

# CAPITAL PUNISHMENT

*Material Relating to Its Purpose  
and Value*

HV  
8699  
.C16  
1965  
c.3

Parable Guy Favreau, Minister of Justice, June 1965

HV  
8699  
.C16  
1965  
c.3

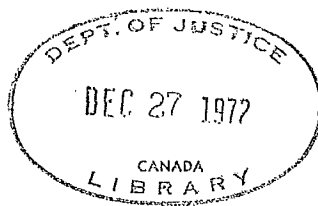
BIBLIOTHÈQUE JUSTICE LIBRARY



3 0163 00003531 1

HV : CANADA... DEPARTMENT OF  
8699 JUSTICE.  
.C16  
1965 Capital punishment:  
c.3 material relating to its  
purpose and value.

HV  
8699  
.C16  
1965  
c.3



# CAPITAL PUNISHMENT

Material Relating to Its Purpose  
and Value

HONOURABLE GUY FAVREAU  
MINISTER OF JUSTICE  
JUNE 1965

© Crown Copyrights reserved

Available by mail from the Queen's Printer, Ottawa,  
and at the following Canadian Government bookshops:

OTTAWA

*Daly Building, Corner Mackenzie and Rideau*

TORONTO

*Mackenzie Building, 36 Adelaide St. East*

MONTREAL

*Æterna-Vie Building, 1182 St. Catherine St. West*

WINNIPEG

*Mall Center Bldg., 499 Portage Avenue*

VANCOUVER

*657 Granville Avenue*

or through your bookseller

A deposit copy of this publication is also available  
for reference in public libraries across Canada

Price \$1.00

Catalogue No. J2-1765

*Price subject to change without notice*

ROGER DUHAMEL, F.R.S.C.  
Queen's Printer and Controller of Stationery  
Ottawa, Canada  
1965

## FOREWORD

Until September 1, 1961 any person convicted of murder in Canada was automatically sentenced to death and the sentence was carried into execution unless the Governor-General, acting upon the advice of his Ministers, commuted the sentence to life imprisonment. By amendments made to the Criminal Code in that year, the crime of murder was divided into "capital murder" and "non-capital murder". Capital murder, generally speaking, is murder that is planned and deliberate; murder committed in the course of certain crimes of violence by the direct intervention or upon the counselling of the accused; and murder of a police officer or prison warden, acting in the course of duty, resulting from such direct intervention or counselling. All other murders are non-capital. Capital murder is still punishable by hanging, except that where the accused was under 18 years of age at the time of the offence, he is sentenced to life imprisonment. Non-capital murder is also punished by life imprisonment.

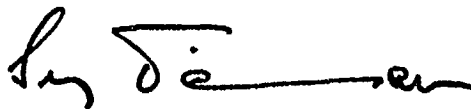
After, as before September 1, 1961, each case in which a sentence of death is passed has been painstakingly reviewed in Cabinet for the purpose of deciding whether to advise His Excellency the Governor-General to commute the sentence or to let it be carried out. In the course of such review all relevant factors are taken into consideration including the age and mental condition of the murderer and the circumstances of the murder itself. The reader will find, at pages 100 to 103 of the Appendices, a table showing all the cases that thus came before Cabinet from January 1, 1957 to May 25, 1965 and the results.

Aside from capital murder the Criminal Code also provides the death penalty for certain cases of treason and piracy.

The question shortly to come before Parliament is whether the death penalty, as prescribed by the Criminal Code, should be entirely abolished, whether it should be further restricted, or whether the present situation should be maintained.

This is not only a very controversial issue: it is also a very subjective issue. It affects every man's conscience to such a degree that it is more appropriate that it be left to a free vote than that it should be dealt with by the ordinary legislative procedure which is likely to bring about voting along Party lines.

In these circumstances the Government considers that its proper role is to facilitate a free vote and to make available to Senators and Members of the House of Commons and citizens at large the information contained in this Paper, in the hope that the Paper may assist them in reaching conclusions. The Paper, prepared in the Department of Justice, is intended to be informative and objective but not to take up a position. The reaction it has already elicited from a member of each Party, to whom it has been shown in draft, encourages the Government to believe that it has achieved these purposes. In this respect I wish to express my gratitude to the various Parties of the House for the co-operation they have extended to the Government in examining the draft and communicating to me their views on it before printing.



*Minister of Justice*

OTTAWA, June 14, 1965.

## ACKNOWLEDGMENTS

Acknowledgment is gratefully made to the following for their kind permission to quote and include extracts from the works and publications below mentioned:

The Controller of Her Majesty's Stationery Office, London, England (Royal Commission on Capital Punishment, 1949-1953, Report; "Murder": A Home Office Research Unit Report)

The Government of the United States of America (United States Official Papers: Uniform Crime Reports, Bureau of Prisons Publications, Federal Bureau of Investigation Bulletins and various Releases)

The American Law Institute and Professor Thorsten Sellin ("The Death Penalty")

Richard J. Bartlett, Esq., Chairman of the State of New York Temporary Commission on Revision of the Penal Law and Criminal Code (Special Report on Capital Punishment)

William F. Tompkins, Esq., Chairman of the New Jersey Commission to Study Capital Punishment (Report of New Jersey Commission to Study Capital Punishment)

Grateful acknowledgment is also made for the use of quotations and extracts from "Capital Punishment", a publication of the Department of Economic and Social Affairs of the United Nations.

## TABLE OF CONTENTS

SECTION	PAGE
1. Introductory .....	1
2. The Royal Commission, 1949-53 (U.K.) .....	1
3. Subsequent Legislative Action in the U.K. ....	3
4. The Joint Committee of Senate and Commons, 1956 (Canada) ....	4
5. Subsequent Legislative Action in Canada .....	5
6. Report on Murder by U.K. Home Office, 1961 .....	6
7. Current Activity in the U.K. ....	7
8. United Nations Study of Capital Punishment, 1962 .....	10
9. The Death Penalty: Thorsten Sellin .....	10
10. Canadian Statistics .....	11
11. Views of Canadian Association of Chiefs of Police .....	12
12. The Situation in France .....	14
13. United States—General .....	15
14. State of New York Temporary Commission Report on Capital Punishment .....	17
15. Report of New Jersey Commission .....	19
16. Arguments or Assertions for and against Capital Punishment ....	22
17. The Summing Up .....	35
18. Bibliography .....	38
<b>APPENDIX</b>	
A. Murder Statistics for England and Wales; Referred to in Section 2 of Paper .....	40
B. Extracts from (1949-53) Report of U.K. Royal Commission as to Functions and Deterrent Effect of Capital Punishment; Referred to in Section 2 of Paper .....	45
C. Chapter III of (1956) Report of Joint Committee, Canadian Senate and Commons: "Retention or Abolition"; Referred to in Section 4 of Paper .....	54
D. Capital Case Statistics for Canada; Referred to in Section 4 of Paper .....	62
E. Criminal Code Sections Defining and Classifying Murder; Referred to in Section 5 of Paper .....	66
F. I. Extracts from the Summary of the (1961) U.K. Home Office Report on Murder; Referred to in Section 6 of Paper .....	69
II. Murder Tables from U.K. Hansard for December 11, 1964; Referred to in Sections 6 and 7 of Paper .....	71
G. Extracts from United Nations Publication: Capital Punishment, including Lists of Countries that have and do not have Capital Punishment; Referred to in Section 8 of Paper .....	76

H.	Extracts from the Description of Professor Thorsten Sellin's Report for the Model Penal Code Project of the American Law Institute; Referred to in Section 9 of Paper .....	85
I.	Canadian Statistics: Proportion of Executions to Sentences; Capital Cases Considered by Governor in Council; Characteristics of Capital Cases, 1957-65; Homicide rates per 100,000 of population, 1954-63; Killings of Policemen and Penitentiary Guards; General Crime Index; Referred to in Section 10 of Paper .....	98
J.	Statistics Supplied by Canadian Association of Chiefs of Police; Referred to in Section 11 of Paper .....	110
K.	I. United States Crime Statistics; Referred to in Section 13 of Paper .....	112
	II. Department of Justice Release on Capital Punishment, March 26, 1965; Referred to in Section 13 of Paper .....	119
	III. United States Execution Statistics, 1930-1964; Referred to in Section 13 of Paper .....	120
	IV. F.B.I. Bulletins on Capital Punishment; Referred to in Section 13 of Paper .....	124
L.	Summary of Staff Report on Capital Punishment to New York Temporary Commission; Referred to in Section 14 of Paper .....	128
M.	Bibliography; Referred to in Section 18 of Paper .....	134



## 1. INTRODUCTORY

The purpose of this Paper is to indicate some of the principal material available on the questions of the purposes and effectiveness of capital punishment; set out the salient parts of such material; include some Canadian statistics; supply a bibliography; catalogue the arguments that are made for and against capital punishment; and give some other, related and relevant, information. The intention is to assist the reader in drawing his own conclusions and to indicate to him where further reading may be found.

## 2. THE ROYAL COMMISSION, 1949-53 (U.K.)

The Report of the Royal Commission on Capital Punishment, 1949-1953, United Kingdom, considered the functions of capital punishment and dealt at length with the question of deterrent effect. Appendix 6. (pp. 328-380) describes particular instances cited in support of or against the deterrent value of capital punishment and then sets out and tries to derive significant meaning from the statistics of a number of countries. It does this by comparing the experiences of different countries or districts that have and that do not have capital punishment; the experiences of the same country or district before and after abolition or restoration; the experiences in particular countries or districts immediately following an abnormally large or abnormally small number of executions; and so forth. For example, it contains a table (p. 342) showing murders in absolute numbers and as an index of population from 1920 to 1948 inclusive for New Zealand and examines these figures to see if they reflect the fact that capital punishment was abolished in New Zealand in 1941, after being in abeyance since 1935. (It was restored in 1950). The Report reads:

"33. It appears from these figures that the abolition of capital punishment was followed by a considerable increase in the number of murders known to the police during the years 1941-48. But a causal connection cannot be safely inferred; there were increases during that decade also in Queensland, where capital punishment was discontinued many years ago, and in New South Wales, where executions were carried out up to 1939 but have been in abeyance since. Moreover, the increase in 1941-48 in New Zealand is hardly greater than the increase there in 1931-35." (page 343)

There is much more material of the same character. Appendix 3 to the Report (pp. 298-325) contains a table (Table 1) showing, for England and Wales, murders known to the police and the disposition thereof from 1900 to 1949. This is reproduced in Appendix A to this Paper together with a second table bringing certain of the information contained in Table 1 up to date to 1963.

The Commission refers to the difficulties of finding appropriate starting points for statistical enquiries since formal abolition is frequently preceded by a period of no executions; to the difficulties of definition; to

the difficulties of finding truly comparable statistics; and to the impossibility of eliminating extraneous factors arising from differences of character and outlook. The paragraphs of the Report relating to functions, and setting out the conclusions of the Commission as to deterrent effect, are reproduced in Appendix B to this Paper. The effect of such conclusions may be gathered from item (3) of the Conclusions and Recommendations of the Commission (see below) and the following passage:

“. . . We think it is reasonable to suppose that the deterrent force of capital punishment operates not only by affecting the conscious thoughts of individuals tempted to commit murder, but also by building up in the community, over a long period of time, a deep feeling of peculiar abhorrence for the crime of murder. 'The fact that men are hung for murder is one great reason why murder is considered so dreadful a crime.' This widely diffused effect on the moral consciousness of society is impossible to assess, but it must be at least as important as any direct part which the death penalty may play as a deterrent in the calculations of potential murderers. It is likely to be specially potent in this country, where the punishment for lesser offences is much more lenient than in many other countries, and the death penalty stands out in the sharper contrast." (page 20)

The formal conclusions and recommendations of the Commission that are of chief interest, including item (3), are set out below. It should be pointed out that the terms of reference of the Commission were not to recommend on abolition or retention of the death penalty but, rather, "to consider and report whether liability under the criminal law in Great Britain to suffer capital punishment for murder should be limited or modified, and if so, to what extent and by what means, for how long and under what conditions persons who would otherwise have been liable to suffer capital punishment should be detained, and what changes in the existing law and the prison system would be required; and to inquire into and take account of the position in those countries whose experience and practice may throw light on these questions:" (p. iii)

#### **"Summary of Conclusions and Recommendations"**

"(3) These questions involve consideration of the purpose of capital punishment. Of the three purposes commonly assigned to punishment—retribution, deterrence and reformation—deterrence is generally held to be the most important, although the continuing public demand for retribution cannot be ignored. Prima facie the death sentence is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment. There is some evidence (though no convincing statistical evidence) that this is in fact so; and also that abolition may be followed for a short time by an increase in homicides and crimes of violence. But there is no clear evidence of any lasting increase, and there are many offenders on whom the deterrent effect is limited and may often be negligible. It is therefore important to view the question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty (paragraph 68)." (page 274)

"(12) We recommend by a majority (6 to 5) that the statutory age-limit below which a person may not be sentenced to death should be raised from 18 to 21 in both England and Scotland (paragraph 195)." (page 275)

"(39) It is impracticable to frame a statutory definition of murder which would effectively limit the scope of capital punishment and would not have overriding disadvantages in other respects (paragraph 483)." (page 278)

"(41) It is impracticable to find a satisfactory method of limiting the scope of capital punishment by dividing murder into degrees—a proposal which is moreover open to other objections (paragraph 534)." (page 278)

"(42) We do not recommend that the Judge should be empowered to substitute a lesser sentence for the sentence of death where a person is convicted of murder (paragraph 549)." (page 278)

"(43) The alternative of empowering the jury to decide in each case whether punishment by imprisonment for life can properly be substituted for the death penalty is said to work well on the whole in the countries where it has been adopted (paragraph 594). The possibility of introducing it into Great Britain is examined and the conclusion is reached that a workable procedure could be devised (paragraph 567) and that it is the only practicable way of enabling the courts, instead of the Executive, to take account of extenuating circumstances so as to correct the rigidity which is the outstanding defect of the existing law (paragraph 595)." (page 278)

"(46) We recognise that the disadvantages of a system of 'jury discretion' may be thought to outweigh its merits. If this view were to prevail, the conclusion would seem to be inescapable that in this country a stage has been reached where little more can be done effectively to limit the liability to suffer the death penalty, and that the issue is now whether capital punishment should be retained or abolished (paragraph 611)." (page 278)

### 3. SUBSEQUENT LEGISLATIVE ACTION IN THE U.K.

In 1957 the Homicide Act of the United Kingdom (Homicide Act, 1957, c. 11) to some extent redefined murder, and classified it as capital and non-capital, in the following provisions:

"5.—(1) Subject to subsection (2) of this section, the following murders shall be capital murders, that is to say,—

- (a) any murder done in the course or furtherance of theft;
- (b) any murder by shooting or by causing an explosion;
- (c) any murder done in the course or for the purpose of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody;
- (d) any murder of a police officer acting in the execution of his duty or of a person assisting a police officer so acting;
- (e) in the case of a person who was a prisoner at the time when he did or was a party to the murder, any murder of a prison officer acting in the execution of his duty or of a person assisting a prison officer so acting.

(2) If, in the case of any murder falling within the foregoing subsection, two or more persons are guilty of the murder, it shall be capital murder in the case of any of them who by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered, or who himself used force on that person in the course or furtherance of an attack on him; but the murder shall not be capital murder in the case of any other of the persons guilty of it."

The Act provides for a person convicted of capital murder, or of a second murder whether capital or non-capital, to be sentenced to death and for persons otherwise convicted of murder to be sentenced to life imprisonment; except that a person, convicted of capital or non-capital

murder, who was under 18 years of age at the time of the offence is to be detained during Her Majesty's pleasure; and sentence of death is not passed upon a pregnant woman.

The Homicide Act also introduced into the law of England, from the law of Scotland, the principle of "diminished responsibility". On this principle if a person, at the time of the offence, "was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing", (S. 2) he is not to be convicted of murder, but of manslaughter, and is liable, in effect, to imprisonment for any term up to life or to be committed to a mental institution.

#### 4. THE JOINT COMMITTEE OF SENATE AND COMMONS, 1956 (CANADA)

The Report of the Joint Committee of the Senate and House of Commons on Capital Punishment, June 27, 1956, (Canada) also considered the questions of the function and deterrent effect of capital punishment.

The Committee arranged for the attendance before it of Professor Thorsten Sellin who has made statistical studies of deterrent effect and is a recognized authority in this field. Professor Sellin went further, in his presentation to the Committee, than he had gone in his evidence before the Royal Commission of the United Kingdom. In the latter evidence he stated that it could not be concluded from his statistical studies that capital punishment had no deterrent effect. To the Committee he stated: "What the statistics prove is not the case for or against the death penalty, but the case against the general deterrent effect of that penalty" (Report, pages 12-13). The Committee, however, said it shared the opinion of the Royal Commission that too much should not be read into the failure to find a correlation between the death penalty and homicide rates in statistical surveys. It went on to say that it was conscious of the views, of the provincial attorneys general and other officials responsible for law enforcement, that capital punishment is a necessary deterrent to murder, and it did not consider this opinion displaced by other evidence based on statistical comparisons. The Committee therefore concluded "that capital punishment does exercise a deterrent effect, which would not result from imprisonment or other forms of punishment" (Report, pages 13-14 particularly paragraph 52).

Chapter III of the Report—"Retention or Abolition" is set out in Appendix C to this Paper. Appendix D to this Paper reproduces a table of capital case statistics that was published in the Report and brings such statistics up to date from 1954.

The recommendations of the Committee were as follows:

- (1) Retention of Capital Punishment as Mandatory Penalty for Murder (paragraph 63).
- (2) Retention of Capital Punishment for Treason and Piracy (paragraph 65).

- (3) No Change in Definition of Murder (paragraph 69).
- (4) No 'degrees of murder' (paragraphs 70-71).
- (5) No Special Provision for Women (paragraph 75).
- (6) Abolition of Capital Punishment for Offenders under 18 and Restriction for Offenders under 21 (paragraph 76).
- (7) Full Disclosure of Crown's Case to Accused (paragraph 79).
- (8) Provision of Competent Counsel and Assistance in Producing Evidence (paragraph 80).
- (9) Mandatory Plea of 'not guilty' in Capital Cases (paragraph 81).
- (10) Automatic Appeal to Provincial Court of Appeal in all Capital Cases (paragraph 83).
- (11) Appeal as of Right by a Convicted Person to Supreme Court of Canada (paragraph 84).
- (12) Centralized Places of Execution in each Province (paragraph 88).
- (13) Abolition of Hanging—Replacement by Electrocution with alternative of the Gas Chamber (paragraphs 91-94)." (Report, page 23).

## 5. SUBSEQUENT LEGISLATIVE ACTION IN CANADA

In 1961 the Criminal Code was amended to classify murder as capital and non-capital. Generally speaking, murder is capital when it is planned and deliberate; when it is committed in the course of certain crimes of violence by the direct intervention or upon the counselling of the accused himself; and when it is committed upon a police officer or prison warden, acting in the course of duty, by the direct intervention or upon the counselling of the accused himself; otherwise it is non-capital. As may be seen from Sections 202 and 206A (Appendix E to this Paper) it is not always necessary, in order to constitute capital murder, that the accused actually intended to kill; it is sufficient, e.g., if he intentionally caused bodily harm for the purpose of facilitating a robbery and death ensued therefrom. The death penalty was retained, with one exception, for capital murder and the punishment for non-capital murder was made a mandatory\* imprisonment for life. The exception mentioned is that a person convicted of capital murder who was under 18 years of age at the time of the offence is sentenced to life imprisonment. It was also provided that, upon an accused being convicted for capital murder, the Judge shall ascertain whether the jury wishes to make any recommendation for or against clemency, for consideration by the Executive when deciding whether or not the death sentence should be commuted. An automatic review of all capital convictions, by the provincial Court of Appeal, was also provided, with a further full right of appeal on fact or law to the Supreme Court of Canada. The courts of appeal cannot, of course, review the death *sentence* for capital murder, as distinguished from the *conviction*, because the former is mandatory. The principal sections of the Criminal Code which define and classify murder are set out in Appendix E to this Paper.

---

\* Mandatory, i.e., upon the Judge; the convicted person may later be paroled or his sentence could be commuted to a term of years by the Governor-in-Council.

The Minister of Justice of the day, Honourable Mr. E. Davie Fulton, said in moving the second reading of the 1961 Bill to amend the Criminal Code in respect of murder:

"But the general base on which it rests in so far as concerns the retention of capital punishment for deliberate murder, is this: That society requires for its preservation and protection that certain laws be observed. The whole basis of society, in the sense of any ordered form of life, would dissolve and chaos would reign if we did not have laws embodying that code of conduct by which, collectively, we say we desire to live. And because we live in an imperfect world, these laws require sanctions. Now, there are laws or rules of conduct of greater or lesser importance; therefore there are and must be sanctions of greater or lesser degree. But whatever be the sanction it is not a matter of retribution or revenge: It is an integral and essential element necessary to ensure the moral as well as the material vigour of the system of laws of which it is a part. If there is no sanction, the law ceases to have any effect.

Society's concern for its basic rules is expressed in its commands and corresponding sanctions that together constitute our criminal law. The degree of society's concern with respect to individual rules is reflected in the method of expression adopted.

In this sense, therefore, the sanction for the law against murder may properly reflect the importance which society attaches to the maintenance of that law. In our view, Canadians properly attach so high a value to the sanctity of human life that the law which translates this feeling into effective form should provide the maximum sanction for its deliberate breach, and no other penalty would be considered adequate." (Hansard, May 23, 1961, page 5223)

In concluding the debate the Minister said:

"The bill appears to have received very general, perhaps almost unanimous support in principle. It must be recognized, of course, that the reasons for such support are not the same on the part of each member who has spoken. Those members who favour outright abolition of the death penalty apparently welcome the bill not only for the restriction that it actually places on the imposition of the death penalty but also because they regard it as a step toward abolition. The vast majority, however, appear to accept and approve the bill for what it was intended to be and what it is. It is not an abolitionist measure or a first step toward abolition but a bill for the purpose of bringing the present position with regard to capital punishment into line with present day ideas of crime and punishment and for the purpose of excluding from the imposition of the death penalty those classes of cases which, generally speaking, are not characterized by deliberations and planning and where it is felt that the imposition or execution of the death penalty ought not to be provided." (Hansard, May 24, 1961, pages 5317-8)

## **6. REPORT ON MURDER BY U.K. HOME OFFICE, 1961**

At the beginning of 1961 the Home Secretary directed the Home Office Research Unit to undertake an investigation of the subject of murder. The report of the investigation was published the same year under the title "Murder". It was based "on a statistical enquiry, beginning with deaths initially recorded by the police as murders and following them through to the final decision reached, and includes an analysis of the

types of victim and the types of murderers concerned". The object of the report was "to give a perspective view of the subject over recent years, with special attention to the effect of the changes made by the Homicide Act, 1957." (p.iii)

The following Table, showing finally adjusted numbers of murders known to the police, and numbers of offences reduced to manslaughter by reason of the principle of diminished responsibility, is taken from the Report:

	No. of victims			No. per million of home population (a) of England and Wales	
	Murder	s. 2 Manslaughter	Total	Murder	Murder and s. 2 Manslaughter
1931-40 { annual	130	—	130	3.2	3.2
1941-50 { (a)	152	—	152	(a)	(a)
1951-55 { average	137	—	137	3.1	3.1
1956.....	150	—	150	3.4	3.4
1957.....	151	23	174	3.3	3.9
1958.....	125	28	153	2.8	3.4
1959.....	141	20	161	3.1	3.5
1960.....	135	31	166	3.0	3.7

(a) No figure for home population is available for the war years, since this represents persons actually living in the country at the time." (Report, page 4).

Elsewhere, in the Report, the authors point out that the cases classified above as "s. 2 Manslaughter", that is to say, cases which were reduced from murder to manslaughter upon the principle of diminished responsibility, are cases that, before the Homicide Act, 1957, would likely have resulted in convictions for murder or verdicts of guilty but insane. For this reason they have been included in the "Total" column. Relevant excerpts from the Summary of the Report are reproduced in Appendix F to this Paper. The Report pointed out that the annual average of murders for the last three years before the Homicide Act, 1957 came into force was 143 and for the three year period thereafter, 160; this being an increase of 11% as compared with an increase, in all crimes of violence against the person, of 69%; and that the number of murders for robbery or financial gain rose from 6 per year to 12 per year, after the Homicide Act, 1957 in spite of the fact that murder in the course or furtherance of theft is capital murder.

Included in Appendix F are several tables that were published in United Kingdom Hansard of December 11, 1964, in connection with the debate on the Bill to abolish capital punishment, for the purpose of bringing the tables in this Report up to date.

## 7. CURRENT ACTIVITY IN THE U.K.

On December 4, 1964, Mr. Sydney Silverman, M.P., long an advocate of abolishing capital punishment, introduced in the United Kingdom Parliament a private members' bill to abolish capital punishment for

murder. (United Kingdom Hansard for December 4, 1964, col. 928). The Bill came on for second reading on December 21, 1964 (Hansard for December 21, 1964, col. 870 et seq.). The following passages from Mr. Silverman's speech on second reading indicate the principles which led him to introduce the Bill:

"Sir Alexander Spearman (Scarborough and Whitby): The hon. Member says that hanging is not a deterrent. He has said in the past that hanging is not a deterrent and, presumably, he bases his Bill upon that. I should like to know whether he will consider, at a later stage, a new Clause incorporating a trial period. If, indeed, hanging is not a deterrent, that would do his cause no harm but it would give some assurance to those, rightly or wrongly, who still have doubts about whether it is a deterrent.

Mr. Silverman: I have never said that hanging was not a deterrent.

Sir A. Spearman: An effective deterrent.

Mr. Silverman: That is the difference. The only point about deterrents, and, I think, the only rational ground on which a death penalty could ever be defended, is that there are fewer murders if we have the death penalty than if we do not have the death penalty. That is the criterion and test. What I have denied, and what I have not denied alone, is that the death penalty is a deterrent to murder in any sense that is more effective than other existing or imaginable deterrents. The Royal Commission has established that proposition beyond further controversy to the satisfaction of all those who wish to know the truth.

The Hon. Gentleman asks about a trial period. This is where I began 16 years ago. We have had already seven or eight years' experience of the deterrent effect of the exceptions in the 1957 Act. Another five years will not alter the picture one way or the other. I think that this controversy has gone on long enough. The arguments both ways are clear; and I think that everybody knows what they are. I think that everybody has made up his mind about where the balance between the two arguments lies. I do not believe that any useful purpose would be served by prolonging the debate, or by keeping the matter in issue, for another five years with the prospect of having to do it all over again five years' hence.

If it should turn out that this is all wrong, and if the abolition of this remnant of the death penalty proves to be a mistake, we do not need a five years' Clause in the Bill to put it right. Parliament will remain sovereign. It will be able to repeal whatever we do. There is no need to keep the pot boiling, to keep the argument going, when it has been reduced to such a small, narrow limit and has had so much of a trial period." (cols. 882-3)

"I have finished but for one closing remark which I should like to make. It may be said, it may be in many people's minds, what does it matter? This question of the death penalty, be it right or wrong, is reduced to a very small compass. In 1964 we executed only two people, and those two were executed for one and the same murder. Last year, I think, it was also two. The year before it was either two or three—I am not quite sure which. It is a very small matter, and I can well understand Members on either side of the House saying, 'In the face of all our anxieties and preoccupations, what can it matter whether we execute or do not execute two wretched murderers every year?'

For my part, I think that it matters. Men and women in my generation have lived through two world wars. They may have cost between



them about 80 million human lives. When I was a very young man, in my boyhood in the earlier years of the twentieth century we regarded the twentieth century as synonymous with the ultimate achievement of civilisation, and when we wanted to say that a thing was wrong we said that it was not worthy of the twentieth century.

Sir Winston Churchill once described this twentieth century, which we began with so much hope, as 'this terrible twentieth century'. We have seen in it not merely those two wars, this destruction, this bloodshed. We have seen whole cities of non-combatant men, women and children wiped out without notice at one blow. We have seen a nation collecting from the ends of the earth 6 million human beings not for any military purpose, but for annihilation on grounds of race or creed.

We are living today in a world under the threat of human extinction. We may be beginning to make our way out of it. But who knows? It is impossible to argue that the execution or non-execution of two people in England every year can make a very great contribution to the improvement of a dark and menacing world. But in this darkness and gloom into which the twentieth century civilisation has so far led us, we can at least light this small candle and see how far its tiny beams can penetrate the gloom." (cols. 889-90)

As of May 26, 1965, the Bill was still in the stage of second reading in the Commons. On that day the following clause was added to the Bill at the instance of Mr. Henry Brooke, the previous Home Secretary:

"This Act shall continue in force until the thirty-first day of July nineteen hundred and seventy, and shall then expire unless Parliament by affirmative resolutions of both Houses otherwise determines: and upon the expiration of this Act the law existing immediately prior to the passing of this Act shall, so far as it is repealed or amended by this Act, again operate as though this Act had not been passed, and the said repeals and amendments had not been enacted."

In explaining the new clause Mr. Brooke said:

"The purpose of the new Clause is to ensure that after five years' trial—whatever Government are in power at the time and whoever may be the Home Secretary—the practical working of the Measure now before us will automatically come up for review by Parliament. I propose, in the Clause, that the operation of the Bill shall run until July, 1970, but that it should be capable of being prolonged beyond that date if both Houses by affirmative Resolution then think fit.

This is not a wrecking Amendment. I would rather call it a fulfilling Amendment, because it is designed to fulfil the belief of very large numbers of people that we should experiment with the abolition of the death penalty—approach it as an experiment—and then decide, in the light of practical experience of its working, whether we should make it permanent. I say at once that I personally hope that it can be made permanent. However, I am sure that it will lessen the fears which a great many people have about the Measure if we embody the new Clause so that its experimental character becomes an integral part of the Bill and is obvious on the face of it. I see no objection to taking this course." (cols. 529-30)

As noted elsewhere, there are included in Appendix F to this Paper a number of tables that were published in United Kingdom Hansard of December 11, 1964, in connection with the debate on Mr. Silverman's Bill.

### **8. UNITED NATIONS STUDY OF CAPITAL PUNISHMENT, 1962**

On November 20, 1959, the General Assembly of the United Nations invited the Economic and Social Council to initiate a study of the question of capital punishment, of the laws and practices relating thereto, and of the effects of capital punishment, and the abolition thereof, on the rate of criminality. The Secretary-General of the Council sent out questionnaires requesting information on the laws, regulations and practices in force in the different countries and also requesting information on the deterrent effect of the death penalty and on the consequences of its abolition. There was also available, for purposes of the study, documentation gathered at the instance of the Council of Europe from its member countries. The Report is entitled "Capital Punishment", and is United Nations Publication ST/SOA/SD/9, sales number: 62.iv. 2, published by the Department of Economic and Social Affairs of the United Nations in 1962. Relevant extracts from the Report appear in Appendix G to this Paper. Before proceeding to the body of the Report the author points out several difficulties in the way of ascertaining the facts, including the difficulty of comparing statistical data on a truly international level.

The Report, after referring again to the difficulty of obtaining complete and objective data, and subject to this qualification, goes on to note that the information assembled for the enquiry "confirms the now generally held opinion that the abolition or (which is perhaps even more significant) the suspension of the death penalty does not have the immediate effect of appreciably increasing the incidence of crime." (Report, page 53, paragraph 192).

### **9. THE DEATH PENALTY: THORSTEN SELLIN**

The Report of the Joint Committee of the Senate and House of Commons on Capital Punishment mentions (page 12) that the Committee was fortunate in arranging for the attendance, before the Committee, of Professor Thorsten Sellin who presented statistical surveys comparing homicide rates in various jurisdictions in relation to the use of capital punishment. Professor Sellin, in 1959, prepared for The American Law Institute, in connection with the Model Penal Code project which the Institute was working on, a study entitled "The Death Penalty". "The purpose of this report" he said "is not to present a brief for or against the death penalty. It aims to furnish some data which will clarify some of the issues involved and to examine some of the claims made by those who defend or oppose the use of this punishment". (p. ix) He examines, comparatively, homicide rates in selected States of the United States that do and do not have capital punishment; compares the rates of capital crimes in specific States or Countries that have experimented with abolition; notes the specific effect of highly publicized executions; and examines the claims that the death penalty protects policemen. Relevant extracts from the study are reproduced in Appendix H. The following table is taken from Chapter 1:

"TABLE 1

COMPARATIVE HOMICIDE DEATH RATES IN 1948 OF SOME COUNTRIES WITH OR WITHOUT THE DEATH PENALTY FOR MURDER

Rates per 100,000 population

Countries with death penalty		Countries without death penalty	
Name of country	Rate	Name of Country	Rate
El Salvador.....	44.3	Colombia.....	15.9
Bolivia <sup>1</sup> .....	6.6	Puerto Rico.....	14.1
U.S.A.....	5.8	Costa Rica <sup>1</sup> .....	5.0
Spain.....	1.4	Dominican Republic.....	4.9
Canada.....	1.2	Finland.....	4.6
Australia.....	1.1	Italy.....	2.4
New Zealand.....	1.1	Austria.....	2.1
France.....	0.8	Portugal.....	1.6
Ireland.....	0.6	Belgium.....	1.4
Scotland.....	0.6	Western Germany <sup>2</sup> .....	1.2
England and Wales.....	0.5	Denmark.....	1.0
		Switzerland.....	1.0
		Sweden.....	0.8
		Norway.....	0.5
		Netherlands.....	0.4

SOURCE: United Nations, Demographic Yearbook, 1952. New York, 1952, Table 20.

<sup>1</sup>1947 rate.

<sup>2</sup>1949 rate." (page 3)

Sellin classified the arguments for or against the death penalty as falling in the class of *dogma* on the one hand or *empirical* or *utilitarian* on the other hand. "The main utilitarian arguments" he says "focus on the problem of deterrence". (Study, page 16; Appendix H to this Paper). His finding is that anyone who carefully examines the data he has put forward is bound to arrive at the conclusion that the death penalty, as it is used, exercises no influence on the extent or fluctuating rates of capital crimes. (Study, pages 34 and 63; Appendix H to this Paper)

### 10. CANADIAN STATISTICS

As already noted, Appendix D to this Paper brings up to date the table of capital case statistics, going back to Confederation, which was incorporated in the 1956 Report of the Joint Committee of the Senate and House of Commons. Appendix I to this Paper supplies further Canadian statistics comprising:

- (a) Table A showing, by decades or parts thereof since 1867, the number of death penalties imposed in each such decade or part thereof and the number of such penalties carried into execution.
- (b) Table B showing, for the years 1951 to 1965 inclusive, the number of capital cases considered by the Governor-in-Council.
- (c) Table C showing, for three significant periods since January 1, 1951, the number of capital cases considered by the Governor-in-Council in each such period and the results.
- (d) Table D showing the leading characteristics of all capital cases considered by the Governor-in-Council since January 1, 1957.

- (e) Table E showing the number of murders known to the Police, and homicidal deaths, over the period 1954-1963 inclusive, and the rates thereof per 100,000 population 7 years of age and over for the same period.
- (f) Tables F, G and H relating to murders of policemen and penitentiary guards.
- (g) Table I showing number of persons convicted, and convictions, for indictable offences, over the period 1954-1962 inclusive, and the rates thereof per 100,000 population 16 years and over, for the same period.

## 11. VIEWS OF CANADIAN ASSOCIATION OF CHIEFS OF POLICE

In a letter addressed to all members of Parliament, dated February 6, 1965, the Canadian Association of Chiefs of Police expressed great concern with what they described as "the present state of lawlessness in our country". Rarely a day passes, said the Association, without news of a bank hold-up, atrocious murder or other serious crime. The Association went on to express its belief that the policy of the Canadian Government, since 1957, in granting clemency to vicious murderers by commuting death sentences to "so-called life imprisonment" has greatly contributed to the present deplorable situation. The Association also expressed the view that the proponents of abolition are more vociferous than others on the subject, because they have formed an organization to press for their objective, whereas the average good citizen is too busy with his own problems to write the Press or others. The Association enclosed with their letter a copy of a letter addressed to the Prime Minister dated December 17, 1964, and a copy of a Brief presented by the Association to the Joint Committee of the Senate and House of Commons which considered the question of capital punishment and reported thereon in 1956.

The letter to the Prime Minister protested the policy of commuting death sentences imposed for capital murder, especially the recent cases of Kenneth Lloyd Meeker and Georges Marcotte. (Meeker was convicted of the sex slaying of a 12 year old girl in British Columbia and Marcotte was convicted of the killing of a policeman in the well known "Santa Claus" case.) The Association also expressed astonishment at the announcement of the decision of the Government to permit a free vote at the next session of Parliament on the question of capital punishment. In the Association's view this is a time when crimes of violence are at an all time high and steadily increasing, including attacks upon and murders of, police officers and the commutation policy followed since 1957 has contributed greatly to this state of affairs. The Association then referred to a recent television program in which had been quoted disturbing figures indicating a very substantial increase of murders between 1960 and 1963. (But see in this regard the Tables in Appendix I to this Paper). The Association then expressed firm belief that the death penalty is the greatest safeguard the police have in dealing with dangerous criminals.

The Brief presented under date of March 24, 1955, to the Joint Committee, urged retention of capital and corporal punishment. It referred

to the statistics presented to the Committee by Professor Sellin and, in turn, presented "the official figures as compiled by the Federal Bureau of Investigation, Department of Justice, Washington, for a period of five years from 1949 to 1953, inclusive." These statistics are reproduced in Appendix J to this Paper and it should be noted that the first six States mentioned, which with the exception of Michigan are quite small in population, were the six States then understood not to have the death penalty.

The Brief then sets out the following as "a brief summary of the crime trend in the United States, according to the F.B.I. reports for the years 1949, 1950, 1951 and 1953":

<u>"Year</u>	<u>Crime (General)</u>	<u>Murder</u>
1949	Increased 4.5%	Decreased 8.3%
1950	" 1.5%	Increased 0.4%
1951	" 5.1%	Decreased 2.9%
1952	(Information was not available to us)	
1953	Increased 6%	Decreased 1.2%"

The Brief then set out the following, among other, "Contentions":

"No. 1. In answer to the evidence given you by others that crime statistics do not offer proof either for or against the death penalty as a deterrent to murder, we wish to say that after studying the figures for murder in the United States, we submit that the following table will serve to show a comparison of the murders reported by six of the larger States for the 5-year period, 1949 to 1953, inclusive. This table has been compiled from the F.B.I. figures shown on Appendix 'A'. It will be observed that five States which have the death penalty have a lower ratio per 100,000 of population than Michigan, which does not have the death penalty. The most striking example is that of Massachusetts with a reporting population of 3,729,795, including the City of Boston, had a ratio of 1.3 per 100,000 compared to Michigan with a population of 3,850,500, with a ratio of 4.5. Even the great State of New York with a population of 11,665,437 had a lower ratio than Michigan, namely 3.1.\*

<u>State</u>	<u>Reporting Population</u>	<u>Rate Per 100,000</u>	<u>No. of Murders 1949 to 1953</u>
Michigan.....	3,850,500	4.5	806 (No Death Penalty)
Massachusetts.....	3,729,795	1.3	187 With Death Penalty
Pennsylvania.....	5,699,131	1.7	717 " " "
New York.....	11,665,437	3.1	1820 " " "
California.....	6,666,927	3.5	1154 " " "
Ohio.....	4,924,372	4.2	1055 " " "

No. 2. We also offer as strong evidence the fact that the United States, one of the most progressive, powerful and democratic countries of the world, has deemed it prudent to retain the death penalty in 42 of its 48 States, including all the larger ones, with the exception of Michigan. It is worthy of mention, too, that Great Britain, which can hardly be classed as barbaric or less prudent in humanitarian principles than any other country, has retained Capital Punishment.

No. 3. We believe that the system of law administration in Canada in dealing with murder cases provides the necessary safeguards to prevent innocent persons being put to death. Furthermore, we know of no case in this country of any innocent person having been executed.

\* The reader may wish to make further comparisons, between States that have and States that do not have the death penalty, by reference to Appendix J.

No. 4. The statement has been made in the evidence before you that *imprisoned killers are reported to be well behaved convicts*. What does it mean? We imagine it is equivalent to saying that the most ferocious beast of the jungle is a rather quiet and docile animal behind steel bars, but we all know what happens if the beast succeeds in getting out of his cage.

No. 5. The statement that *murder is the least risky of Canadian crimes* would seem to merit little time on the part of this Committee to refute it. We know nothing that will cause greater effort on the part of the police of all forces, even with national or international aspects, or anything that will guarantee better results.

No. 6. We sincerely believe that all sane persons would prefer a sentence of life imprisonment rather than suffer the death penalty, therefore, we feel that Capital Punishment is definitely an effective deterrent. The adage 'Where there is life, there is hope' would seem to appropriately fit this situation."

## 12. THE SITUATION IN FRANCE

It is understood that in France as in Canada there is an organized movement toward the abolition of the death penalty, centred in the Association Française Contre La Peine De Mort. The Association made representations against the carrying out of the death penalty in the last case in France of which details are known to the Department of Justice. That was a case of murder in the course of armed robbery. The murderer was convicted on January 31, 1964, and executed on June 27, 1964. The Department does not have knowledge of any study conducted recently in France, of the nature of the Royal Commission or Joint Committee above mentioned, but the following table indicates capital convictions, executions and commutations from 1954 to 1965 inclusive. As is likely known, the method of execution in France is by the guillotine.

### CAPITAL CONVICTIONS

#### COURT OF ASSIZES

Year	Number of Persons Condemned	Number	
		Executions	Commutations
1954.....	4	0	4
1955.....	10	1	9
1956.....	6	2	4
1957.....	5	4	1
1958.....	11	6	5
1959.....	3	1	2
1960.....	3	1	2
1961.....	7	1	6 (A)
1962.....	0	0	0
1963.....	8	3	5
1964(B).....	4	1	2
1965(C).....	2		
Total.....	63	20	40

(A) including 2 women.

(B) one case still under consideration of clemency.

(C) first five months; both cases still under consideration of clemency.

There is a table in the Report of the Royal Commission on Capital Punishment, 1949-53 (U.K.), setting out similar information for France up to and including 1947, but omitting the war years. The largest number of executions since 1900 was 26 in 1912. The average number from 1931 to 1938 inclusive was 7.3. (pages 368-9).

### 13. UNITED STATES—GENERAL

The latest information obtained from the United States indicates that the following States do not have capital punishment: Alaska, Hawaii, Maine, Michigan, Minnesota, Rhode Island, North Dakota, Wisconsin, Oregon, Iowa, and West Virginia. (U.S. Department of Justice Release, March 26, 1965)

This statement has to be qualified by the remark that some of these States may, however, retain limited use of the death penalty. The United Nations Publication "Capital Punishment" noted that, of the States that were considered to have abolished capital punishment "in principle", Michigan retained it for treason. North Dakota for treason and murder in the first degree committed by a prisoner already serving a sentence for murder in the first degree and Rhode Island for murder committed by a prisoner under sentence of life imprisonment (pages 8-9).

Recent items, in the press and reporting services, however, are to the effect that a Bill to abolish the death penalty, except for murders of peace officers and murders by convicts while in prison or trying to escape, has been adopted by the State of New York effective June 1, 1965 (The Ottawa Citizen, June 2, 1965); that the Vermont Legislature gave approval to a Bill abolishing capital punishment except that the jury may call for capital punishment in cases where an accused is convicted of murder for the second time, provided the two cases are not related and when the murder is of an on-duty police officer or prison guard (The New York Times, April 14, 1965); that a Bill to abolish capital punishment was passed by the Senate in Tennessee but defeated in the House (Facts on File, April 1-7, 1965); that the Governor of Indiana vetoed a Bill passed by the Indiana Legislature, stating he preferred to see the issue put to a referendum (Facts on File, April 1-7, 1965); and that Missouri recently turned down abolition (The Christian Science Monitor, March 24, 1965).

Mr. John Edgar Hoover, Director of the Federal Bureau of Investigation of the United States Department of Justice, issues annually a publication entitled "Crime in the United States". Appendix K to this Paper contains a Table which has been compiled from these Uniform Crime Reports, showing, by States and for the years 1958 to 1963, the index of serious crime and, separately, the index of murder and non-negligent manslaughter.

The following are extracts from the 1959 and 1963 issues, respectively, of the Uniform Crime Reports:

#### "Capital Punishment

Most states have capital punishment; a few do not. For the most part, capital punishment is associated with the crime of murder. Some states have high murder rates; some do not. Of those states with low

murder rates, some have capital punishment; some do not. The number of murders that occur within a state as indicated by rates is due to a wide range of social, human and material factors.

It would be convenient for a study of the effects of capital punishment as a deterrent if states fell neatly into two groups: (1) Those with low murder rates and capital punishment; and (2) those with high murder rates and no capital punishment. Or, if the user of these statistics is making a case against capital punishment, he would prefer to demonstrate that the states with low murder rates are those that do not have capital punishment. But to expect such an over-simplification of a highly complex subject is to engage in wishful thinking or a futile groping for proof that is not there.

Some who propose the abolishment of capital punishment select statistics that 'prove' their point and ignore those that point the other way. Comparisons of murder rates between the nine states which abolished the death penalty or qualified its use and the forty-one states which have retained it either individually, before or after abolition, or by group are completely inconclusive.

The professional law enforcement officer is convinced from experience that the hardened criminal has been and is deterred from killing based on the prospect of the death penalty. It is possible that the deterrent effect of capital punishment is greater in states with a high murder rate if the conditions which contribute to the act of murder develop more frequently in those states. For the law enforcement officer the time-proven deterrents to crime are sure detection, swift apprehension, and proper punishment. Each is a necessary ingredient." (1959 Report)

#### "Criminal Homicide

The number of willful killings in 1963 remained at about the same level recorded in the previous year or 8,500 victims. Similarly since 1958, there has been little change in the murder rate. When examined over a longer period of time, we find the urban murder rate of the early 1930's was over 40 percent higher than that recorded in the early 1960's. Generally, this is a crime that cannot be controlled by law enforcement since most of its occurs beyond the reach of preventive patrols, although the police cleared up 91 percent of the murders by arrest of the offender during 1963. The reduction of the murder rate since the 1930's may well be the result of improved police service bringing quicker medical attention for the victim and at the same time improved medical treatment. The serious assault rate during these periods in American cities increased over 50 percent, indicating the victim remains an assault statistic rather than becoming a murder statistic.

Nationally in 1963, 31 percent of the willful killings occurred within a family unit and 51 percent resulted from altercations outside the family but usually among acquaintances. Of the 8,500 willful killings in 1963, 12 percent or almost 1,100 could be identified as felony murder; i.e., the victim was killed by a robber, sex offender or other felon. The remainder, another 5 percent of the murders, occurred under such circumstances that a specific motive was not determined at the time reported. Breaking down these figures further, spouse killing spouse made up 53 percent of the family situations and parents killing children 17 percent, while the reverse circumstances accounted for 6 percent. Murders among other family relatives comprised 24 percent of the total in this category. In killings outside the family, lovers' quarrels were identified in 17 percent, drinking situations 14 percent, quarrels over money or property 5 percent and revenge 4 percent. The vast majority in this category were the result of impulsive rage involving a wide range of altercations, such as arguments over a cigarette, ice cream, noise, etc." (1963 Report, pages 6-7)



The 1964 Preliminary Annual Release (March 10, 1965) of the Federal Bureau of Investigation contains the following paragraph:

"Preliminary figures for the calendar year 1964 revealed a nationwide rise of 13 percent in the Crime Index over 1963. In actual numbers, this was an increase of more than 250,000 serious crimes for the reporting agencies included in this release. For the country as a whole, all crime classifications were up in volume. The crimes of violence recorded a 9 percent rise in murder, 18 percent in aggravated assault, 19 percent in forcible rape and 12 percent in robbery. The property crimes continued the up-swing led by auto theft up 16 percent, larceny \$50 and over 13 percent, and burglary 12 percent. Total crime increases were reported by all areas, with cities over 100,000 population as a group up 11 percent, suburban communities 18 percent and rural areas 9 percent."

The Federal Bureau of Prisons annually publishes statistics relating to executions in the United States. Appendix K, above mentioned, sets out a Release of the Department of Justice, relating to executions, dated March 26, 1965, in which the Attorney General reports that fifteen (15) executions, the fewest since 1930, were carried out by civil authorities in the United States during the calendar year 1964, nine of these executions being for murder and six for rape. Also set out in Appendix K are Tables 2 and 3 from the latest publication of the Federal Bureau of Prisons showing for the period 1930-64, executions by regions and States and by offences and race.

Although advocacy and emotive to a degree, there are included in Appendix K above mentioned, the F.B.I. Law Enforcement Bulletins for June, 1960 and June, 1961, because they set out the viewpoint, based upon his experience, of the Director of the F.B.I.

#### **14. STATE OF NEW YORK TEMPORARY COMMISSION REPORT ON CAPITAL PUNISHMENT**

The Temporary Commission on Revision of the Penal Law and Criminal Code of the State of New York considered capital punishment a cardinal issue before it and made a special report thereon to the Governor of the State on March 19, 1965. The report recommended the immediate abolition of the death penalty by a vote of eight members to four. The report included a majority and minority statement and a staff study.

The majority reasons may be summarized as follows:

1. Infliction of the death penalty is most violent and cruel and there is no basis for conviction that it is necessary.
2. Retention of the death penalty has a harmful effect on the administration of criminal justice, turning public sympathy in the direction of the murderer.
3. Some erroneous convictions are inevitable; and recognition of this fact leads to endless protraction of the post trial proceedings.
4. The death penalty cannot be administered with even rough equality.
5. The foregoing considerations are overriding, irrespective of deterrent affect. Though the death penalty may occasionally be a unique deterrent, the available data indicates that such deterrence has no quantitative significance.

In brief, according to the majority, no social justification has been shown for the continuation of a cruel, irreparable and harmful punishment.

The minority statement is longer. It recommends further consideration of the issue by the Commission and the Legislature and a wider canvass of the views of law enforcement groups. It may be summarized as follows:

The nature of the issue encourages public expression by the abolitionists and discourages it by the retentionists who fear to be considered inhumane or worse. To justify abolition the proponents thereof should have the burden of demonstrating that the death penalty has failed and is totally undesirable.

- (a) The deterrent effect is not susceptible of accurate measurement but in the absence of proof to the contrary it must be taken that capital punishment is a deterrent and if there is a case against it, it must be upon some other ground than absence of deterrent effect. Wanton murder being so extremely morally wrong, the punishment must remain proportionately severe to emphasize the high outrage of society; otherwise the potential murderer is likely to infer that society no longer regards the crime as most heinous.
- (b) Life imprisonment is not necessarily less inhumane, barbaric or morally wrong, but in any event there is no longer any true life sentence, because of parole practices. A "life sentence", as now understood for murder, would be a further erosion of the concept of the dignity of human life. Human nature being what it is, demands, on occasion, a reversion to earlier penal concepts of retaliation, vengeance and the placation of an outraged community, and human nature should be taken into account.
- (c) The ample opportunity for cautious judicial review, followed by exhaustive non-legal review by the Executive, leaves no fear that innocent persons will be executed.
- (d) The "two-stage procedure"\* in effect in New York in capital cases, has ruled out the argument, which at one time had some validity, to the effect that the death penalty in actual operation discriminates on the basis of economic status, race and sex.
- (e) Sensationalism and alleged disruption of judicial proceedings could well occur in a bizarre murder case apart from the death penalty.

While the foregoing sets out the main contentions in support of retention, some further considerations also apply. It would be unwise to legislate in this field without benefit of the opinions and specific recommendations of law enforcement officials. At a time when the State is losing ground in the war against crime it is wise and necessary to focus concern on the law enforcement official and the protection of society rather than the criminal. There is more crime in the State of New York than anywhere else in the world. The historical reasons and justifications for the death penalty should not be summarily invalidated

---

\* This procedure is described in the Summary of the Staff Report in Appendix L.

by unproven claims of the humanitarians. Let the proponents of change prove that abolition is not only desirable for the protection of the criminal but also for the protection of society. The myriad complexities of New York State and its heterogeneous populations render invalid comparisons and analogies with other jurisdictions. If, as claimed by abolitionists, popular sentiment is running toward abolition, then abolition will come about normally under the present "two-stage procedure".\* The experience of such procedure, in force only since 1963, has been too brief to allow meaningful conclusions to be drawn as to the adequacy of the death penalty or the attitude of the citizens. If the majority recommendation is adopted the Legislature should nevertheless seriously consider appropriate exceptions, on the basis, perhaps, of a jury recommendation. Ample safe-guards for the accused already exist under the "two stage procedure" since the death penalty is not mandatory.

The Staff Report indicates some support for the view that the death penalty is a deterrent to felony murder, the robber's frequent tactic of carrying only a toy pistol, or no weapon at all, being frequently adverted to at trial as negating any intention to inflict bodily harm; the removal of the death penalty might well signal the end of this "considerate restraint". Abolition at the present time would be taken by the lawless masses as a signal for further outbreaks of lawlessness in the State of New York despite what statistics from *other* jurisdictions tend to show.

A Summary of the Staff Report is set out in Appendix L. As previously noted, New York is reported in the Press to have abandoned the death penalty for murder, with certain exceptions, effective June 1, 1965.

## 15. REPORT OF NEW JERSEY COMMISSION

By Joint Resolution the Senate and General Assembly of the State of New Jersey appointed, in 1964, a Commission to study Capital Punishment. The terms of reference were as follows:

"3. It shall be the duty of the commission to study the subject of capital punishment to evaluate the conditions under which it has been applied in New Jersey and to its purported deleterious moral and social effect [sic]. It shall be the further duty of the commission to inquire into the effect which abolition of the death penalty may have on law enforcement and to evaluate the experience in those States and countries which do not have the death penalty. In conducting its studies, the commission shall be guided by the imperative need of respect for the law, and the constant need for revision of the law toward the end that it shall be compatible with modern moral, social and scientific concepts." (Report, page 23)

The Commission, on October 26, 1964, made its Report which included both a majority and minority statement, each giving conclusions and recommendations. The majority statement, signed by seven members, recommended the retention of capital punishment.

---

\* This procedure is described in the Summary of the Staff Report in Appendix L.

## MAJORITY REPORT

The highlights of the majority statement may be summarized as follows:

The Commission attempted to go beyond a mere analysis of statistical information concerning homicide rates and tried to analyze capital punishment on many levels, including the religious, moral, penal, deterrent, protective, psychiatric, medical and sociological aspects of punishment for murder. It then sought to make a judgment on the frequently claimed discrimination concerning the death penalty based upon legal counsel, race, wealth and intelligence (pages 6-7).

New Jersey and the rest of the Nation are suffering a greater incidence of crime than at any time for which records have been kept. While the homicide rate has not risen to the same extent as certain crimes involving property, it has none the less risen sharply, being at the highest rate per 100,000 of population since the gang wars of the 1930's and the rate of aggravated assaults, very frequently with a deadly weapon, has risen far more sharply. The great increase in crime in New Jersey has coincided with a greater tendency to emphasize the rehabilitation factor in criminology as against the punishment or retributive and deterrent aspects. It cannot be concluded that easing the lot of the murderer will cause less crime or fewer criminal homicides. In case of doubt as to which method would create the most likely optimum of protection that type of punishment should be retained "which throughout history has proved to be the most severe" (page 8). The abolitionists are concerned with saving the lives of the murderers and also with the possible brutalizing effect of executions upon the populace as a whole but most, if not all abolitions, would retain the death penalty if satisfied it would save innocent lives. The majority felt it would not be justified in gambling the life of a single citizen.

The majority was not convinced that capital punishment does not deter some potential murderers and it believed deterrence to be most significant in the area of felony murder and of truly premeditated crime. Those most intimately concerned with law enforcement gave evidence to the effect that capital punishment is a deterrent in some cases. However, no punishment would be a deterrent for a crime of passion or a crime committed by one who was insane.

As to the suggestion that there is discrimination in the execution of persons based upon wealth, legal counsel, race and intellectual attainment, the available information indicates that the intellectual attainment of persons sentenced to death and executed is a rough cross section of the prison population at large. Counsel assigned to capital cases in New Jersey are of the highest level that the Bar has to offer, being selected by the Courts with extreme care. Race does not emerge as a statistically significant factor in the final disposition of capital cases in New Jersey.

The death penalty should be, as it normally is, meted out only for the most heinous and aggravated type of murder, but there is a possibility of excessive use of the death penalty if the jury does not have an adequate alternative sentence to impose for a somewhat

less shocking crime; and only by increasing the absolute meaning of life imprisonment can an adequate alternative be provided. (A person sentenced to life imprisonment in New Jersey, including one whose death sentence is commuted, is eligible for parole as early as fourteen years, eight months after sentence). The Legislature should consider an amendment to provide that life imprisonment means life imprisonment without the possibility of parole; or at least that a person sentenced to life imprisonment will not be eligible for parole for an absolute period of thirty years or more. The majority report concludes with the following paragraph:

"The Commission recommends the retention of capital punishment. It also recommends that, after the absolute life sentence provision is in effect for a period of time sufficient to create a body of facts and information, there be a thorough review of the subject of capital punishment to determine whether new conclusions are appropriate." (page 11)

#### MINORITY REPORT

The highlights of the minority report, which was signed by two members, may be summarized as follows:

The minority did not agree that capital punishment should be retained or that life imprisonment should be made absolute but they favoured "a strengthened life imprisonment" which would mean a minimum of thirty years before possibility of parole. (page 12)

There are two approaches to the problem of capital punishment. The first assumes that minimal morality requires some social need to be shown for retention and the second assumes that the death penalty is unrelated to morality, but should only be imposed if the benefit exceeds the detriment.

The men who need to be deterred most are the organized criminals, but they enjoy almost complete immunity, and unless it can be demonstrated that the death penalty is a more effective deterrent than life imprisonment, the death penalty is unwarranted under the first approach. Retribution cannot be accepted as a justification unless it is necessary to prevent lynching, but it has been demonstrated there is no such need. Further, the death penalty is more than retribution because few murderers have ever killed with such calculated coldness, forewarning or concomitant suffering through anticipation, as occur in the case of an execution.

The retentionists fail on the empirical data and this is consistent with common sense because it would be rare that a potential killer would be influenced by the difference between capital punishment and life imprisonment if he stopped seriously to weigh the difference; either is a sufficient deterrent to the man who deliberates but, in fact, most killings are perpetrated without such rational evaluation.

Under the second approach the following disadvantages are apparent: jury discretion to impose the death penalty operates upon no identifiable standards; the issue of punishment may overshadow the question of guilt at the trial, make calm deliberation difficult and error likely; the death penalty protracts post-trial procedure and leads to disrespect for the law and the Courts; it has a serious

emotional effect upon people associated with it; it is not a proven deterrent and there is evidence to show that the States which have abolished it have slightly lower homicide rates than adjoining states which have retained it; a strengthened "life term" will provide equity for all segments of society while now the poor and the illiterate have most to fear; the death penalty wastes human resources and prisoners serving life sentences do not constitute a special threat to the safety of other prisoners or the prison staff. If all or a substantial number of these disadvantages are accurate, any supposed advantage is outweighed.

Finally, the minority members recommended:

- (1) Abolition of capital punishment.
- (2) Substitution of an absolute term of not less than thirty years.
- (3) Failing legislative implementation of these recommendations within the next legislative year, a referendum on abolition.

## 16. ARGUMENTS OR ASSERTIONS FOR AND AGAINST CAPITAL PUNISHMENT

The purpose of this section of the Paper is to catalogue, uncritically, as many as possible of the arguments that are from time to time advanced *pro* and *con* capital punishment. These arguments and assertions are grouped, first, as in favour of or against capital punishment and second, according to where they occur in the various texts below mentioned, and the page reference is given so that the reader may, if he wishes, look up the treatment of a particular argument or assertion. The texts are designated thus:

- United Nations Publication ST/SOA/SD/9, 62.IV.2 "Capital Punishment"—United Nations.
- Report of the Joint Committee of the Senate and House of Commons on Capital Punishment, June 27, 1956—Joint Committee.
- Royal Commission on Capital Punishment, 1949-1953 Report—Royal Commission.
- "The Death Penalty" by Thorsten Sellin—Thorsten Sellin.
- Report of New Jersey Commission to Study Capital Punishment—New Jersey.
- Special Report on Capital Punishment of the State of New York Temporary Commission on Revision of the Penal Law and Criminal Code—New York.

A reference to a text does not mean, however, that the argument or assertion has necessarily been supported by the author; it may only mean that such argument or assertion has been mentioned or implied in the text. A number of arguments or assertions not directly attributable to any of the texts are classified under "General". Having regard to the purposes of the cataloguing, the arguments or assertions are frequently repetitive.

## IN FAVOUR OF CAPITAL PUNISHMENT

### *United Nations*

1. The death penalty has at least one deterrent effect—the protection of society from the risk of a second offence by the same criminal who if not executed may subsequently be released or may escape. The death penalty is thus based on the principle of self-defence. (59)
2. The death penalty is the only just punishment for the gravest of crimes and the only punishment capable of effacing an unpardonable crime. (59)
3. Even if, from the philosophical point of view, the death penalty may be of doubtful legitimacy, it nevertheless represents a political necessity for the protection not merely of society but of the social order itself. (59)
4. Since the death penalty is the only means of eliminating the offender altogether, this penalty is necessary, at least provisionally, when the public peace is endangered by certain particularly dangerous forms of crime. (59)
5. Public opinion remains generally favourable to the death penalty, the public as a whole and particularly the police and prison officials believing in its effectiveness; this sincere belief should be respected in its own right and in view of the possibility it is correct. It would be virtually impossible to find another penalty to replace capital punishment; imprisonment, even for a long time, is inadequate and its effects are minimized by the practice of anticipated release. (60)
6. If imprisonment were really to be solitary confinement for life it would be more cruel than death; imprisonment in perpetuity leaves no hope to the offender and does not encourage him to repentance in the same way as the immediate prospect of the supreme penalty. (60)
7. Even assuming that, if the question whether to establish capital punishment, were now arising for the first time, the answer would be no, the penalty does exist and a persuasive case has not been made out to the effect that it does not perform a useful social function. (63)
8. If the State is to be denied the right to take the life of one of its members, then by the same token it should be denied the right to deprive that member in perpetuity of his liberty and thus exclude for him all hope of freedom and rehabilitation; so that the argument in favour of life imprisonment as a substitute for the death penalty is fallacious. (64)

### *Joint Committee*

9. Law enforcement authorities entertain the view that the death penalty is an effective deterrent to murder and that it is particularly effective in deterring professional criminals from carrying weapons and committing crimes of violence. (10)
10. The death penalty safeguards police because a criminal seeking to avoid arrest would have much less fear of the consequences of the use of firearms or of violence if there were no death penalty. (10)

11. Capital punishment is an integral part of Canada's respected structure of law enforcement which probably deters a substantial number of professional criminals from entering Canada. (10)
12. Capital punishment is a just and appropriate one for murder; above all other punishments it marks society's detestation and abhorrence of the taking of life and its revulsion against the crime of crimes; in the retributive sense capital punishment should be supported not from a desire for revenge but rather as society's reprobation of the grave crime of murder; as a result of capital punishment there has developed over a long period of time a deep feeling of peculiar abhorrence for the crime of murder. (10)
13. Public opinion in Canada is substantially in favour of capital punishment which should not be abolished contrary to the wishes of a majority of Canadian citizens. (10)
14. Additional administrative problems would arise in penitentiaries if all convicted murderers were imprisoned; and the conduct of murderers whose sentences have been commuted for extenuating reasons is no reliable guide to what will be the conduct of other murderers. (10)
15. In any event capital punishment is required in the case of a subsequent murder in prison or in the course of escape by a convicted murderer; because if this existing deterrent were removed, apprehension would exist concerning the safety of the prison staff and the general public from prisoners for whom, because they were already serving life sentences, a further sentence of imprisonment could have no deterrent effect. (11)
16. Capital punishment in a painless and humane form is less cruel than imprisonment for life. (11)
17. In a young and growing country like Canada, with a mixed population representing many nationalities, there is a greater need for the deterrent control provided by capital punishment than there may be in some other countries, for example countries of Western Europe which have been longer established and are more homogeneous as regards race, language, religion and outlook; the murder rate and the proportion of deliberately planned homicides is higher in the U.S. and Canada than Western Europe; and the abandonment of capital punishment would carry a greater danger of inducing and increasing violent crime in the United States and Canada than in Western Europe; moreover it is professional criminals who are most likely to resort to violence and to this class capital punishment is a more effective deterrent than mere imprisonment to which they are already hardened and which they tend to regard as an occupational hazard. (11)

#### *Royal Commission*

18. The death penalty is the only punishment proportionate to the gravity of the offence of murder. (17)
19. The punishment inflicted for a grave crime should adequately reflect the revulsion felt by the great majority of citizens, and the ultimate justification of any punishment is not that it is a deterrent, but



- that it is the emphatic denunciation by the community of a crime; and from this point of view there are some murders which demand the most emphatic denunciation of all, namely the death penalty. (18)
20. By reserving the death penalty for the gravest crime, the law fosters in the community a special abhorrence of murder; and thus retribution merges into deterrence. (18)
  21. The law should not ignore the public demand for retribution which a heinous crime undoubtedly provokes; and it would be dangerous to move too far in advance of public opinion. (18)
  22. It is a common sense argument based on human nature that in certain cases particularly the death penalty has a specific deterrent effect not possessed by any other form of punishment. (19)
  23. The whole experience of mankind is to the effect that the threat of instant death is the most effective deterrent of all; death is death and its terrors cannot be described more forcibly. (19)
  24. Where the death penalty in fact exists, the odds against it being carried out are probably realized only vaguely, if at all, by would-be murderers; and the deterrent effect of the death penalty therefore remains. (20)
  25. The fact that capital punishment has obviously failed as a deterrent when a murder is committed does not mean that it may not have deterred many other people from committing murders. (20)
  26. "It is reasonable to suppose that the deterrent force of capital punishment operates not only by affecting the conscious thoughts of individuals tempted to commit murder, but also by building up in the community, over a long period of time, a deep feeling of peculiar abhorrence for the crime of murder." (20)
  27. Where murder is premeditated it is only common sense to assume that not only the chances of detection but also the consequences in the event of detection are ordinarily taken into consideration. (21)
  28. The police and prison service are virtually unanimous in their opinion that capital punishment has a unique deterrent value in its effect upon professional criminals. (21)
  29. Capital punishment not only deters violence on the part of professional criminals but also deters them from carrying a weapon. (21)
  30. Prominent judges, with experience in the criminal law, support by their opinion that of the police and prison service to the effect that capital punishment has a unique deterrent effect. (21)
  31. It is natural to suppose that in the case of the professional criminal for whom imprisonment is merely a normal professional risk, the death penalty will fall in an entirely different category of deterrent. (21-2)
  32. The death penalty may be the only effective deterrent against a life prisoner making a murderous assault on a fellow prisoner or member of the prison staff. (22)
  33. Statistics, which ordinarily fail to demonstrate the deterrent effect of capital punishment, are for the most part assembled by those who wish to abolish the death penalty; in other words, such statistics

are not compiled on the way to reaching a conclusion but, rather, to support a conclusion already reached morally, philosophically or intuitively; statistics are susceptible of different interpretations, and are unreliable and misleading; it is almost impossible to draw valid comparisons between different countries owing to differences in the legal definition of crimes, the practice of the prosecuting authorities and the courts, methods of compiling criminal statistics, moral standards, customary behaviour and political, social and economical conditions. (22)

34. There is some evidence that abolition of capital punishment may be followed by an increase in homicides and crimes of violence. (23)
35. Upon the view that the deterrent effect of capital punishment resides primarily in its long term effect on the attitude of society to murder, it is not to be expected that variations in the number of executions from year to year would be directly reflected in a rise or fall in the murder rate. (24)
36. A negative conclusion to be drawn from statistics does not imply a conclusion that the deterrent effect of the death penalty is not greater than that of any other punishment; it means only that the figures afford no reliable evidence one way or the other; it would be equally difficult to show statistically a direct relationship between the severity of any other punishment and the incidence of the crime to which it relates. (24)
37. *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 or negligible; and a penal policy in relation to murder ought not to be based on exaggerated estimates of the uniquely deterrent force of the death penalty. (24)
38. An examination of certain individual cases of murder indicates that the death penalty has a deterrent effect. (335)

*Thorsten Sellin*

39. The death penalty is the only punishment by which the murderer can really *expiate* his crime. (15)
40. The death penalty is the only *just* punishment for murder. (15)
41. The death penalty is more humane than life imprisonment. (15)
42. The death penalty is a *specific* deterrent and without it there would be more murders. (16)
43. The restraining influence of the death penalty is particularly strong on psychopaths and the fleeing criminal. (16)
44. If, in general, the threat of punishment is conceded to have a deterrent effect, then the severer the punishment the greater the deterrent effect, and, logically, the death penalty should have the greatest deterrent effect of all. (16)

45. Were the death penalty removed, an outraged community would in some cases resort to lynch justice and the victim's family to private vengeance. (16)
46. The death penalty has eugenic value in that it prevents the procreation of dysgenic human strains. (17)
47. The death penalty is more economical than imprisonment. (17)
48. The death penalty affords society maximum protection by removing the offender permanently from society. (17)
49. The occasional execution of an innocent person, while deplorable, is nevertheless excusable and outweighed by the great service to society which the death penalty renders by its deterrent power. (65)
50. Even if capital punishment cannot be shown to be a specific deterrent, it should be used in order to protect society, including society at large, in the event of the murderer's release or escape, and custodial society against the convicted murderer. (70)
51. Capital punishment should be retained, at least for persons who commit murder while undergoing sentences of life imprisonment, because in their cases there is no other practical deterrent. (70)
52. The reason why convicted murderers, whose sentences are commuted, show such a good record is that the worst types have been executed. (78)

#### *New Jersey*

53. An increase in the crime rate has coincided with a greater tendency to emphasize the rehabilitation factor as against the punishment, retribution and deterrent aspects of criminology, and it cannot be concluded that easing the lot of the murderer will cause less crime or fewer homicides. In case of doubt as to where lies optimum protection for society the death penalty should be retained. (7-8)
54. It has not been proved that the death penalty does not deter some potential murders and deterrence is believed to be most significant in the area of crimes of violence for gain and premeditated crime; such is the opinion of the law enforcement agencies. (8-9)
55. There is no evidence of significant discrimination on the basis of wealth, race or intellectual attainment, in the application of the death penalty. (9-10)

#### *New York*

56. In the absence of proof to the contrary it must be taken that the death penalty has some deterrent effect. (7)
57. Wanton murder is so extremely morally wrong that the punishment must remain proportionately severe to emphasize the outrage of society; otherwise the potential murderer will infer that society no longer regards the crime as most heinous. (7-8)
58. Life imprisonment is not necessarily less inhumane than the death penalty and in any event, there is no longer any true "life sentence", having regard to parole practice. (8)

59. Human nature, which should be taken into account, demands on occasion a reversion to earlier penal concepts of retaliation, vengeance and placation of an outraged community. (9)
60. The ample opportunity today for judicial and post trial review leaves no fear that innocent persons will be executed. (10)
61. Discrimination in the application of the death penalty on the basis of economic status, race or sex can be avoided by proper procedural measures. (10-11)
62. At a time when the state is losing ground in the war against crime, concern should be focused on the protection of society rather than the criminal; there is some support for the view that the death penalty is a deterrent against crimes of violence for gain; and abolition of the death penalty might be taken by the lawless masses as a signal for further outbursts of lawlessness. (12-13, 17-18)

#### *General*

63. The retributive basis of capital punishment should not be dismissed as mere vengeance; it is healthy for a community to be able, symbolically, to speak out in wrath against an odious crime; and to deny the community this right would be to invite it to take a less serious view of criminal behaviour and lower, generally, the standard of public morality.
64. Even where the existence of the death penalty does not have an immediate deterrent effect in the sense that it enters into the calculations of the murderer, he is nevertheless conditioned by the existence of the death penalty as an integral part of the enforcement of criminal justice, to avoid acts which may bring it on.
65. It is not realistic to argue that a term of life imprisonment, or a very long term of imprisonment, is a sufficient deterrent because, in practice, actual life imprisonment will not exist and terms will tend to become shorter; in England as soon as it was thought that the abolition Bill was likely to pass, a movement was commenced in favour of shorter terms of imprisonment for murderers; people do not stay "angry" long enough to insist upon life imprisonment or a very long term; by the time a murderer has been imprisoned for a period of, say, ten years, people have begun to look at the other side of the coin, that is, the hardship on the prisoner of long imprisonment and they become amenable to the argument that the man is now a different person, mentally and spiritually, from the person who was convicted, and ought to be given a chance to return to society.

### AGAINST CAPITAL PUNISHMENT

#### *United Nations*

1. The abolition or suspension of the death penalty does not have the immediate effect of appreciably increasing the incidence of crime. (53)
2. The deterrent effect of the death penalty is, to say the least, not demonstrated. (54)

3. Even a number of countries which have maintained the death penalty, such as Spain, Greece, Turkey, in particular the United Kingdom and, with qualifications, Japan, query its value as a deterrent. (54)
4. All available information appears to confirm that the removal of an offence from the list punishable by death has never in fact been followed by a notable rise in the incidence of that offence. (54)
5. Certain crimes including robbery, forgery and rape actually decreased in number after the abolition of the death penalty in respect thereof during the 19th Century. (54)
6. The experience has been the same with murders which ceased to be capital murders and the same general observation can usually be made regarding the total abolition of the death penalty. (55)
7. In Canada from 1951 to 1958, the average number of executions was 6, though there were 12 in 1952 and 11 in 1953; however the criminality curve remained more or less at a constant level throughout the period. In Western Australia and South Australia the average number of executions has been two annually since 1935 but during the most recent five year period there have been no executions and no appreciable effect has been noted on the criminality curve. (56)
8. It sometimes happens that restoration of the death penalty is actually followed by an increase in crime. (56)
9. There is real danger of executing an innocent person. (58)
10. Executions may be bungled. (58)
11. The State should set the example of recognizing the sanctity of human life and the wrongness of killing. (60)
12. An execution is "a self mutilation of the State": by eliminating a citizen the State does not erase the crime but repeats it. (61)
13. The death penalty can only be justified under the aspect of collective vengeance, of atonement or of absolute retribution. (61)
14. The modern tendency is to regard penalties as having no object other than prevention and punishment and this object can be achieved by means other than the taking of life. (61)
15. The *lex talionis* is obsolete; execution is a sort of judicial or legal murder; and the existence of the death penalty debases justice. (61)
16. The presence of capital punishment in the catalogue of penalties falsifies criminal proceedings which take on the character of a sinister tragi-comedy; and the existence of this penalty renders criminal justice uncertain. (61)
17. The death penalty rests on a somewhat metaphysical concept of human freedom, whereas the social sciences show that an offender does not generally enjoy complete freedom; absolute justice is therefore an illusion and full atonement a fiction; human justice cannot evaluate individual responsibility in absolute terms; the condemned person is in reality paying for other people or suffering for the sake of the example; his execution then has no moral foundation. (61)

18. The death penalty does not have the deterrent effect attributed to it and statistics show that its abolition does not lead to any increase in crime and consequently capital punishment loses its basic traditional justification. (61)
19. The penalty of death is a form of cruelty and inhumanity unworthy of a civilization which aims to be humane; doctors report that even the most efficient methods do not result in instantaneous and painless death. (61)
20. The chief defect of the death penalty is that it is irrevocable; in spite of all official statements, judicial error is possible and has sometimes occurred; and in the latter cases the death penalty is an unpardonable crime committed by society. (61)
21. Society can protect itself by means other than the death penalty, which is merely a lazy answer and hinders the search for effective means of curbing crime and a rational system of prevention. (61)
22. The death penalty is unjust in that it affects not only the criminal himself, but also his close relatives, and brands the whole family with a mark of infamy. (62)
23. It is paradoxical to claim that the death penalty alone makes repentance possible; and it certainly totally precludes the rehabilitation of the human being concerned. (62)
24. The finality (absoluteness) of the death penalty makes it impossible to adapt it to the gravity (degree) of the offence committed and all attempts to draw a distinction between capital murder and other forms of homicide have proved arbitrary. (62)
25. There is a contradiction in claiming that the death penalty has a deterrent effect and, at the same time, surrounding the execution with secrecy. (62)
26. The curiosity aroused by an execution is notoriously morbid and it is increasingly realized that the penalty of death may itself have criminogenous effects, particularly upon abnormal individuals who, in spite of all legal and judicial precautions, are often executed. (62)
27. The death penalty is applied unequally, both from the social and racial points of view; some persons do not have sufficient financial means to defend themselves and some are morally unable to do so; so that this penalty, which should be the expression of absolute justice, often leads in practice to injustice against individuals. (62)

*Joint Committee*

28. Capital punishment is not an effective deterrent; it has no unique deterrent effect which would not be accomplished by imprisonment; a considerable proportion of murders are committed in circumstances of sudden passion where consequence is not a deterrent; on the other hand, persons who deliberately plan to avoid detection are not influenced by the death penalty; the only person likely to be deterred is the normal law abiding citizen who will not commit murder anyway; certainty of detection and apprehension is the more effective deterrent; the behavioural sciences support this argument; a con-

siderable proportion of murderers are not fully responsible and are not therefore to be restrained by threat of a particular punishment; this view is supported by statistics which show that capital punishment exercises no deterrent effect. (11)

29. It is morally wrong for the State as well as an individual to take human life, at variance with the principles of Christianity and the humanitarian and social developments which characterize the modern world; it is an obsolete barbarous punishment which has been successfully dispensed with in most civilized countries and is out of step with modern morality and thought. (12)
30. The death penalty is merely the expression of society's revenge against the murderer and thus undesirable. (12)
31. Capital punishment is brutalizing not only upon prisoners and staff of the institutions where it takes place but also on society at large; and of this the shocking scenes which have accompanied some executions are proof. (12)
32. The death penalty is irrevocable and involves the risk of executing an innocent person. (12)
33. Guilty persons are sometimes allowed to go free because the jury fears the death penalty. (12)
34. The death penalty is unequal in its incidence upon people who on the one hand are reasonably well-to-do and on the other hand are indigent, in respect of the counsel they can employ and their chances of evasion. (12)
35. Incarceration of all convicted murderers will pose no special problem for prison administration; murderers as a class of prisoners have a superior record; and in any event administrative and economic reasons do not deserve to be counted upon such an issue. (12)

#### *Royal Commission*

36. The death penalty, having regard to the number of cases in which it is commuted, entails an undue interference, behind closed doors, by the Executive with the due process of law; and the effect of setting aside so many sentences, solemnly pronounced by the court, tends to degrade the administration of justice. (15, 16)
37. There should be no longer any recognition of such primitive conceptions as atonement or retribution. (17)
38. Murderers are not incapable of reformation and the prospects of their reformation are at least as favourable as are those of other offenders. (18).
39. The small proportion of executions, in relation to murderers, detracts from the value of the death penalty as a deterrent. (20).
40. Murders committed upon impulse, and by the mentally abnormal, are not likely to be prevented by the prospect of capital punishment and, where the murder is premeditated, the murderer will ordinarily calculate on escaping detection rather than upon the consequences if he is detected. (21)

41. The existence of capital punishment may even act as an incitement to murder on the mentally abnormal. (21)
42. There is no evidence that the abolition of capital punishment in other countries has led to an increase in violence on the part of professional criminals. (21)
43. Even on the basis of countries or law districts which are contiguous or near each other and closely similar in composition of population and social and economic conditions generally, fluctuations in the homicide rate exhibit a striking similarity notwithstanding some have the death penalty and some do not; and the only conclusion that can be drawn is that there is no clear evidence that the homicide rates of such countries are influenced by the death penalty or the frequency of executions. (22-3)
44. Juries may sometimes be more ready to reach a verdict of guilty when the death penalty has been abolished. (23)
45. Any inference that abolition of the death penalty may be followed for a short time by an increase in homicides and crimes of violence must be qualified by the fact that, as soon as a country has become accustomed to the new form of the extreme penalty, abolition will not in the long run lead to an increase in crime. (23)
46. There is no clear evidence in any statistics that the abolition of capital punishment has led to an increase in the homicide rate or that its reintroduction has led to a fall. (23)
47. No relationship is discernible in statistics between the number of executions in particular years and the incidence of murder in succeeding years. (23)
48. Even if the statistics do not prove that capital punishment has no particular deterrent effect they at least demonstrate that any deterrent effect it does have is not overwhelming but must be rather small. (24)
49. Even if the death penalty does have some particular deterrent effect, it does not operate universally or uniformly and upon many offenders the effect is limited or negligible; and the death penalty ought not to be retained on the basis of exaggerated estimates of its uniquely deterrent force. (24)

*Thorsten Sellin*

50. Capital punishment is characteristically advocated by persons who have deeply rooted beliefs in retribution, atonement or vengeance. (15)
51. Capital punishment is characteristically opposed by persons who have deeply rooted beliefs in the personal value and dignity of the common man and in the scientific approach to an understanding of the motives underlying human behaviour. (15)
52. Society has no right to take away life, the gift of the Creator. (15)
53. Retaliation is not a defensible basis for a penal system. (15).
54. The death penalty is unjust. (15)



55. All the desirable effects, that can be validly attributed to the death penalty, can be produced by other punishments. (17)
56. The certainty of protection to society against violence by the same individual, which the death penalty insures, is bought at the risk of miscarriage of justice since the irreparable nature of the punishment prevents later rectification of judicial error. (17)
57. The death penalty induces judges and juries to render verdicts contrary to the facts and thus makes a mockery of justice. (17)
58. The existence of the death penalty sometimes, in itself, incites to murder. (17)
59. No evidence exists to prove that the death penalty is a *specific* preventive of murder. (17)
60. As for the eugenic argument, even were it shown that murderers generally have more than a normal number of undesirable traits, neither their execution nor sterilization would have any measurable effect on the frequency of such traits in future generations, as any competent geneticist could show and in any event sterilization would be as effective as the death penalty. (18)
61. The death penalty cannot, with good conscience, be supported upon economic grounds and, in any event, there is no reason why imprisoned murderers cannot earn their keep. (18-19)
62. Executions have no discernible effect on homicide death rates which may be regarded as adequate indicators of capital murder rates. (34)
63. The abolition or reintroduction of the use of the death penalty has no immediate effect. (40)
64. It is impossible to conclude that the States of the United States which have no death penalty have thereby made the policeman's lot more hazardous. (57)
65. Although in States of the United States which have the death penalty the majority police view is to the effect that the death penalty is a protective force for police, such view is to the opposite effect in the abolitionist States. (59)
66. Students of the problem of homicide never think of the death penalty as a factor worth mentioning and even in personality studies of murderers it is rare to find any mention of the death penalty playing a role; anyone who examines the available data is bound to arrive at the conclusion that the death penalty exercises no influence on the extent or fluctuating rates of capital crimes and that it has failed as a deterrent. (63)
67. The death penalty constitutes a real danger that innocent persons will be executed. (63-5)
68. There are instances of persons who have been led to commit murder for the purpose of being executed. (65)
69. Convicted murderers are no more prone to violence in penitentiary or after their release than any other type of prisoner; they are even less prone. (71)

70. The conclusion is inescapable that the murderer who is not executed but instead sentenced to life imprisonment is not nearly so great a danger to the prison community, nor to the outside world when he is paroled or pardoned, as are many other classes of prisoners who are regularly released after serving much shorter periods of imprisonment. (77-8)
71. The administration of criminal justice in capital cases is too dependent on fortuitous circumstances, such as the skill of prosecutor and defence counsel, the composition of juries, the temper of the court and the emotional climate of the community, to permit the assumption that there is rational selection of persons to be executed. (78)
72. The argument that the life sentence is not an adequate safeguard against further murders by the same person is untenable and is advanced, probably, by persons who feel that life imprisonment is not an *adequate* punishment. (78-9)
73. The experience of the States of the United States which have experimented with abolition of the death penalty does not indicate any association between abolition and lynchings. (79)
74. The death penalty exerts a disruptive influence on the broad administration of justice; it delays the empanelling of juries, causes jurors to seek to disqualify themselves, draws out the length of the trial, beclouds the issue with emotion, leads to the acquittal of guilty persons, increases the likelihood of unwarranted reversals and leads to long delays in the administration of justice. (80)
75. Responsible persons who have studied the matter deeply and from a neutral starting point have come to the conclusion that the better view is against capital punishment. (81-2)

#### *New Jersey*

76. Those who need most to be deterred are organized criminals but they enjoy almost complete immunity. (13)
77. Since it cannot be demonstrated that the death penalty is a more effective deterrent than life imprisonment the former is morally unwarranted. (13)
78. Retribution cannot be accepted as a justification for the death penalty unless necessary to prevent lynching; but there is no such necessity; furthermore the death penalty, in its calculated coldness and forewarning, goes beyond retribution. (13)
79. On a common sense approach, life imprisonment is as sufficient a deterrent as the death penalty to a potential murderer who stops to deliberate. (14)
80. The death penalty overshadows the issue of guilt or innocence at the trial, protracts post trial procedure, leads to disrespect for the law and the courts and has a serious emotional effect on people associated with it. (15-16)

81. The death penalty wastes human resources and prisoners serving life sentences do not constitute a special threat to other prisoners or prison staff. (16-17)

*New York*

82. The death penalty is most violent and cruel and there is no basis for conviction it is necessary or has quantitative deterrent significance. (2)
83. The death penalty harms the administration of justice by turning public sympathy toward the murderer. (2)
84. Some erroneous convictions are inevitable and recognition of this fact protracts post trial proceedings endlessly. (2-3)
85. The death penalty cannot be administered with equality. (3)

*General*

86. No man with money or influence is ever hanged.
87. The death penalty is not of particular deterrent effect because no individual ever really faces up to the fact or prospect of his own death; although he will face up to a lesser prospect such as life imprisonment; and the prospect of capital punishment in any event is never a prospect of "instant death" at the time the murderer succumbs to temptation.

NEUTRAL

*United Nations*

1. Many other countries, such as Austria and Yugoslavia, state no final opinion can be expressed as to whether or not the death penalty has a deterrent effect. (54)

## 17. THE SUMMING UP

Some persons approach the issue of the death penalty from a straightforward moral viewpoint, the abolitionists among them believing that it is wicked and unwarranted for the State to take a human life in any circumstances and the retentionists believing that the crime of murder is so heinous that death is the only punishment that is consonant with a sound moral sense in the community. Neither of these groups is likely to change camp upon considerations of deterrent effect; their conclusions are deeply and subjectively rooted in background, training, philosophy and religion.

Most people, however, are likely willing to join issue upon the question of deterrence; if satisfied that the death penalty has no significant deterrent effect over and above available alternatives, they would favour abolition; if convinced that it does have some significant deterrent effect, they would favour retention. Before arriving at a final conclusion each

group will also likely weigh, against any evidence pointing to deterrent effect, whatever they consider to be the danger of an innocent person being executed.

Different persons will give different weights to this last consideration: some will feel that if there is any appreciable danger of irrevocable error, the death penalty should be abandoned in spite of the fact that, on balance, it may safeguard innocent lives; while others will be prepared to accept the risk of occasional error if satisfied that the overall saving is substantial. On the straight issue of whether innocent persons are sometimes executed, some will maintain that occasional error is inevitable, having regard to the imperfections of human institutions, and that it has occurred; others will argue that, having regard to the safeguards that surround present day trials and to the meticulous executive review that subsequently takes place, the risk of final error is minimal.

On the important issue of deterrent effect the abolitionist argues that the burden is upon the retentionist to show positively that the death penalty has a unique deterrent effect and entails no danger of false verdicts; otherwise the principle of sanctity of human life prevails; and that this burden has not been discharged. If the death penalty does have such effect, he continues, it should be possible to demonstrate the fact statistically: to show that States which employ the death penalty have fewer murders than States which do not; that abolition of the death penalty is accompanied by a rise in the murder rate and restoration by a fall; that an abnormally high number of executions in a given period causes the rate to go down and an abnormally low number causes it to go up; and none of these situations actually occur. The retentionist replies that the statistics prove nothing because difficulties of definition and collection and intrusion of other variables make comparisons worthless. It is likewise impossible, he says, to demonstrate, statistically, the relationship between the punishment for any other crime and the incidence of such crime. But common sense, he continues, dictates that consequences as well as likelihood of detection must affect the decisions of potential murderers and that no other consequence can have such restraining effect upon the criminally minded man as the possibility of losing his very life; and he points to general police evidence in this direction and sometimes to specific instances. The abolitionists reply that impulsive murderers do not weigh consequences at all and that the deliberate murderer does not expect to be detected. But, retorts the retentionist, when the robber is on the point of deciding whether or not to put a loaded gun in his pocket, it is unrealistic to suppose that the possible consequences do not come to bear upon his decision. But there is no reason, says the abolitionist, to believe that the prospect of the death penalty bears any more heavily than life imprisonment; the real deterrents are certainty of detection and promptness of punishment. If that were so, says the retentionist, it would suggest that life imprisonment is as cruel as the death penalty; in fact, however, imprisonment for the professional criminal is only a vocational hazard and there is no such thing as a true "life sentence", having regard to parole practice.

Furthermore, continues the retentionist, it is not just a question as to whether the potential murderer rationally considers in advance the pos-

sible consequences of his behaviour; the question goes much deeper into the conditioning he has had to abhor murder and associate it with the death penalty; remove the latter and you invite the potential murderer to infer that society is taking a more lenient approach and eventually he becomes reconditioned accordingly. Actually, the public is not taking a more lenient approach says the retentionist; on the contrary the public still favours the death penalty and to outdistance public opinion would be to encourage a less strict public morality. The harmful effect of removing the death penalty may therefore in part be a long term effect rather than something which will show up dramatically in tomorrow's statistics.

The modern approach to criminology, says the abolitionist, is away from the ideas of vengeance, retribution and punishment, in the direction of correction, rehabilitation and prevention; and the principle underlying the death penalty assumes a wider exercise of choice and free will than the behavioural sciences support. The retentionist replies that increasing emphasis on rehabilitation rather than public protection is being accompanied by a fast increasing crime rate and that, in regard to crimes of violence for gain, the factor of free choice is not being exaggerated against the murderer.

The police, who ought to know, are generally in favour of the death penalty, say the retentionists. This, reply the abolitionists, is merely "feeling" unsupported by fact. Even if that were so, which is not admitted, say the retentionists, the fact that the police feel this way, and the moral support they feel the death penalty gives them, are in themselves potent reasons for retaining it.

Capital punishment should be retained, says the retentionist in the case at least of the murder of a policeman or prison guard by a prisoner undergoing a life sentence because he can be affected by no other deterrent. But, says the abolitionist, imprisoned murderers as a class are well conducted prisoners and have an excellent record on parole. Only, says the retentionist, because the worst have been executed.

Capital punishment, says the abolitionist, discriminates among criminals on the basis of social, economic and minority position—only the poor and friendless are ordinarily hanged; it perverts justice because juries are loath to sentence to death; it protracts post trial procedure for similar reasons; it brutalizes all those who are associated with the execution; and the latter is subject to tragic bungling. But persons executed, says the retentionist, are a typical cross section of the prison population; these defects, where they exist, can be put straight administratively; and it is not a valid objection that the death penalty fails to reach all murderers.

The dialogue, of course, does not always proceed so dispassionately. As the factual and logical arguments become exhausted and emotions become excited, some zealous abolitionist may accuse his retentionist opponent of being vengeful and sadistic, and the retentionist may suggest in return that the abolitionist entertains too little concern for the victims of crime and too much sentimental attachment to the undeserving murderer.

These are the main points with which the person who wishes to reach a conclusion will have to contend and while this section, by policy, makes no attempt to indicate the answers, it is hoped that the material set out in the Paper and Appendices will help him to make up his mind.

## 18. BIBLIOGRAPHY

Bibliographies of works on capital punishment, to be found in the Supreme Court of Canada Library and the Department of Justice Library, and a select bibliography prepared by the Library of Parliament of works available in that Library are set out in Appendix M for the convenience of persons who would like to do further reading on the subject.

# APPENDICES

APPENDIX "A"

Table 1 of Murder Statistics from Appendix 3 of Report of the Royal Commission on Capital Punishment (U.K.) 1949-53, and Supplementary Table Bringing Table 1 Up to Date

"TABLE 1  
MURDER STATEMENT FOR THE YEARS 1900-1949 (ENGLAND AND WALES)

(1) YEAR	(2) Number of murders known to Police	(3) Number of cases in which suspect committed suicide	(4) Persons arrested for Murder		(5) Persons discharged at Magistrates' Court	(6) Number for Trial at Assizes		(7) Number acquitted or not tried	(8) Insane on arraignment	(9) Guilty but Insane	CONVICTED													
			M	F		M	F				(10) Detained during His Majesty's Pleasure		(11) Penal Servitude		(12) Death		(13) Committed to Penal Servitude		(14) Respited to Broadmoor		(15) Executed		(16) Conviction quashed by Court of Criminal Appeal	
											M	F	M	F	M	F	M	F	M	F	M	F	M	F
1900.....	136 (47)	19	58 (1)	24 (12)	13 (2)	38	13	19	4	8	—	—	—	—	19	1	5	—	2	—	12	1	—	—
1901.....	161 (58)	37	77 (20)	34 (6)	17 (6)	46	28	18	9	19	—	—	—	—	26	2	10	2	1	—	15	—	—	—
1902.....	140 (54)	23	68 (4)	34 (20)	16 (5)	45	26	16	5	17	—	—	—	—	28	5	6	5	—	—	22	—	—	—
1903.....	171 (63)	26	79 (2)	38 (29)	9 (2)	55	23	18	4	16	—	—	—	—	35	5	11	2	—	—	24	3	—	—
1904.....	160 (58)	42	69 (6)	30 (18)	12 (3)	44	26	15	6	21	—	—	—	—	26	2	9	2	1	—	16	—	—	—
1905.....	137 (45)	22	75 (2)	24 (15)	14 (3)	47	16	13	4	14	—	—	—	—	31	1	14	1	—	—	17	—	—	—
1906.....	134 (47)	21	60 (1)	33 (16)	12 (2)	48	20	14	2	20	—	—	—	—	24	3	15	3	—	—	9	—	—	—
1907.....	132 (51)	19	54 (3)	30 (18)	8 (1)	33	12	9	5	11	—	—	—	—	18	2	10	1	—	—	8	1	—	—
1908.....	159 (47)	32	64 (2)	32 (20)	4 (2)	43	24	20	9	13	—	—	—	—	23	2	10	2	—	—	13	—	—	—
1909.....	161 (52)	24	69 (1)	46 (22)	23 (2)	49	28	21	5	20	—	—	—	—	27	4	7	4	2	—	18	—	—	—
10 year Total.....	1,500 (522)	265	673 (22)	325 (190)	128 (26)	443	216	163	53	159	—	—	—	—	257	27	97	22	6	—	154	5	—	—



1910.....	148 (59)	28	62 (3)	32 (28)	9 (4)	48	25	13	2	30	—	—	—	—	24	4	8	4	—	—	16	—	—	—
1911.....	144 (42)	19	73 (3)	37 (18)	15 (3)	53	24	24	5	17	—	—	—	—	26	5	8	5	1	—	16	—	1	—
1912.....	152 (59)	37	53 (2)	36 (20)	6 (3)	40	23	16	7	15	—	—	—	—	24	1	9	1	2	—	13	—	—	—
1913.....	178 (67)	39	56 (3)	46 (23)	5 (2)	40	27	17	5	17	—	—	—	—	24	4	8	4	—	—	16	—	—	—
1914.....	141 (49)	44	52 (3)	25 (11)	6 (2)	37	18	14	6	12	—	—	—	—	20	3	5	3	—	—	14	—	1 (a)	—
1915.....	130 (49)	Not available	47	29 (20)	10 (1)	28	19	13	2	12	1	—	—	—	16	3	5	3	—	—	10	—	1 (b)	—
1916.....	146 (61)	"	50 (1)	39 (21)	9 (2)	31	23	11	12	16	—	—	—	—	11	4	4	4	—	—	7	—	—	—
1917.....	127 (46)	"	43 (2)	40 (22)	6 (1)	28	20	18	5	9	—	—	—	—	14	2	4	2	—	—	9	—	1 (b)	—
1918.....	131 (50)	34	45 (2)	48 (23)	14 (2)	29	28	12	10	11	—	—	—	—	17(c)	7	6	7	—	—	10	—	—	—
1919.....	176 (53)	21	104 (3)	37 (17)	16	56	27	25	13	20	1	—	—	—	19	5	5	5	2	—	12	—	—	—
10 year Total.....	1,473 (535)	222	585 (22)	369 (203)	96 (20)	390	234	163	67	159	2	—	—	—	195	38	62	38	5	—	123	—	4	—
1920.....	179 (58)	27	86 (5)	45 (25)	20 (5)	62	28	32	8	14	1	—	—	—	32	3	10	3	1	—	21	—	—	—
1921.....	138 (48)	35	44 (2)	30 (18)	1	40	23	27	7	14	2	—	—	—	10	3	4	3	1	—	5	—	—	—
1922.....	145 (45)	27	52 (1)	29 (15)	5	41	19	9	3	13	1	—	—	—	29	5	6	4	2	—	20	1	1 (b)	—
1923.....	150 (51)	31	49 (1)	38 (19)	11 (1)	37	21	11	14	12	—	—	—	—	19	2	7	2	1	—	11	—	—	—
1924.....	150 (45)	36	45 (14)	31	9	24	18	11	3	14	—	—	—	—	13	1	3	1	—	—	9	—	1 (b)	—
1925.....	160 (35)	32	74 (8)	28	9	57	24	18	8	24	1	—	—	—	28 (c)	2	7	2	1	—	19	—	—	—
1926.....	154 (40)	50	38 (7)	27	5 (2)	37	20	10	5	18	—	—	—	—	21	3	5	2	1	—	15	1	—	—
1927.....	143 (43)	42	40 (11)	22	7 (3)	38	12	6	6	13	—	—	—	—	22	3	4	3	1	—	16	—	1 (a)	—
1928.....	136 (37)	32	51 (2)	16 (8)	3 (1)	47	13	13	12	12	—	—	—	—	23	—	9	—	—	—	13	—	1 (b)	—
1929.....	131 (28)	38	33 (1)	17 (7)	2	32	18	9	7	19	—	—	—	—	15	—	8	—	—	—	7	—	—	—
10 year Total.....	1,486 (430)	350	512 (12)	283 (132)	72 (12)	415	196	146	73	153	5	—	—	—	212	22	63	20	8	—	136	2	4	—

The figures in brackets relate to victims under 1 year and are included in the main total.

(a) Guilty but insane substituted.

(b) Manslaughter substituted.

(c) 1 died immediately after conviction.

MURDER STATEMENT FOR THE YEARS 1900-1949 (ENGLAND AND WALES)—Continued

(1) YEAR	(2) Number of murders known to Police	(3) Number of cases in which suspect committed suicide	(4) Persons arrested for Murder		(5) Persons discharged at Magistrates' Court	(6) Number for Trial at Assizes		(7) Number acquitted or not tried	(8) Insane on arraignment	(9) Guilty but Insane	CONVICTED													
											(10) Detained during His Majesty's Pleasure		(11) Penal Servitude		(12) Death		(13) Committed to Penal Servitude		(14) Respited to Broadmoor		(15) Executed		(16) Conviction quashed by Court of Criminal Appeal	
											M	F	M	F	M	F	M	F	M	F	M	F	M	F
1930.....	122 (35)	38	30	12 (6)	2	29	11	8	7	11	—	—	—	—	13	1	7	1	1	—	5	—	—	—
1931.....	138 (27)	45	45	22 (10)	5	40	17	14	8	17	—	—	—	—	17	1	6	1	1	—	9	—	1	—
1932.....	125 (31)	39	37	24 (8)	2	37	27	11	9	29	—	—	—	—	14	1	5	1	—	—	9	—	—	—
1933.....	141 (30)	40	47	15 (3)	2	40	13	11	5	18	—	—	—	—	16	3	6	3	—	—	10	—	—	—
1934.....	141 (32)	53	53	14 (4)	1	47	14	11	7	19	—	—	—	—	21	3	10	2	1	—	8	1	2	—
1935.....	120 (19)	55	35	20 (7)	5	37	15	11	6	15	—	—	—	—	19	1	6	1	1	—	10	—	2 (d)	—
1936.....	145 (31)	44	50	27 (11)	4	41	26	8	12	20	—	—	—	—	19	8	10	5	2	—	7	2	—	1
1937.....	114 (26)	33	33	19 (5)	2	30	14	5	14	11	1	—	—	—	13	—	4	—	2	—	7	—	—	—
1938.....	126 (19)	39	38	16 (3)	3	40	14	7	12	12	1	—	—	—	19	3	11	3	—	—	8	—	—	—
1939.....	157 (21)	61	59	15 (3)	5	52	12	14	11	11	3	—	—	—	22	3	9	3	3	—	9	—	1 (a)	—
10 year Total.....	1,329 (245)	447	427	184 (60)	31 (7)	393	163	100	91	163	5	—	—	—	173	24	74	20	11	—	82	3	6	1

1940.....	123 (8)	47	53	12	2	49	10	11	12	14	1	—	—	—	17	4	5	3	—	1	11	—	1 (b)	—
1941.....	146 (11)	45	58	12	2	53	11	12	10	18	1	—	—	—	22	1	9	1	—	—	11	—	2 (b)	—
1942.....	209 (37)	65	56 (2)	17 (4)	2	59	13	11	13	17	6	—	—	—	24	1	5	1	2	—	16	—	1 (b)	—
1943.....	174 (35)	37	58	16	6	56	19	10	12	24	2	1	—	—	25	1	7	1	1	—	15	—	2 (b)	—
1944.....	166 (35)	25	45	13 (4)	1	39	10	7	10	12	—	—	—	—	17	3	4	3	2	—	10	—	1	—
1945.....	218 (45)	45	65 (2)	24 (2)	5 (3)	49	15	10	15	18	1	—	—	—	19	1	7	1	2	—	10	—	—	—
1946.....	148 (17)	41	70 (2)	17 (3)	8	55	13	5	15	17	1	—	—	—	30	—	9	—	1	—	20	—	—	—
1947.....	175 (40)	46	62 (5)	21 (3)	1	55	19	9	16	14	6	—	—	2 (e)	25	2	11	2	3	—	11	—	—	—
1948.....	171 (24)	Not avail- able	95 (4)	25 (7)	5 (2)	69	18	7	25	15	2	—	—	—	36	2	25(f)	1	4	—	7	1	—	—
1949.....	136 (17)	39	75 (3)	21 (4)	—	51	17	4	16	15	1	—	—	—	28	4	12	3	—	1	15	—	1 (a)	—
10 year Total.....	1,666 (269)	390	637 (18)	178 (29)	32 (5)	535	145	86	144	164	21	1	—	2	243	19	94	16	15	2	126	1	8	—
TOTAL 1900-1949	7,454 (2,001)	1,674	2,834 (95)	1,339 (614)	359 (70)	2,176	954	658	428	798	33	1	—	2	1,080	130	390	116	45	2	621	11	22	1

The figures in brackets relate to victims under 1 year and are included in the main total.

(a) Guilty but insane substituted. (b) Manslaughter substituted. (c) 1 died immediately after conviction. (d) 1 by House of Lords. (e) Pregnant. (f) This figure includes a number of cases where the sole reason for the decision to recommend commutation was the position resulting from the vote in the House of Commons on the clause in the Criminal Justice Bill suspending capital punishment for five years." (Report, pages 298-301)

SUPPLEMENTARY TABLE, MURDER STATISTICS  
FOR ENGLAND AND WALES

Year  (1)	CONVICTED OF CAPITAL MURDER									
	Sentenced to Death  (12)		Committed to Imprisonment  (13)		Respite to Broadmoor  (14)		Executed  (15)		Conviction quashed by Court of Criminal Appeal  (16)	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
1950.....	31	2	10	2	2	—	19	—	—	—
1951.....	21	—	4	—	2	—	15	—	—	—
1952.....	37	2	14	2	—	—	22	—	1	—
1953.....	23	3	6	2	2	—	14	1	1*	—
1954.....	20	1	9	—	1	—	10	1	—	—
1955.....	25	4	12	3	1	—	11	1	1	—
1956.....	27	1	25	1	1	—	—	—	1	—
1957.....	17	1	13	1	—	—	2	—	2*†	—
1958.....	8	1	2	1	—	—	5	—	1‡	—
1959.....	6	—	1	—	—	—	5	—	—	—
1960.....	8	—	3	—	—	—	5	—	—	—
1961.....	7	—	1	—	—	—	5	—	1*	—
1962.....	4	—	—	—	—	—	3	—	1‡	—
1963.....	4	—	1	—	—	—	2	—	1†	—

\* Conviction of manslaughter substituted.

† Verdict of non-capital murder substituted.

‡ Conviction of manslaughter (on grounds of diminished responsibility) substituted.

## APPENDIX "B"

### Discussion and conclusions of the Royal Commission on Capital Punishment, United Kingdom, 1949-53, as to the function and deterrent effect of Capital Punishment

#### "(d) *The Function of Capital Punishment*

50. We cannot hope to find reasoned answers to these questions unless we first consider what purpose capital punishment is intended to serve and how far, as now applied in this country, it achieves that purpose. This is a difficult and controversial subject, long and hotly debated; and it evoked strongly conflicting views from our witnesses. It is generally agreed that the scope of this drastic and irrevocable punishment should be no wider than is necessary for the protection of society, but there is no such agreement about how wide a scope the protection of society demands.

51. It is commonly said that punishment has three principal purposes—retribution, deterrence and reformation. The relative importance of these three principles has been differently assessed at different periods and by different authorities; and philosophers and penologists have emphasised one or another of them, sometimes even to the exclusion of the others. For the purposes of our inquiry, however, we may accept this traditional classification and consider the importance of each of the three principles in relation to capital punishment in Great Britain at the present time.

52. Discussion of the principle of *retribution* is apt to be confused because the word is not always used in the same sense. Sometimes it is intended to mean vengeance, sometimes reprobation. In the first sense the idea is that of satisfaction by the State of a wronged individual's desire to be avenged; in the second it is that of the State's marking its disapproval of the breaking of its laws by a punishment proportionate to the gravity of the offence. Modern penological thought discounts retribution in the sense of vengeance. Lord Templewood<sup>7</sup> went so far as to say that recently 'the reforming element has come to predominate and that the other two are carried incidentally to the reforming element'. Sir John Anderson<sup>8</sup> attached greater importance to deterrence, but agreed in excluding retribution:

'I think there would be general agreement that the justification for the capital sentence, as for other salient features of our penal system, must be sought in the protection of society and that alone... There is no longer in our regard of the criminal law any recognition of such primitive conceptions as atonement or retribution. We have, over the years, fortunately succeeded to a very large extent, if not entirely, in relegating the purely punitive aspect of our criminal law to the background.'

<sup>7</sup> Q. 8533.

<sup>8</sup> House of Commons, Official Report, 14th April, 1948, cols. 998-999.

53. Lord Templewood and Sir John Anderson had in mind retribution in the sense of vengeance or atonement. But in another sense retribution must always be an essential element in any form of punishment; punishment presupposes an offence and the measure of the punishment must not be greater than the offence deserves. Moreover, we think it must be recognised that there is a strong and widespread demand for retribution in the sense of reprobation—not always unmixed in the popular mind with that of atonement and expiation. As Lord Justice Denning put it<sup>0</sup>:

'The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformatory or preventive and nothing else... The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime: and from this point of view, there are some murders which, in the present state of public opinion, demand the most emphatic denunciation of all, namely the death penalty.'

The Archbishop of Canterbury, while expressing no opinion about the ethics of capital punishment, agreed with Lord Justice Denning's view about the ultimate justification of any punishment.<sup>1</sup> By reserving the death penalty for murder the criminal law stigmatises the gravest crime by the gravest punishment; and it may be argued that, by so doing, the law helps to foster in the community a special abhorrence of murder as 'the crime of crimes', so that the element of retribution merges into that of deterrence. Whatever weight may be given to this argument, the law cannot ignore the public demand for retribution which heinous crimes undoubtedly provoke; it would be generally agreed that, though reform of the criminal law ought sometimes to give a lead to public opinion, it is dangerous to move too far in advance of it.

54. The *reformation* of the individual offender is usually regarded as an important function of punishment. But it can have no application where the death penalty is exacted, if 'reformation' is taken to mean not merely repentance,<sup>2</sup> but re-establishment in moral life as a good citizen.<sup>3</sup> Not that murderers in general are incapable of reformation; the evidence plainly shows the contrary. Indeed, as we shall see later,<sup>4</sup> the experience of countries without capital punishment indicates that the prospects of reformation are at least as favourable with murderers as with those who have committed other kinds of serious crimes.

55. Discussion of the value of capital punishment has been largely devoted to the aspect of *deterrence*. This is an issue on which it is extraordinarily difficult to find conclusive arguments either way. Both sides are commonly argued by wide generalisations confidently expressed

<sup>0</sup> P. 207 (1, 3).

<sup>1</sup> Fisher, Q. 4087-8.

<sup>2</sup> It has sometimes been suggested that the death penalty has a unique value as a stimulus to repentance. The Royal Commission on Capital Punishment of 1864-66 were informed that in the opinion of the Governor, Chaplain and Chief Clerk of Millbank Prison 'criminals deserving death generally are not likely to reform with ordinary opportunities, but they do repent before hanging' (Minutes of Evidence, p. 639).

<sup>3</sup> It might be argued, as Professor Sellin pointed out (p. 648, footnote), that the death sentence, subsequently commuted, has a stronger reformatory effect in some cases than an original sentence of life imprisonment would have had; but we received no evidence which might support this hypothesis.

<sup>4</sup> Paragraphs 651-2 and Appendix 15.

with little positive evidence to support them. We heard much evidence about it from numerous witnesses, and were furnished with much relevant information, largely statistical. The greater part of this information will be found in our Minutes of Evidence, including the evidence obtained from other countries; but, as much of it is not readily available elsewhere, we have thought it useful to *give a full summary* of it in an appendix to this Report.<sup>5</sup>

56. Supporters of capital punishment commonly maintain that it has a uniquely deterrent force, which no other form of punishment has or could have. The arguments adduced both in support of this proposition and against it fall into two categories. The first consists of what we may call the common-sense argument from human nature, applicable particularly to certain kinds of murders and certain kinds of murderers. This *a priori* argument was supported by evidence given by representatives of all ranks of the police and of the prison service. The second comprises various arguments based on examination of statistics.

57. The arguments in the first category are not only the simplest and most obvious, but are perhaps the strongest that can be put forward in favour of the uniquely deterrent power of capital punishment. The case was very clearly stated by Sir James Fitzjames Stephen nearly a hundred years ago<sup>6</sup>:

'No other punishment deters men so effectually from committing crimes as the punishment of death. This is one of those propositions which it is difficult to prove, simply because they are in themselves more obvious than any proof can make them. It is possible to display ingenuity in arguing against it, but that is all. The whole experience of mankind is in the other direction. The threat of instant death is the one to which resort has always been made when there was an absolute necessity for producing some result... No one goes to certain inevitable death except by compulsion. Put the matter the other way. Was there ever yet a criminal who, when sentenced to death and brought out to die, would refuse the offer of a commutation of his sentence for the severest secondary punishment? Surely not. Why is this? It can only be because "All that a man has will he give for his life". In any secondary punishment, however terrible, there is hope; but death is death; its terrors cannot be described more forcibly.'

58. It is true, as has often been pointed out in reply to this argument, that capital punishment as applied in Great Britain falls very far short of a threat of instant and certain death to every murder. This is clearly shown by the figures in Tables 1 and 2 of Appendix 3. During the 50 years 1900-1949, 7,454 murders were known to the police in England and Wales. In 1,674 cases the suspect committed suicide. During the same period 4,173 persons were arrested on a charge of murder and 3,129 were committed for trial at assizes.<sup>7</sup> Of those committed for trial 658 were acquitted or not tried, 428 were found insane on arraignment and 798 were found guilty but insane. Of those convicted of murder 35 were sentenced to penal servitude for life or detention during H.M. pleasure and 1,210 were sentenced to death. Of those sentenced to death 23 had

<sup>5</sup> Appendix 6 (pp. 328 ff).

<sup>6</sup> 'Capital Punishments' in Fraser's Magazine, Vol. LXIX, June, 1864, p. 753.

<sup>7</sup> Owing to the basis on which the Criminal Statistics are compiled, this figure does not include persons charged with murder and convicted of manslaughter or some other lesser offence; but for the present purpose this effect is immaterial.

their conviction quashed on appeal, 47 were certified insane and 506 were reprieved. There remain 632 (621 men and 11 women) who were executed for murder. There was therefore only one execution for every 12 murders known to the police. In Scotland the proportion was even lower. In that country during the same period 612 murders were known to the police, 59 persons were convicted of murder and sentenced to death and 23 (22 men and 1 woman) were executed. There was therefore less than one execution to every 25 murders known to the police. But these odds against being hanged for murder are probably realised only vaguely, if at all, by would-be murderers. Those who, like Stephen, are convinced that the fear of death cannot fail to have a more potent effect on most men and women than the fear of any other punishment are not likely to be shaken in that conviction by these figures.

59. Capital punishment has obviously failed as a deterrent when a murder is committed. We can number its failures. But we cannot number its successes. No one can ever know how many people have refrained from murder because of the fear of being hanged. For that we have to rely on indirect and inconclusive evidence. We have been told that the first thing a murderer says when he is arrested is often 'Shall I be hanged?' or 'I did it and I am ready to swing for it', or something of that kind. What is the inference to be drawn from this? Clearly not that the death penalty is an effective deterrent, for he has not been deterred; nor that he consciously considered the risk of the death penalty and accepted it; still less that the death penalty was not so effective a deterrent as some other punishment might have been. The true inference seems to us to be that there is a strong association between murder and the death penalty in the popular imagination. We think it is reasonable to suppose that the deterrent force of capital punishment operates not only by affecting the conscious thoughts of individuals tempted to commit murder, but also by building up in the community, over a long period of time, a deep feeling of peculiar abhorrence for the crime of murder. 'The fact that men are hung for murder is one great reason why murder is considered so dreadful a crime.' This widely diffused effect on the moral consciousness of society is impossible to assess, but it must be at least as important as any direct part which the death penalty may play as a deterrent in the calculations of potential murderers. It is likely to be specially potent in this country, where the punishment for lesser offences is much more lenient than in many other countries, and the death penalty stands out in the sharper contrast.

60. We have already remarked that the deterrent effect of capital punishment may naturally be expected to operate more strongly to prevent some kinds of murders than others, and to deter some kinds of individuals more than others. To form any idea of the extent to which, and the way in which, this expectation coincides with experience, it would be necessary to have some classification of murders according to motives or causes. Attempts at such a classification have been made, notably by the Home Office in 1905 and by the Home Office and Scottish Home Department in 1949<sup>8</sup>. But these are inevitably very general and tentative and for several reasons can hardly fail to be misleading if they are taken as more than

---

<sup>8</sup> See Appendix 3, Tables 4 and 5, and Appendix 6, paragraphs 3-14.



a rough guide. Such a classification can only be framed in somewhat crude categories. If it is in terms of motives, it is unsatisfactory, because many murders are prompted by a combination of motives, or by hidden motives, or have no obvious motive. If, like the tables prepared for us by the Home Office and Scottish Home Department, they classify murders in terms of the relationship between the murderer and his victim, they can give only an approximate indication of the motive that inspired the crime. Although the murder of a wife, for example, will in many cases be committed for reasons which may broadly be described as of a sexual character, it may be inspired by the widest range of motives—jealousy, boredom, pity, exasperation, revenge, a wish to be free to marry another woman or a desire to dispose of the wife's fortune. Such analyses can do no more than lend some support to conclusions that can be reached by commonsense, namely that capital punishment is likely to act as a deterrent more of pre-meditated murders than of impulsive ones, and on normal persons more than on the mentally abnormal. Even these generalisations are subject to many exceptions. Premeditated murders are committed in spite of the existence of the death penalty—in them the offender will often calculate on escaping detection—and it can hardly be doubted that impulsive murders are prevented by it. Mentally normal persons do commit murder, and though the deterrent effect of capital punishment will certainly be negligible on the severely deranged, the question how far persons suffering from lesser forms of mental abnormality, and especially that difficult and amorphous category known as psychopaths, are capable of being deterred by the fear of punishment is far from clear. Our evidence was that some are and some are not. It was even suggested that in some very rare cases the existence of capital punishment may act as an incitement to murder on the mentally abnormal<sup>9</sup>.

61. Of more importance was the evidence of the representatives of the police and prison service. From them we received virtually unanimous evidence, in both England and Scotland, to the effect that they were convinced of the uniquely deterrent value of capital punishment in its effect on professional criminals. On these the fear of the death penalty may not only have the direct effect of deterring them from using lethal violence to accomplish their purpose, or to avoid detection by silencing the victim of their crime, or to resist arrest. It may also have the indirect effect of deterring them from carrying a weapon lest the temptation to use it in a tight corner should prove irresistible. These witnesses had no doubt that the existence of the death penalty was the main reason why lethal violence was not more often used and why criminals in this country do not usually carry firearms or other weapons. They thought that, if there were no capital punishment, criminals would take to using violence and carrying weapons; and the police, who are now unarmed, might be compelled to retaliate. It is in the nature of the case that little could be adduced in the way of specific evidence that criminals had been deterred by the death penalty. What an offender says on his arrest, probably some time after the commission of the crime, is not necessarily a valid indication of what was in his mind when he committed it; nor is it certain that a man

---

<sup>9</sup> Howard League, p. 279 (4), Calvert, Q. 3561-2; Henderson, p. 462\*\* (17); Institute of Psycho-Analysis, p. 546 (6 (ii) (e)); Sellin, Q. 8888. See also Appendix 6, paragraphs 20-21.

who tells the police that he refrained from committing a murder because he might have to 'swing for it' was in fact deterred wholly or mainly by that fear. Moreover we received no evidence that the abolition of capital punishment in other countries had in fact led to the consequences apprehended by our witnesses in this country; though it is fair to add that any comparison between Great Britain and most of these countries, with the exception of Belgium, is vitiated by the differences in social and industrial conditions and in density of population. But we cannot treat lightly the considered and unanimous views of these experienced witnesses, who have had many years of contact with criminals. Some of our most distinguished judicial witnesses—notably the Lord Chief Justice, Mr. Justice Humphreys and the Lord Justice General—felt no doubt that they were right<sup>1</sup>. It seems to us inherently probable that, if capital punishment has any unique value as a deterrent, it is here that its effect would be chiefly felt and here that its value to the community would be greatest. For the professional criminal imprisonment is a normal professional risk, of which the idea is familiar, if not the experience, and which for him carries no stigma. It is natural to suppose that for such people (except the rare gangster, who constantly risks his life in affrays with the police and other gangs) the death penalty comes into an entirely different category from other forms of punishment. The Commissioner of Police of the Metropolis told us<sup>2</sup> of a gang of armed shopbreakers who continued their operations after one of their members had been sentenced to death for murder and reprieved, but broke up and disappeared when, on a later occasion, two others were convicted of another murder and hanged. He thought it 'a reasonable inference' that this was evidence of the uniquely deterrent effect of the death penalty; and that was the opinion of the police officers who dealt with the gang. It is also contended that in the case of a violent prisoner under-going a life sentence the death penalty may be the only effective deterrent against his making a murderous assault on a fellow prisoner or a member of the prison staff.

62. We must now turn to the statistical evidence. This has for the most part been assembled by those who would abolish the death penalty; their object has been to disprove the deterrent value claimed for that punishment. Supporters of the death penalty usually counter them by arguing that the figures are susceptible of a different interpretation, or that for one reason or another they are too unreliable and misleading to form a basis for valid argument. The question should be judged, they say, not on statistics but on such considerations as we have been examining in the preceding paragraphs.

63. The arguments drawn by the abolitionists from the statistics fall into two categories. The first, and by far the more important, seeks to prove the case by showing that the abolition of capital punishment in other countries has not led to an increase of murder or of homicidal crime. This may be attempted either by comparing the homicide statistics of countries where capital punishment has been abolished with the statistics for the same period of countries where it has been retained, or by comparing the

<sup>1</sup> Goddard, Q. 3109; Humphreys, p. 260 (2); Cooper, Q. 5370-1.

<sup>2</sup> P. 148 (Appendix B). Extracts from the Commissioner's evidence about this case are printed in Appendix 6, paragraph 15.

statistics of a single country, in which capital punishment has been abolished, for periods before and after abolition. The second category is of arguments drawn from a comparison of the number of executions in a country in particular years with the murder or homicide rate in the years immediately succeeding.

64. An initial difficulty is that it is almost impossible to draw valid comparisons between different countries. Any attempt to do so, except within very narrow limits, may always be misleading. Some of the reasons why this is so are more fully developed in Appendix 6<sup>3</sup>. Briefly they amount to this: that owing to differences in the legal definitions of crimes, in the practice of the prosecuting authorities and the courts, in the methods of compiling criminal statistics, in moral standards and customary behaviour, and in political, social and economic conditions, it is extremely difficult to compare like with like, and little confidence can be felt in the soundness of the inferences drawn from such comparisons. An exception may legitimately be made where it is possible to find a small group of countries or States, preferably contiguous, and closely similar in composition of population and social and economic conditions generally, in some of which capital punishment has been abolished and in others not. These conditions are satisfied, we think, by certain groups of States in the United States of America, about which we heard evidence from Professor Thorsten Sellin, and perhaps also by New Zealand and the Australian States. In Appendix 6<sup>4</sup> we print a selection from the relevant material. If we take any of these groups we find that the fluctuations in the homicide rate of each of its component members exhibit a striking similarity. We agree with Professor Sellin that the only conclusion which can be drawn from the figures is that there is no clear evidence of any influence of the death penalty on the homicide rates of these States, and that, 'whether the death penalty is used or not and whether executions are frequent or not, both death-penalty States and abolition States show rates which suggest that these rates are conditioned by other factors than the death penalty'<sup>5</sup>.

65. A firmer basis for argument is afforded by the trend of the homicide rate in a country before and after the abolition of capital punishment, and, in a few cases, its reintroduction. The nature of the statistics available differs from one country to another; in a few the number of homicides known to the police are available, but more often there are statistics only of prosecutions for murder or of convictions. The number of homicides known to the police clearly provides the most informative basis and the number of convictions the least; the ratio between crimes committed and convictions may vary widely owing to such factors as the efficiency of the police, the methods of recording crime and the attitude of the courts; moreover juries may sometimes be more ready to return a verdict of guilty when the death penalty has been abolished. But so long as a continuous series of figures compiled on a uniform basis exists for the whole period under review, we think that the fluctuations in these figures can be taken as some index of fluctuations in the homicide rate. Whatever

<sup>3</sup> See paragraph 24.

<sup>4</sup> See paragraphs 32-36 and 51-54.

<sup>5</sup> P. 650 (41, 44).

basis is chosen, interpretation of the relevant statistics involves elements of doubt and difficulty. In most countries where capital punishment has been abolished, statutory abolition has come after a long period when the death penalty was in abeyance, and this creates the problem of what date should be taken as the dividing line. Whatever date may be selected, it cannot safely be assumed that variations in the homicide rate after the abolition of capital punishment are in fact due to abolition, and not to other causes, or to a combination of abolition and other causes. There is some evidence<sup>6</sup> that abolition may be followed for a short time by an increase in homicides and crimes of violence, and *a fortiori* it might be thought likely that a temporary increase of this kind would occur if capital punishment were abolished in a country where it was not previously in abeyance but was regularly applied in practice; but it would appear that, as soon as a country has become accustomed to the new form of the extreme penalty, abolition will not in the long run lead to an increase in crime. The general conclusion which we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to a fall.

66. We also review in Appendix 6 such evidence as has been submitted to us about the possible relation between the number of executions in particular years and the incidence of murder in succeeding years<sup>7</sup>. We need not here consider the evidence in detail; it is sufficient to say that we are satisfied that no such relationship can be established. (It was suggested to us by some Scottish witnesses that a fall in the number of murders and crimes of violence in Glasgow in 1946 was due, or mainly due, to the carrying out of three executions in that year after capital punishment had been in abeyance for 17 years, but the available evidence does not support this conclusion)<sup>8</sup>. We have suggested (paragraph 59) that any deterrent effect of capital punishment is likely to reside primarily in its long-term effect on the attitude of society to murder rather than in the conscious calculations of potential criminals. If this is so, it cannot be expected that variations in the number of executions from year to year would be directly reflected in a rise or fall of the murder rate, and a failure to find any such correlations cannot properly be used as an argument against the view that the death penalty is a unique deterrent.

67. The negative conclusion we draw from the figures does not of course imply a conclusion that the deterrent effect of the death penalty cannot be greater than that of any other punishment. It means only that the figures afford no reliable evidence one way or the other. It would no doubt be equally difficult to find statistical evidence of any direct relationship between the severity of any other punishment and the rise or fall of the crime to which it relates. Too many other factors come into the question. All we can say is that the deterrent value of punishment in general is probably liable to be exaggerated, and the effect of capital punishment specially so because of its drastic and sensational

---

<sup>6</sup> See Appendix 6, paragraphs 69-73.

<sup>7</sup> See Appendix 6, paragraphs 74-87.

<sup>8</sup> See Appendix 6, paragraphs 78-80.

character. The conclusion of Professor Sellin, who has made a profound study of this subject, is summarised in the answers to four of the questions we put to him:

‘8916. We cannot conclude from your statistics . . . that capital punishment has no deterrent effect?—No, there is no such conclusion.

8917. But can we not conclude that if it has a deterrent effect it must be rather small?—I can make no such conclusion, because I can find no answer one way or another in these data. . . . It is impossible to draw any inferences from the material that is in my possession, that there is any relationship . . . between a large number of executions, small number of executions, continuous executions, no executions, and what happens to the murder rates.

8918. . . . I think you have already agreed that capital punishment cannot, on the basis of your figures, be exercising an overwhelmingly deterrent effect?—That is correct.

8919. . . . But you would not like to go any further than that?—No. . . .’

68. We recognise that it is impossible to arrive confidently at firm conclusions about the deterrent effect of the death penalty, or indeed of any form of punishment. 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 to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty.” (Report, pages 17-24)

## APPENDIX "C"

### Chapter III of the Report of the Joint Committee of the Senate and House of Commons on Capital Punishment, June 27, 1956

#### "CHAPTER III—RETENTION OR ABOLITION

##### SECTION 1: ARGUMENTS FOR RETENTION

###### (1) *Deterrence*

29. The Committee was impressed by the support of the death penalty by those having responsibility for law enforcement including all provincial attorneys general except the attorney general of Saskatchewan. The experience of the officials supporting this view indicated that it was an effective deterrent to murder. They considered that it was particularly effective in deterring professional criminals from carrying weapons and committing crimes of violence. In addition, it was contended that abolition would endanger police because a criminal seeking to avoid arrest would have much less fear of the consequences of the use of firearms or violence. Capital punishment was also said to be an integral part of Canada's respected structure of law enforcement which probably deters a substantial number of professional criminals from entering Canada.

###### (2) *Retribution*

30. Capital punishment was said to be a just and appropriate punishment for murder. It was claimed that, above all other punishment, it marks society's detestation and abhorrence of the taking of life and its revulsion against the 'crime of crimes'. In the retributive sense, capital punishment was supported not because of a desire for revenge but rather as society's reprobation of the grave crime of murder. It was also argued that, as a result of capital punishment, there had developed over a long period of time, in the words of the United Kingdom Royal Commission, 'a deep feeling of peculiar abhorrence for the crime of murder'.

###### (3) *Public Opinion*

31. It was contended that public opinion in Canada remained substantially in favour of capital punishment and that it would be unwise for the Canadian Parliament to abolish capital punishment contrary to the wishes of a majority of the Canadian citizens.

###### (4) *Prison Administration*

32. It was claimed that additional administrative problems would arise in penitentiaries if all convicted murderers were imprisoned. The conduct in prison of murderers, whose death penalties had for extenuating reasons been commuted to life imprisonment, was said to be no reliable

guide to the conduct of persons in respect of whose capital offences there had been no sufficiently extenuating circumstances to warrant commutation.

33. The Commissioner of Penitentiaries, who expressed no view on the principle of abolition of capital punishment, suggested that consideration should be given to the retention of capital punishment for the convicted murderer who commits a subsequent murder in prison or in the course of an escape. He said that, if this existing deterrent were removed, apprehension would exist concerning the safety of the prison staff and the general public from prisoners for whom, because they were already serving life sentences, a further sentence of imprisonment could have no deterrent effect.

34. One related argument, which has been made in other jurisdictions to the effect that capital punishment in a painless and humane form is less cruel than punishment by life-long imprisonment, was not put to this Committee.

#### (5) *Propensity to Crimes of Violence*

35. It was also suggested that care should be used in making comparisons with the experiences of the United Kingdom and other countries in Western Europe which have been longer established and are more homogeneous as regards the racial origin, the language, the religion and outlook of their citizens than Canada. In a young and growing country like Canada, with a mixed population representing many nationalities, there was a greater need for the deterrent control provided by capital punishment. The murder rate, however it was measured, was said to be appreciably higher in both the United States and Canada than in Western Europe, as was the proportion of deliberately-planned homicides. Hence, it was argued, that greater danger exists on this continent of an increase in violent crime if capital punishment were abandoned. Moreover, it was contended that professional criminals were more likely to resort to violence. To this class of criminal, capital punishment was a more effective deterrent than mere imprisonment to which they were already hardened and which they tended to regard as an occupational hazard.

### SECTION 2: ARGUMENTS FOR ABOLITION

#### (1) *Not an Effective Deterrent*

36. Capital punishment was said to have no unique deterrent effect which would not be accomplished by imprisonment. It was claimed that a considerable proportion of murders are committed in circumstances of sudden passion and such murderers cannot be deterred by threat of the consequences. In contrast, those who carefully plan a murder or a crime like robbery from which murder results, were alleged to plan deliberately to avoid detection and are not influenced by the threat of the death penalty. In effect it was claimed that the only person who might be deterred is the normal law-abiding citizen, who would not murder in any case. In substance, the argument was that certainty of detection and apprehension is a more effective deterrent than severe punishment. This argument was reinforced by reference to some theories of the behaviour sciences which

indicate that capital punishment has no special deterrent effect against those who expose themselves to it. Apart from those who can meet the test of the legal defence of insanity, it was also contended that a considerable proportion of murderers are not fully responsible and cannot be restrained by the threat of a particular punishment. The argument denying any effective deterrent influence of capital punishment was supported by statistical references which were said to prove that capital punishment exercises no deterrent effect and that variations in the incidence of murder are not affected by the presence or absence of capital punishment. These statistics are discussed more fully in the next section of this chapter.

(2) *Morally Wrong*

37. It was contended that it is morally wrong for the state, as well as an individual, to take human life. The punishment was said to be at variance not only with the principles of Christianity but also with the humanitarian and social developments which characterize the modern world. It was alleged to be an obsolete, barbarous punishment which has been successfully dispensed with in most civilized countries and that it is out of step with modern morality and thought. It was also claimed that the public is revolted by the barbarous nature of the punishment.

(3) *Based on Revenge*

38. It was alleged that the death penalty is not justified as a deterrent and is retained only as a retributive punishment in the worst sense of expressing society's revenge against the murderer. It was contended that revenge should not be part of any just punishment and that the death penalty fails completely to afford any special protection to society.

(4) *Morbid Aspects*

39. It was contended that capital punishment is not only unjust to the murderer and ineffective as a deterrent, but is brutalizing in that it has a bad effect, not only upon prisoners and staff of the institutions where it takes place, but on society at large. It was said that the disproportionate publicity which surrounds a murder trial and an execution reflects the morbid instincts aroused by the death penalty. The shocking scenes which have accompanied some executions were cited in proof of these assertions as to the degenerative influence of capital punishment.

(5) *Risk of Error*

40. The punishment is irrevocable and the risk of executing an innocent person was alleged to justify abolition.

(6) *Adverse Effect upon Administration of Justice*

41. On the other hand, it was argued that guilty persons sometimes go free because juries are unduly swayed in their verdicts by fear of the death penalty. The punishment was criticized as unequal because the accused person who is able to employ competent counsel is much less likely to be exposed to it than the indigent person.



(7) *Prison Administration*

42. Opponents of the death penalty alleged that the incarceration of all convicted murderers will pose no special problems for prison administration and argued that, as a class, murderers have a superior record to other types of prisoners. Some also urged that, even if the housing of all convicted murderers presented difficulties, it would be improper to permit mere administrative considerations to stand in the way of abolition which was justified on broad grounds of public policy.

SECTION 3: STATISTICS RELATING TO DETERRENCE

43. Throughout the literature on this subject and in many of its early hearings, the Committee noted references to the statistical studies of Professor Thorsten Sellin and the Committee was fortunate in arranging for his attendance. His evidence presented statistical surveys comparing homicide rates (as defined in paragraph 27) in various jurisdictions in relation to the use of capital punishment.

44. Professor Sellin's oral evidence fell into three categories and was later supplemented by written evidence on a fourth matter. First, he compared homicide rates in several groups of states in the United States having similar social and economic characteristics, including in each group both states which have abolished and states which have retained capital punishment. In this way he sought to avoid the danger of comparing homicide rates in states with different traditions and social conditions. These comparisons indicate that homicide rates are similar in the various groups of states in which traditions and social conditions are substantially the same regardless of whether these states have retained or abolished the death penalty.

45. Professor Sellin's second group of comparisons traced the pattern of homicide rates, before and after abolition, in jurisdictions which have abolished the death penalty and included information on jurisdictions where capital punishment was restored after a period of abolition. These statistics also indicate that the trend of homicide rates does not appear to be affected appreciably by the presence or absence of capital punishment, and that no significant change in the rates followed abolition or re-imposition of the death penalty.

46. His third group of statistics related to the incidence of homicide in Philadelphia before and after well-publicized executions and indicated that the executions appear to have had no appreciable effect on the number of homicides reported.

47. Finally, Professor Sellin and the Reverend Father Donald J. Champion submitted written studies of police killings in certain United States jurisdictions including both abolition and retention states. These studies, while comprehensive for the jurisdictions covered, did not contain data from some important states and municipalities. They indicated that the rate of police killings does not appear to be affected appreciably by the presence or absence of capital punishment.

48. The interpretation of this statistical data involves difficulty because the figures cannot express the differences in tradition, standards of law enforcement, social conditions and other factors in various coun-

tries or even regions within a country. It seems impossible to determine to what extent the movement of homicide rates may have been influenced by causes other than abolition or by a combination of abolition and other causes. However, the figures from other countries indicate that homicide rates are influenced by factors other than the death penalty, which are not easily measured or assessed, and this makes it difficult to deduce from the statistics available that abolition in Canada would not influence the homicide rate.

49. The Committee noted that Professor Sellin went farther in his presentation to it than in his presentation to the United Kingdom Royal Commission on Capital Punishment<sup>(1)</sup>. In his evidence before the Royal Commission he stated in answer to a question that it could not be concluded from his statistical studies that capital punishment had no deterrent effect. In his evidence to this Committee he stated<sup>(2)</sup>. 'What the statistics prove is not the case for or against the death penalty, but the case against the general deterrent effect of that penalty'.

50. While the Committee recognized that this statistical information assists in an understanding of this subject, it shared the opinion of the United Kingdom Royal Commission that too much should not be read into the failure to find a correlation between the death penalty and homicide rates in these statistical surveys. The Royal Commission concluded its survey of these statistics as follows: 'The negative conclusion we draw from the figures does not of course imply a conclusion that the deterrent effect of the death penalty cannot be greater than that of any other punishment. It means only that the figures afford no reliable evidence one way or the other. It would no doubt be equally difficult to find statistical evidence of any direct relationship between the severity of any other punishment and the rise or fall of the crime to which it relates. Too many other factors come into the question. All we can say is that the deterrent value of punishment in general is probably liable to be exaggerated, and the effect of capital punishment specially so because of its drastic and sensational character'.

#### SECTION 4: CONCLUSIONS

51. Abolition of capital punishment would involve a major change in the law and the Committee considered that it must approach this question on the basis of whether or not such a change would prejudice the safety and well-being of the public.

52. In considering the arguments for and against abolition, the Committee was conscious of the view of the provincial attorneys-general and other officials responsible for law enforcement from whom it received evidence that capital punishment is an important and necessary deterrent to murder. As indicated in paragraph 50, the Committee did not consider that this opinion is displaced by other evidence based upon statistical comparisons, and the Committee has concluded that capital punishment does exercise a deterrent effect, which would not result from imprisonment or other forms of punishment.

<sup>(1)</sup> Report of U.K. Royal Commission on Capital Punishment, 1949-53 (Cmd. 8952) H.M.S.O. London.

<sup>(2)</sup> 1954 Minutes of Proceedings and Evidence, No. 17, p. 671 (Queen's Printer, Ottawa).

53. The failures of capital punishment as a deterrent are obvious from the number of murders still committed. Its successes are unknown because it is impossible to determine the number of persons it has deterred from murder. One measure of its deterrent effect was afforded by an analysis of murders which indicated that a considerable proportion, probably in excess of half, are committed under the compulsion of overwhelming passion or anger where no deterrent could have been effective. This would seem to demonstrate that the death penalty, coupled with the excellent standards of law enforcement prevailing in Canada, has been successful in deterring the commission of deliberate premeditated murders and reducing their incidence to minimum proportions. The deterrent effect may also be indicated by the widespread association of the crime of murder with the death penalty which is undoubtedly one reason why murder is regarded as such a grave and abhorrent crime.

54. The Committee has already indicated in paragraph 28 that comparisons between different countries on the basis of available statistics must, of necessity, be made with reservations. However, the Committee considered that criminals in North America appear more prone to the use of firearms and violence than European criminals. The Committee does not attempt to explain why this should be so, although it appears likely that it results from the comparative youthfulness of North American society and the variegated nature of its population. Whatever the reason may be, the Committee is of the opinion that it is obviously more imperative to retain the stern penalty of capital punishment as a continuing restraint against the use of violence by professional criminals.

55. The Committee also noted a difference in the types of murder committed in Canada and the United Kingdom. In the United Kingdom, murders of the familial-passion type which are not subject to control by the death penalty, or any other penalty, constitute an appreciably higher proportion. In contrast, it seems that, proportionately, twice as many Canadian murders are committed in connection with robbery which indicates that, on the whole, Canadian murders are committed more frequently by professional criminals. The Committee has concluded that the death penalty is most likely to operate as a restraint and a deterrent to professional criminals who are obviously not deterred from crime by the risk of imprisonment alone, and that it is necessary to retain capital punishment to minimize the tendency of Canadian criminals to use violence in the commission of other crimes.

56. The Committee, while recognizing the substantial support given by many persons to the abolition of capital punishment, considered there is a still wider group who support and accept capital punishment. This support reflects the public's revulsion against murder, the 'crime of crimes'. Equally, the Committee considered that the public abhorrence of murder reflects a traditional attitude built up by the reservation of capital punishment for this particular crime. The abolition of a penalty traditionally accepted as a just and effective deterrent could only be recommended if the evidence clearly established that the ordinary citizen's view of its efficacy was demonstrably wrong. The experience of other

jurisdictions shows that abolition, in the face of strong public support of capital punishment, might lead to confusion and doubt which adversely affect the administration of justice.

57. The Committee, in reaching the conclusion that it is in the public interest to retain capital punishment, took into account additional considerations relating to the apprehension, trial, and custody of accused persons upon which it desired to record its views.

58. The Committee was of the opinion that capital punishment does protect the police to a greater extent than imprisonment alone would do by deterring criminals from using firearms or violence to facilitate the commission of crimes, or escapes from arrest or attempted apprehension.

59. Some witnesses suggested that juries might be swayed by fear of the death sentence, and refuse to render murder verdicts in appropriate cases with the result that the guilty are not punished. The Committee, however, accepted the view of most law-enforcement authorities appearing before it that the great majority of jurors do not shrink from their duty because of fear of accepting responsibility for a sentence of capital punishment. While there is ample evidence that court and jury alike insist on the highest standards of proof in murder trials, the Committee did not consider that the existence of the death sentence interferes with the administration of justice. There are undoubtedly cases where the verdicts of juries, either acquitting or convicting for a lesser offence, are not easily reconciled with the evidence, but the Committee considered that, in these instances, juries may have been moved by their sympathy with the accused rather than by any reluctance to impose capital punishment.

60. Considerable emphasis was put on the risk of irrevocable error in capital convictions. The fact that there was no known Canadian instance of the execution of an innocent person indicated the effectiveness of present procedures by way of trial and executive review and this suggests that the risk of error does not present a reasonable argument for abolition in Canada.

61. The Committee considered that the proper management of prisons and executions can and does prevent adverse effects on prisoners and the public generally, and there was no evidence that properly trained and selected personnel, charged with the duty of superintending all details of executions, are left with any lasting ill effects.

62. The Committee took note of both the report of the United Kingdom Royal Commission on Capital Punishment, 1949-53, and the subsequent debates in the United Kingdom Parliament. Recently the British House of Commons approved the abolition of capital punishment. The Committee did not consider that the recent decisions of the United Kingdom House of Commons afford any compelling reason for it to reconsider its decision. There are obvious differences between the two countries which may indicate that capital punishment is necessary and more effective in Canada. Moreover, the Committee noted that the votes in favour of abolition were carried by small majorities and that public opinion in the United Kingdom appears divided on the question. If the

United Kingdom Parliament abolishes capital punishment, the experience of that country after abolition may be of assistance to Canada in the event that this question is studied again, as this Committee considers it should be, within the next decade.

63. While the Committee considered that capital punishment should be subjected to periodic review by Parliament, it recommends that the death penalty should be retained as the mandatory punishment for the crime of murder." (Report, pages 10-16)

## APPENDIX "D"

**Table A from Appendix "B" to the Report of the Joint Committee of the Senate and House of Commons on Capital Punishment, June 27, 1956, showing disposition of capital cases, 1867-1954 and a supplementary table bringing Table A up to date**

NOTE: This Table, and the following supplementary Table, carry each case through to its conclusion under the year in which the sentence was imposed.

"TABLE A: DISPOSITION OF CAPITAL CASES, 1867-1954

This Table is the counterpart of Table I in Appendix 3 of the United Kingdom Royal Commission Report on Capital Punishment, 1949-53 at pages 298-301. "Otherwise" means "otherwise disposed of by the court of appeal", i.e., by quashing the conviction and entering a verdict of not guilty or ordering a new trial or substituting a verdict for a lesser offence.

M.—MALE

F.—FEMALE

Year	Sentenced to death		Executed		Commuted		Otherwise	
	M.	F.	M.	F.	M.	F.	M.	F.
1867.....	7	1	2	0	5	1	0	0
1868.....	11	0	4	0	7	0	0	0
1869.....	8	0	6	0	1	0	1	0
3 years.....	26	1	12	0	13	1	1	0
1870.....	6	0	0	0	6	0	0	0
1871.....	12	1	2	0	9	1	1	0
1872.....	16	1	3	1	13	0	0	0
1873.....	10	1	6	1	4	0	0	0
1874.....	13	0	3	0	10	0	0	0
1875.....	14	1	3	0	11	1	0	0
1876.....	15	0	4	0	11	0	0	0
1877.....	3	0	2	0	1	0	0	0
1878.....	12	1	4	0	8	1	0	0
1879.....	8	1	4	0	4	1	0	0
10 years.....	109	6	31	2	77	4	1	0
1880.....	6	0	5*	0	1	0	0	0
1881.....	12	1	8	0	4	1	0	0
1882.....	8	0	3	0	5	0	0	0
1883.....	8	1	5	0	3	1	0	0
1884.....	10	1	9	0	1	1	0	0
1885.....	20	0	11	0	9	0	0	0
1886.....	8	0	4	0	4	0	0	0
1887.....	6	0	3	0	3	0	0	0
1888.....	12	0	7	0	5	0	0	0
1889.....	2	0	2*	0	0	0	0	0
10 years.....	92	3	57	0	35	3	0	0

Year	Sentenced to death		Executed		Committed		Otherwise	
	M.	F.	M.	F.	M.	F.	M.	F.
1890.....	12	0	10	0	2	0	0	0
1891.....	4	0	2	0	2	0	0	0
1892.....	6	0	2	0	4	0	0	0
1893.....	7	0	2	0	5	0	0	0
1894.....	8	0	5	0	3	0	0	0
1895.....	5	0	3	0	2	0	0	0
1896.....	5	0	1	0	4	0	0	0
1897.....	6	1	4	0	1	0	1	1
1898.....	14	0	7*	0	6	0	1**	0
1899.....	11	3	8	3	3	0	0	0
10 years.....	78	4	44	3	32	0	2	1
1900.....	8	0	6	0	2	0	0	0
1901.....	7	0	3	0	4	0	0	0
1902.....	13	0	9	0	4	0	0	0
1903.....	12	0	5	0	7	0	0	0
1904.....	12	0	6	0	4	0	2	0
1905.....	9	1	5	0	3	0	1††	1
1906.....	6	0	2	0	3	0	1	0
1907.....	12	0	7	0	5	0	0	0
1908.....	16	0	8	0	7	0	1	0
1909.....	17	1	12	0	3	1	2	0
10 years.....	112	2	63	0	42	1	7	1
1910.....	16	1	12	0	3	1	1	0
1911.....	13	1	7	0	4	1	2	0
1912.....	29	1	8	0	20	1	1	0
1913.....	25	1	9	0	14	0	2	1
1914.....	29	1	15	0	13	1	1	0
1915.....	28	2	14	0	12	2	2	0
1916.....	19	1	9*	0	9	0	1	1
1917.....	16	2	6	1	10	0	0	1
1918.....	15	0	6	0	8	0	1	0
1919.....	35	2	20*	0	13	1	2†	1
10 years.....	225	12	106	1	106	7	13	4
1920.....	21	2	7	0	11	2	3	0
1921.....	16	0	7	0	6	0	3	0
1922.....	24	1	11	1	8	0	5	0
1923.....	15	1	11	0	3	0	1	1
1924.....	23	1	10	0	9	1	4	0
1925.....	19	0	9	0	9	0	1	0
1926.....	10	0	6	0	2	0	2	0
1927.....	16	1	11	0	4	1	1	0
1928.....	18	0	6	0	7	0	5	0
1929.....	22	0	14	0	6	0	2	0
10 years.....	184	6	92	1	65	4	27	1

TABLE A: DISPOSITION OF CAPITAL CASES, 1867-1964—Contc.

Year	Sentenced to death		Executed		Commuted		Otherwise	
	M.	F.	M.	F.	M.	F.	M.	F.
1930.....	23	0	13	0	5	0	5	0
1931.....	32	0	25	0	3	0	4	0
1932.....	22	1	13	0	5	0	4	1
1933.....	21	0	16	0	3	0	2	0
1934.....	23	3	11	1	4	1	8	1
1935.....	14	3	11	1	2	1	1	1
1936.....	21	1	14	0	3	1	4	0
1937.....	14	0	7	0	2	0	5	0
1938.....	18	1	8	1	8	0	2	0
1939.....	10	1	4	0	3	1	3	0
10 years.....	198	10	122	3	38	4	38	3
1940.....	19	2	9	0	6	0	4	2
1941.....	15	0	7	0	7	0	1	0
1942.....	12	1	6	0	1	0	5	1
1943.....	10	0	7	0	1	0	2	0
1944.....	13	0	9	0	4	0	5	0
1945.....	19	0	10	0	5	0	4	0
1946.....	24	5	12	1	7	1	5	3
1947.....	19	0	10	0	3	0	6	0
1948.....	26	0	13*	0	5	0	8†	0
1949.....	29	0	11	0	6	0	12	0
10 years.....	191	8	94	1	45	1	52	6
1950.....	20	1	10	0	3	0	7	1
1951.....	17	2	10	1	2	1	5	0
1952.....	26	0	10	0	8	0	8	0
1953.....	22	0	8	0	6	0	8	0
1954.....	25	0	10	0	4	0	11‡	0
5 years.....	110	3	48	1	23	1	39	1

\* Includes one condemned person who committed suicide.

\*\* Includes one condemned person who died in police hospital.

† Includes one condemned person who died before date fixed for execution.

†† Condemned person who died before consideration of case by Governor in Council.

‡ Includes three condemned persons whose cases were still before Appeal Courts."



SUPPLEMENTARY TABLE, CAPITAL CASE STATISTICS FOR CANADA

This Supplementary Table, in order to accord with the main Table, counts all death sentences imposed, including more than one sentence imposed upon the same accused for the same offence as the result of a new trial. The figures in brackets eliminate this duplication. For example, four persons who were convicted and sentenced to death in 1950 were granted new trials and were thereafter again convicted and sentenced to death in 1950, 1951, 1951 and 1952 respectively. The first conviction and sentence imposed on each of these people has been removed from the figure "20" and the figure "7", for 1950, to give the figure "(16)" and the figure "(3)". The second conviction and sentence is included, of course, for the year in which it occurred, namely, 1950, 1951, 1951 and 1952 respectively.

Year	Sentenced to death		Executed		Committed		Otherwise	
	M.	F.	M.	F.	M.	F.	M.	F.
1950.....	20 (16)	1	10	0	3	0	7 (3)	1
1951.....	17 (15)	2	10	1	2	1	5 (3)	0
1952.....	26 (22)	0	10	0	8	0	8 (4)	0
1953.....	22 (20)	0	10*	0	6	0	6 (4)	0
1954.....	27 (23)	0	11	0	4	0	12 (8)	0
1955.....	17 (16)	1	6	0	8	1	3 (2)	0
1956.....	18 (16)	1	5	0	5	0	8 (6)	1
1957.....	12 (11)	0	3	0	5	0	4 (3)	0
1958.....	21 (21)	0	3	0	16	0	2 (2)	0
1959.....	18 (15)	0	3	0	11	0	4 (1)	0
10 years.....	198(175)	5	71	1	68	2	59(36)	2
1960.....	12 (10)	0	2	0	6	0	4 (2)	0
1961.....	17 (17)	0	1	0	10	0	6 (6)	0
1962.....	13 (13)	0	2	0	7	0	4 (4)†	0
1963.....	12 (12)	0	0	0	7	0	5 (5)†	0
1964.....	5 (5)	0	0	0	3	0	2 (2)†	0
1965#.....	9 (8)	0	0	0	1	0	8 (7)††	0
	68 (65)	0	5	0	34	0	29(26)	0

# Up to May 25, 1965.

\* Includes two condemned persons who committed suicide.

† Includes one condemned person whose case is still before Appeal Court.

†† Includes six condemned persons whose cases are still before Appeal Courts.

N.B. It should be noted, if comparing these figures with statistics previously given, that there are two more cases in 1954 because of the correction of the omission of two cases in that year.

## APPENDIX "E"

### Criminal code sections defining and classifying murder

"201. Culpable homicide is murder

- (a) where the person who causes the death of a human being
  - (i) means to cause his death, or
  - (ii) means to cause him bodily harm that he knows is likely to cause his death; and is reckless whether death ensues or not;
- (b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or
- (c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

202. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or an offence mentioned in section 52, [sabotage] piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

- (a) he means to cause bodily harm for the purpose of
  - (i) facilitating the commission of the offence, or
  - (ii) facilitating his flight after committing or attempting to commit the offence,and the death ensues from the bodily harm;
- (b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom;
- (c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom; or
- (d) he uses a weapon or has it upon his person
  - (i) during or at the time he commits or attempts to commit the offence, or
  - (ii) during or at the time of his flight after committing or attempting to commit the offence,and the death ensues as a consequence.

- 202A. (1) Murder is capital murder or non-capital murder.
- (2) Murder is capital murder, in respect of any person, where
- (a) it is planned and deliberate on the part of such person,
  - (b) it is within section 202 and such person
    - (i) by his own act caused or assisted in causing the bodily harm from which the death ensued,
    - (ii) by his own act administered or assisted in administering the stupefying or over-powering thing from which the death ensued,
    - (iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,
    - (iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or
    - (v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or
  - (c) such person by his own act caused or assisted in causing the death of
    - (i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
    - (ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,or counselled or procured another person to do any act causing or assisting in causing the death.
- (3) All murder other than capital murder is non-capital murder.

203. (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.

(2) A wrongful act or insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted upon it on the sudden and before there was time for his passion to cool.

- (3) For the purposes of this section the questions
- (a) whether a particular wrongful act or insult amounted to provocation, and
  - (b) whether the accused was deprived of the power of self-control by the provocation that he alleges he received,

are questions of fact, but no one shall be deemed to have given provocation to another by doing anything that he had a legal right to do, or by doing anything that the accused incited him to do in order to provide the accused with an excuse for causing death or bodily harm to any human being.

(4) Culpable homicide that otherwise would be murder is not necessarily manslaughter by reason only that it was committed by a person who was being arrested illegally, but the fact that the illegality of the arrest was known to the accused may be evidence of provocation for the purpose of this section."

Note: It should also be noted that infanticide is not classified as murder but as a separate offence punishable with imprisonment up to five years. Infanticide is described as follows:

"204. A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed."

## APPENDIX "F"

### I. Extracts from the Summary of the 1961 Report of the Home Office Research Unit (U.K.) entitled "Murder"

#### "CHAPTER I

##### Crimes known to the police and proceedings taken

1. Figures providing the best basis for a consideration of the trend in the number of murders are those of murders known to the police in each year, adjusted by deducting those which the police later found not to be murder or the courts disposed of as offences other than murder. Comparisons between the numbers of murders committed in periods before and after the Homicide Act, 1957, came into operation (on 21st March, 1957) are, however, difficult to make because the Act altered the definition of murder and also introduced the special defence of diminished responsibility (s.2), as a result of which some persons who would formerly have been convicted of murder may now be convicted of manslaughter. It is probable that, but for the operation of the Homicide Act, most of these 'diminished responsibility' cases would have remained on record as murders and therefore, in the figures quoted below, these cases have been allowed to remain as if they had been murders, except where section 2 manslaughter is separately mentioned.

2. The long-term trend in the murder rate may be indicated by comparing the annual averages for the three decades 1931-40, 1941-50 and 1951-60. During the period 1931-40 the annual average was 130; during 1941-50 it was 152; and during 1951-60 it was 149. Between 1931 and 1960 the population increased by approximately 15 per cent; the average annual number of murders per million of the population was 3.2 during the period 1931-40 and 3.3 during the period 1951-60.

3. The annual average of murders for the period 1954-56 (the last three complete years before the Homicide Act came into operation) was 143, and for the period 1958-60 it was 160. This represents an increase of 11 per cent. The corresponding increase in all crimes of violence against the person was 69 per cent.

4. The annual figures show wide fluctuations, which cannot be explained. The figure for 1960 is 166 (including 31 offences reduced to manslaughter by reason of diminished responsibility); this is high but not unprecedented, and it cannot be taken as an indication of any general continuing increase in the murder rate.

5. The annual figures may be slightly inflated, since they include cases in which a suspect was charged with murder and acquitted of any crime. In some of these cases murder was certainly committed, even

though no one was convicted; but in others there was probably no murder. Since the reason for an acquittal is never given, such cases cannot be accurately distinguished, and they are all recorded as murder. Analysis suggests that the true murder-rate may be about 5 per cent lower.

6. Less than 15 per cent of all murders are of the types now defined as capital murder, and the proportion has not changed since the Homicide Act. This figure includes cases which did not result in conviction because the offender committed suicide or was found to be mentally abnormal.

7. Nearly one-third of all victims are murdered by persons who commit suicide. These are mainly family murders and are very largely cases in which children are killed by a parent in a state of despair or mental stress.

...

12. Up to the end of 1960, 29 persons had been convicted of capital murder under section 5 of the Homicide Act, 1957. Twenty-one of these were convicted of murder in the course or furtherance of theft, 5 of murder by shooting, and 3 of the murder of a policeman in the course of his duty. Nineteen were executed, 7 were reprieved, and three were persons under 18 detained during Her Majesty's Pleasure.

...

## CHAPTER II

### The Victims

...

9. The number of murders for robbery or financial gain rose from six a year to 12 a year after the Homicide Act, in spite of the fact that murder in the course or furtherance of theft is capital murder.

## CHAPTER III

### The Offenders

1. An analysis was made of offenders for the same period as for victims, 1955-1960. Persons acquitted or discharged were excluded from this analysis, which covered four categories: the suicides, the insane, those convicted of manslaughter by reason of diminished responsibility, and those convicted and sentenced for murder. Both before and after the Homicide Act, those convicted and sentenced for murder comprised only 31 per cent of the total.

2. Those convicted of murder were almost all men, as were most of the mentally abnormal; but 30 to 40 per cent of the suicides were women.

...

7. Motives showed a variation corresponding to the type of victim. The suicides killed in desperation; the mentally abnormal killed in sudden rage, with very rarely a sexual motive. Only among men convicted of murder was there much variety of motive, and in this group also,

quarrels and rage accounted for over half the total; but the proportion who killed for robbery or financial gain rose from 14 per cent before the Homicide Act to 21 per cent after it.

...

11. The results show that those convicted of capital murder are mainly persons who kill in pursuit of criminal activities. The majority kill for gain, and there has been some increase in this type of murder since the Homicide Act. Murder by shooting, by contrast, has decreased slightly since the Act; but in any case there are few convictions of capital murder in this category, since such murders are mainly done by persons who commit suicide or are mentally abnormal. Murder by shooting, like non-capital murder, is apparently more likely to be done for emotional reasons than in the course of crime." (pages 39-43)

## II. Tables published in U.K. Hansard for December 11, 1964 for the purpose of bringing up to date tables previously published in the Home Office Report "Murder", 1961

The following explanatory note accompanies these Tables:

"1. The figures below have been compiled on the same basis as those in the Home Office Research Unit Report Murder (H.M.S.O. 1961), and the tables have been numbered to correspond with those in that report, to which page references are given. For purposes of comparison with previous years, convictions of manslaughter by reason of diminished responsibility have been included in the same way as in the Report."

"TABLE 1

FINALLY ADJUSTED NUMBERS OF MURDERS KNOWN TO THE POLICE, AND NUMBER OF OFFENCES REDUCED TO MANSLAUGHTER BY REASON OF DIMINISHED RESPONSIBILITY UNDER S. 2 OF THE HOMICIDE ACT 1957

	No. of victims			No. per million of home population (a) of England and Wales	
	Murder	s. 2 Manslaughter	Total	Murder	Murder and s. 2 Manslaughter
1931-40	130	—	130	3.2	3.2
1941-50	152	—	152	*	*
1951-55) annual average.	137	—	137	3.1	3.1
1956	150	—	150	3.4	3.4
1957	151	23	174	3.3	3.9
1958	125	28	153	2.8	3.4
1959	141	20	161	3.1	3.5
1960	135	31	166	3.0	3.7
1961	130	29	159	2.8	3.4
1962	142	37	179	3.0	3.8
1963	133	56	189	2.8	4.0

\* No figure for home population is available for the war years, since this represents persons actually living in the country at the time."

"TABLE 4

COMPARISON BETWEEN DEATHS PROVISIONALLY AND FINALLY RECORDED AS DUE TO MURDER BEFORE AND AFTER THE HOMICIDE ACT 1957

	Before Homicide Act: 1st January, 1952, to 20th March, 1957			After Homicide Act: 21st March, 1957, to 31st December, 1963		
	No.	Annual Average	Per cent.	No.	Annual Average	Per cent.
Deaths provisionally recorded as murder.....	888	170	100	1,457	215	100
Deaths found not to be murder or manslaughter by reason of diminished responsibility (s. 2)	150	29	16.9	305	45	20.9
Deaths finally recorded as murder or manslaughter by reason of diminished responsibility (s. 2)						
Murder.....	735	140	82.8	931	137	63.9
S. 2 Manslaughter.....	3	1	0.3	221	33	15.2
Total.....	738	141	83.1	1,152	170	79.1"

The following explanatory note accompanies Tables 1 and 4:

"2. Table 1 (Murder, p.4).

...

Table 4 (Murder, p. 6).

...

The numbers of deaths finally recorded as murder which became known to the police in 1961, 1962 and 1963 showed only variations within the range that might be expected. The numbers of cases of diminished responsibility were unusually high in 1962 and 1963. In 1963 the high figure of 56 cases was balanced by a fall in the number of deaths eventually found not to be murder on some other ground. Although all diminished responsibility cases are included as murder for purposes of comparison with earlier years, these will include cases which might have resulted in convictions for other manslaughter but for the availability of this special defence under the Homicide Act, 1957; this defence may now be increasingly used in place of others which would result in a reduction to manslaughter, such as provocation."



"TABLE 6

MURDERS KNOWN TO THE POLICE TOGETHER WITH OFFENCES  
REDUCED TO MANSLAUGHTER BY REASON OF  
DIMINISHED RESPONSIBILITY

Estimated numbers of capital and non-capital offences

	Capital		Non-capital		Total	
	No.	Per cent.	No.	Per cent.	No.	Per cent.
1952.....	17	12.1	124	87.9	141	100.0
1953.....	17	12.1	123	87.9	140	100.0
1954.....	22	15.2	123	84.8	145	100.0
1955.....	15	11.3	118	88.7	133	100.0
1956.....	30	19.9	120	80.0	150	100.0
1957.....	23	13.2	151	86.8	174	100.0
1958.....	19	12.4	134	87.6	153	100.0
1959.....	23	14.3	138	85.7	161	100.0
1960.....	31	18.7	135	81.3	166	100.0
1961.....	20	12.6	139	87.4	159	100.0
1962.....	21	11.7	158	88.3	179	100.0
1963.....	22	11.6	167	88.4	189	100.0
Before Homicide Act (1st January, 1952 to 20th March, 1957): Annual Average.....	20	14.4	121	85.6	141	100.0
After Homicide Act (21st March, 1957 to 31st December, 1963): Annual Average.....	23	13.5	147	86.5	170	100.0"

The following explanatory note accompanies Table 6:

"4. Table 6 (Murder, p. 8).

As before, cases have been classified as 'capital' and 'non-capital' by the circumstances of the offence; the figures include cases in which the suspect committed suicide or was found to be mentally abnormal and was therefore not convicted of murder. The proportion of 'capital' murders was slightly lower than usual in 1962 and 1963, but the fluctuations are no greater than might be expected."

"TABLE 10

CONVICTIONS FOR CAPITAL MURDER AND SIMILAR CONVICTIONS  
BEFORE THE HOMICIDE ACT

		Convictions for capital murder under the Homicide Act 1957				
		S. 5(a) Murder in the course or furtherance of theft	S. 5(b) Murder by shooting	S. 5(c) Murder in the course of resisting arrest	S. 5(d) Murder of policeman in course of duty	S. 5(e) Murder of prison officer in course of duty
1957	Executed.....	2	1	—	—	—
	Reprieved.....	1	1	—	—	—
	H.M.P.....	1	—	—	—	—
	Total.....	4	2	—	—	—

CONVICTIONS FOR CAPITAL MURDER AND SIMILAR CONVICTIONS  
BEFORE THE HOMICIDE ACT—Contc.

		Convictions for capital murder under the Homicide Act 1957				
		S. 5(a) Murder in the course or furtherance of theft	S. 5(b) Murder by shooting	S. 5(c) Murder in the course of resisting arrest	S. 5(d) Murder of policeman in course of duty	S. 5(e) Murder of prison officer in course of duty
1958	Executed.....	4	—	—	1	—
	Reprieved.....	1	—	—	—	—
	Total.....	5	—	—	1	—
1959	Executed.....	2	1	—	1	—
	Reprieved.....	1	—	—	—	—
	Total.....	3	1	—	1	—
1960	Executed.....	6	1	—	—	—
	Reprieved.....	1	—	—	1	—
	H.M.P.....	2	—	—	—	—
	Total.....	9	1	—	1	—
1961	Executed.....	2	2	—	—	—
	Reprieved.....	1	—	—	—	—
	H.M.P.....	1	—	—	—	—
	Total.....	4	2	—	—	—
1962	Executed.....	1	1	—	—	—
	Total.....	1	1	—	—	—
1963	Executed.....	2	—	—	—	—
	Reprieved.....	—	2	—	—	—
	Total.....	2	2	—	—	—
		Similar Convictions for murder before the Act				
1955	Executed.....	1	1	—	—	—
	Reprieved.....	1	—	—	—	—
	Total.....	2	1	—	—	—
1956	Reprieved.....	4	5	—	—	—
	H.M.P.....	1	1	—	—	—
	Total.....	5	6	—	—	—
1957	Reprieved.....	2	1	—	—	—
	Total.....	2	1	—	—	—

The following explanatory note accompanies Table 10:

“5. Table 10 (Murder, p. 10).

The figures relate, as before, to convictions for capital murders which became known to the police in the year stated, even if the final conclusion was reached only in a later year. As before, convictions for

capital murder have been analysed by type. Murders in the course of furtherance of theft amounted to 4 in 1961, 1 in 1962 and 2 in 1963. There have been similarly low figures in previous years, except for 1960, and no trend is apparent. Murder by shooting provided the usual 1 or 2 cases a year among those convicted. Most murders by shooting are, however, done by those who commit suicide or are mentally abnormal (Murder, paragraph 56)."

## APPENDIX "G"

### Extracts from United Nations Publication ST/SOA/SD/9, 1962, Entitled "Capital punishment"

"B.—General list of countries and territories in which the death penalty exists,  
and in which it does not exist"

7. First, one must draw what might be termed the geographical map of the death penalty, showing which countries and territories apply it and which have abolished it. Even this poses some problems of interpretation.

8. *The countries and territories which have kept the death penalty* are, in alphabetical order, the following: Afghanistan, Australia (except two states), Burma, Canada, Cambodia, Central African Republic, Ceylon, Chile, China (Taiwan), Cuba, Czechoslovakia, Dahomey, El Salvador, France, Gambia, Ghana, Gibraltar, Greece, Guatemala, Hong Kong, India, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Japan, Laos, Lebanon, Liberia, Federation of Malaya, Mauritius, Mexico (four states out of 29—i.e., the states of Morelos, Oaxaca, San Luis Potosi and Tabasco), Morocco, Netherlands New Guinea, Nigeria, Northern Rhodesia, Nyasaland, Pakistan, Philippines, Poland, Senegal, Seychelles, Somalia (Northern), Somalia (Central and Southern), Spain, Republic of South Africa, Sudan, Surinam, Tanganyika, Thailand, Togo, Turkey, United Arab Republic, Union of Soviet Socialist Republics, United Kingdom, United States of America (in principle, 42 states out of 50, the District of Columbia and the federal system), Republic of Viet-Nam, Western Pacific Islands,<sup>1</sup> Yugoslavia, Zanzibar.

9. *The countries and territories which have abolished the death penalty* are divided into three categories: first, those in which the death penalty has been abolished by an express constitutional or legislative provision (abolitionist *de jure*); second, those whose positive law (penal code or special statutes) makes provision for the death penalty and where sentences of death are passed but in which such sentences are never carried out by virtue of an established custom (abolitionist *de facto*); third, those in which the death penalty is laid down only for offences committed in certain exceptional circumstances and in which capital punishment has, in fact, virtually disappeared (almost completely abolitionist).

\* The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country or territory or of its authorities, or concerning the delimitation of its frontiers.

<sup>1</sup> In view of the similarity of their legislation, the Fiji Islands, the British Solomon Islands and the Gilbert and Ellis Islands are grouped throughout the report under the general heading of 'Western Pacific Islands', except where statistical data are given.

10. *Abolitionist de jure*.<sup>2</sup> Argentina (1922), Australia (Queensland), Austria<sup>3</sup> (1945), Brazil (1889), Colombia (1910), Costa Rica (1882), Denmark (1930), Dominican Republic (1924), Ecuador (1897), Federal Republic of Germany (1949), Finland (1949), Greenland (1954), Iceland (1940), Italy (1944), Mexico (25 states out of 29 and the federal territory (Constitution, 1931)), Norway (1905), Netherlands (1870), Netherlands Antilles (1957), New Zealand (1961), Portugal (1867), Republic of San Marino (1865), Sweden (1921), Switzerland (1937), United States of America (six states: Alaska (1957), Delaware (1958), Hawaii (1957), Maine (1887), Minnesota (1911), Wisconsin (1853), Uruguay (1907), Venezuela (1863).

11. *Abolitionist de facto*.—Belgium (1867), Leichtenstein (1798), Luxembourg, Vatican City State.<sup>4</sup>

12. *Almost completely abolitionist*. Australia: New South Wales, where the death penalty is abolished for murder but not for treason or piracy; it is not, however, applied in fact. United States of America: Michigan (1847), North Dakota (1915), Rhode Island (1852); these three states have abolished the death penalty, except in the state of Michigan, for treason, in the state of North Dakota for treason (for which the death sentence is mandatory) and murder in the first degree committed by a prisoner already serving a sentence for murder in the first degree, and in the state of Rhode Island, for murder committed by a prisoner under sentence of life imprisonment. Nicaragua: the death penalty is applicable only if the crime is committed with one or more aggravating circumstances.”

### “CHAPTER III

#### SOCIOLOGICAL AND CRIMINOLOGICAL PROBLEMS

190. These are the problems which have given rise to the most abundant literature in various parts of the world. They are also the subject of a larger number of replies, for the special questionnaire addressed to correspondents and to non-governmental organizations dealt in large part with these problems. Unfortunately, as explained earlier, most of these replies arrived at the very end of the specific time-limit and some of them even after the analysis of the material had been completed and when the present report was being written. To the author's great regret, it has therefore not been possible to take these answers into account, just as it has not been possible to discuss in this report all the books, pamphlets and articles which have been consulted. These publications are very valuable

<sup>2</sup> The date of abolition is given in each case. In cases where the death penalty was reintroduced after having been previously abolished, the date given is that of the final abolition, which is reflected in the existing law.

<sup>3</sup> Except in the event of the proclamation of a state of emergency.

<sup>4</sup> To these countries which are certainly abolitionist *de facto* could be added, to some extent at least, those in which an experiment in abolition appears to be in progress, the last executions having been carried out on the dates indicated below. The exact scope of these experiments is, however, debatable. *Australia* (Victoria 1951). *United States of America*: (Massachusetts (1947), New Hampshire (1939), New Jersey (1956)). *Guatemala* (1956). In the Principality of Monaco, the death penalty is provided for in the Penal Code of 1874, but no sentence of death has ever been passed under that statute.

(pages 7-9).

but this field has been much more thoroughly explored than those dealt with in the previous chapters. Moreover, it was impossible to choose between several equally authoritative opinions; since it was not feasible, owing to limitations of space, to quote all the specialists in the field, the author has preferred to quote none. He decided to treat these problems under four broad headings.

#### A.—THE PROBLEM OF THE EFFECTS OF THE DEATH PENALTY

##### 1. *Objective Data Available at Present*

191. The purpose here was to gather, for purposes of comparison, positive indications regarding the death penalty. It is, however, very difficult to obtain data of that type which are complete and, above all, objective. There are numerous gaps in this respect in the material, and many of the replies are silent on the question. There is also a great diversity from one country to another regarding the points on which exact data were supplied.

192. Subject to these remarks, the first point to be noted is that the information assembled confirms the now generally held opinion that the abolition or (which is perhaps even more significant) the suspension of the death penalty does not have the immediate effect of appreciably increasing the incidence of crime. This point is stressed by the abolitionist countries where abolition *de jure* was preceded by a period of *de facto* suspension. Likewise, some countries which have maintained the death penalty have experienced periods during which it was not applied, or at least not carried out, and in these the fact that there were no executions was well known to the general public and therefore to possible offenders. This was the case in France early in the twentieth century under President Fallières and in the United Kingdom in the period preceding the Homicide Act, 1957. No noticeable increase in crime resulted in either case.

193. The replies received from many abolitionist countries, in particular the Scandinavian countries, Austria and certain Latin American countries, take this consideration as the basis for the view that the deterrent effect of the death penalty is, to say the least, not demonstrated. And even a number of countries which have maintained the death penalty query its value as a deterrent in their official replies. This is true of the replies of Spain, Greece, Turkey, and in particular of the United Kingdom, and also (with qualifications) Japan.

194. Many other government replies, however, state that no final opinion can be expressed as to whether the death penalty has a deterrent effect or not. This is the view of Austria and Yugoslavia.

195. In the United States, many studies have been carried out on the deterrent effect of the death penalty on the basis of crime statistics, but these studies are largely the work of private specialists and there is no government reply on this specific point.

##### 2. *The Abolition of the Death Penalty, and the Criminality Curve*

196. A distinction can be drawn between partial abolition and total abolition. Partial abolition consists of the removal of certain offences from the list of capital crimes. It is therefore possible to study in this connexion,

with perhaps greater accuracy than in other contexts, the effect of the removal of an offence from the list of capital crimes on the frequency with which it is committed after it ceased to be punishable with death.

197. All the information available appears to confirm that such a removal has, in fact, never been followed by a notable rise in the incidence of the crime no longer punishable with death. This observation, moreover, confirms the nineteenth century experience with respect to such offences as theft and even robbery, forgery and counterfeiting currency, which have progressively ceased to be punishable with death: indeed, these crimes, so far from increasing, actually decreased after partial abolition. The same has been true of infanticide, which was formerly punishable as murder but which has progressively received more lenient treatment. It is even reported from Greece that banditry in fact decreased after it ceased to be punishable with death, though the report adds that more efficient preventive action by the police also accounts for the decline in this offence. In Canada, rape ceased to be punishable with death in 1954; it is reported that there were 37 convictions for rape in 1950, 44 in 1953 and only 27 in 1954, the year of abolition; from 1957 to 1959 a steady decrease in convictions was noted (from 56 to 44), while in the same period the population of Canada increased by 27 per cent.<sup>1</sup> In England, there has been since 1957 no increase in the crimes which ceased to be capital murders under the Homicide Act of that year. And Yugoslavia reports that the reduction in the number of capital crimes by the successive reforms of 1950 and 1960 did not result in any increase in the crimes previously punishable with death, despite an appreciable increase in the population.

198. The same general observation can usually be made regarding the total abolition of the death penalty. In this respect, it is particularly instructive to look at the experience of States which at one time abolished and then later restored the death penalty. In the United States, for example, the state of Arizona did not apply the penalty of death from 1916 to 1918; capital murder accounted for 20 per cent of all crime before abolition; the percentage rose to 23 per cent during the period of abolition and remained at 22.5 per cent after the re-establishment of the death penalty. In Colorado, where abolition lasted from 1897 to 1901, the figures are 16.3 per cent before, 18 per cent during the period of abolition and 19 per cent after re-establishment. In the state of Iowa, where abolition lasted from 1872 to 1878, the figures were 2.6 per cent before, 8 per cent during abolition and 13.1 per cent after re-establishment. Kansas experienced a comparatively long abolition period (1887 to 1935); capital murder accounted for 6.5 per cent of all crime during the abolition period and for 3.8 per cent after re-establishment. In Australia, the state of Queensland abolished the penalty of death in 1923. In the period 1903 to 1907 the proportion of capital crime to total crime per 100,000 inhabitants was 3.6 per cent; in 1923, the abolition year, it was 1.6 per cent; it rose to 3.2 per cent for the period from 1924 to 1928, but for the period 1929 to 1949, also during abolition, it fell from 1.7 to

---

<sup>1</sup> It should, however, be pointed out with regard to this particular case that, before 1954, sentences of death for rape were very rarely carried out and also that in 1961, the number of convictions for rape was 63.

1.1 per cent. In New South Wales, the death penalty was abolished in 1955 and there were 10 convictions for murder in 1951, 12 in 1952, 10 in 1957, 12 in 1959, and 14 in 1960; though these figures seem to indicate a slight increase in the incidence of murder in the most recent period, allowance should be made for the considerable population growth. New Zealand experienced *de facto* abolition from 1935 to 1941, *de jure* abolition from 1941 to 1950, the restoration of capital punishment by statute in 1951 and actual application of the death penalty from 1957. For the period 1935 to 1961 there were, on an average, two to three convictions for murder annually, except for 1955 and 1956 when the figures were 6 and 8. In Argentina, capital punishment was abolished in 1922; yet despite the constant increase in population, the number of murders of the kind previously punishable with death declined steadily in the decade which followed.

199. The data reported from the Federal Republic of Germany point in the same direction. Capital punishment was abolished in 1949, and there were 521 capital murders in 1948, 301 in 1950 and 355 in 1960, figures which reflect a considerable decrease.<sup>1</sup> Austria, where the penalty of death was reintroduced in 1934 and then abolished again in 1945 (abolition becoming effective in 1950), also reports a decrease in murder since abolition: the figures for the most recent five-year period are the lowest ever recorded in that country. The same observation is generally made in the Scandinavian countries, particularly Finland, where a steady decrease in murder has been noted since the abolition of the penalty of death. Crimes which were formerly considered capital crimes fell in number from 137 in 1950 to 79 in 1959. In Norway, too, subject to allowance for the population increase, a steady decrease is noted since 1875, in the occurrence of crimes formerly punishable with death. The same has been true of Sweden since *de facto* abolition in 1910 and *de jure* abolition in 1921, as also of the Netherlands, Denmark and Belgium. In the United Kingdom, in spite of alternating periods of severity and virtual *de facto* abolition, the figures have remained constant from 1930 to 1960.

### 3. Comparison of the Number of Executions with Trends in Crime

200. This is the subject where statistical data would have been most instructive: unfortunately, such data are generally lacking. The figures usually given are those for sentences or for capital crimes, rather than those for actual executions. However, the following interesting observations may be made.

201. In Canada, from 1951 to 1958, the average annual number of executions was six, though there were 12 in 1952 and 11 in 1953; however, the criminality curve remained more or less at a constant level throughout the period. In Western Australia and in South Australia, the average number of executions has been two annually since 1935. During the most recent five-year period there have been no executions, but no appreciable effect has been noted on the criminality curve.

<sup>1</sup> It will, however, be observed that in the years preceding abolition, the high rate of capital crime was largely attributable to war and post-war conditions.



202. Austria reports even that the restoration of the penalty of death in 1934 was followed by an increase in crime. At that time, this penalty was more often applied in political cases; but experience shows that practically everywhere executions for political crimes generally lead to an increase in the number of political offences. This happened in the Federation of Malya, after the introduction in 1949 of the death penalty for terrorist crimes. It has, however, been pointed out, that the observation was true of Austria after 1934 even for ordinary crimes, although to a lesser extent.

## B.—THE DEATH PENALTY AND PUBLIC OPINION

### 3. *Present State of the General Controversy*

213. A theoretical controversy on the problem of capital punishment has been going on at least since Beccaria. George Fox had raised the issue as early as 1651 in his letters to the judges and in particular in his pamphlet *To the Parliament and Commonwealth of England* published in 1659, submitting 59 proposals for reforms, one of which was the proposal, then a very bold one, that henceforth the penalty of death should be applied only to murder. The British colonies of America had, before their independence, accepted the same ideas. There is no need to recall here the opinions expressed at the end of the eighteenth century and during the humanitarian and liberal period of the twentieth century. Whether one desires it or not, the controversy has once more become very topical in the last twenty years. Accordingly, in a comprehensive report on the problem as it stands today, one can hardly avoid giving an account of the two opposing views in the matter.

214. It is not the intention of the author to repeat here the reasons which were officially given in each of the countries concerned at the time of abolition or to analyse the respective positions of the various countries and national schools of thought; rather, he means to catalogue and briefly describe the reasons usually put forward today, for the guidance of public opinion, for retaining and for abolishing capital punishment.

215. *In favour of the death penalty*, the idea most commonly accepted is that of its deterrent effect—i.e., the protection of society from the risk of a second offence by a criminal who is not executed and who may subsequently be released or who may escape. Similarly, it is argued, the State has the right to protect itself. Many speak of the concept of self-defence and some even regard the death penalty as a necessity and the public authority as the representative in this regard of God on earth.

216. A related argument which is often advanced is that based on the idea of atonement: the death penalty (it is said) is the only just punishment for the gravest of crimes, or the only one capable of effacing an unpardonable crime. Some add that even if, from the philosophical point of view, the death penalty may be of doubtful legitimacy, it represents a political necessity for the protection not merely of society but of the social order itself. Similarly, it is contended that, since the death penalty is the only means of eliminating the offender altogether, this penalty is

necessary, at least provisionally, when the public peace is endangered by certain particularly dangerous forms of crime. This view is based on concepts largely derived from the doctrine of *pericolosità* and of the irredeemability of certain offenders on the basis of these ideas, capital punishment represents the extreme security measure of elimination. Some claim that, on this basis, it is legitimate to do away with 'social monsters'. This purely utilitarian idea is sometimes linked with the other idea that the State has a duty to impose inflexible rules of social conduct.

217. An analogous notion is that based on what is sometimes termed realism in the prevention of crime. The supporters of this view argue that a particularly potent weapon is needed for dealing with dangerous criminals and individuals. This is the reasoning of those who say that capital punishment is needed not only for the protection of human life and of certain cultural values but even to safeguard certain social property which is placed under the protection of the law.

218. Yet others argue that public opinion remains generally favourable to the death penalty and that the public as a whole, and particularly the police and prison officials, believe in its effectiveness. It is urged that this sincere belief should be respected and also that possible victims should be protected by maintaining the penalty of death. In the Middle East and in Africa, its value as a deterrent appears to be recognized in principle; even if its deterrent effect should be debatable, many claim that it ought to be regarded as genuine, or that, for reasons of public safety, those concerned ought to be encouraged to believe in it.

219. A somewhat similar idea is put forward by many who claim that the death penalty should be retained because it is virtually impossible to find another penalty to replace it; imprisonment, even for a long term, is said to be inadequate and its effects are moreover minimized by the practice of anticipated release. It is further argued that, if imprisonment in these cases were really to be a solitary confinement for life, it would be more cruel than death; and besides, imprisonment in perpetuity leaves no hope to the offender and does not encourage him to repentance in the same way as the immediate prospect of the supreme penalty.

220. Another, equally very utilitarian, view held in some countries is that the execution of the condemned person represents a saving of public funds and hence a saving for the taxpayer, who is not called upon to pay for the maintenance of anti-social criminals for an indefinite, or at least very long, period. And it is further said that an execution avoids certain popular reactions which must be expected in cases of heinous crimes if an over-excited public opinion were not aware that the criminal can be sentenced to death.

221. Against these arguments for the retention of the death penalty, the abolitionists advance the following considerations.

222. Their main argument is that based on the sanctity of human life; since it is wrong to kill, the State should set the example and should be the first to respect human life. Some go so far as to say that an execution is a self-mutilation of the State: though the State has admit-

tedly the capacity to defend itself and to command, it is not empowered to eliminate a citizen, and in doing so the State does not erase the crime but repeats it.

223. It is further argued that the penalty of death can only be justified under the aspect of collective vengeance, of atonement, or of absolute retribution. But the modern tendency is to regard penalties as having no object other than prevention and punishment, and this object can be achieved by means other than the taking of life. The abolitionists refer in this connection to the abuses frequently committed in the past, even in a recent past, when the death penalty was applied frequently and indiscriminately, and point out that its retention involves dangers of this kind. In Latin America, in particular, it is stressed that capital punishment might be used for political purposes.

224. Furthermore, it is said, the *lex talionis* is obsolete and hence an execution is a sort of judicial or legal murder; also, the existence of the penalty of death debases justice. For some years now, in America and Europe, it has been strenuously contended that the mere presence of capital punishment in the catalogue of penalties falsifies criminal proceedings, which take on the character of a sinister tragi-comedy; the existence of this penalty renders criminal justice uncertain. Recent works on sociology and judicial psychology indicate the extreme relativity of capital sentences.

225. Another argument used by the abolitionists is that the penalty of death rests in reality on a somewhat metaphysical concept of human freedom, whereas the social sciences show that an offender does not generally enjoy complete freedom. Absolute justice is therefore an illusion, and full atonement a fiction. Besides, how can human justice evaluate individual responsibility in absolute terms? The condemned person is in reality paying for other people or suffering for the sake of the example. His execution then appears to have no moral foundation.

226. Nor does the death penalty have the deterrent effect attributed to it: indeed, it is said, the statistics of crime show that its abolition does not lead to any increase in crime, and consequently capital punishment loses its basic traditional justification.

227. Moreover, the penalty of death is a form of cruelty and inhumanity unworthy of a civilization which claims to be humane; doctors report that even the most efficient methods do not result in instantaneous and painless death. Above all, the chief defect of the death penalty is that it is irrevocable, and in spite of all the official statements, sometimes repeated with complacency, judicial error is always possible, and a few have certainly occurred recently. In such cases, the penalty of death appears as an unpardonable crime committed by society.

228. In any event, society can protect itself by other means, and the death penalty is no more than a lazy answer, which hinders the search for effective means of curbing crime and for a rational system of prevention. In addition, the death penalty is unjust in that, whatever may be claimed to the contrary, it affects not only the criminal himself but also his close relatives and brands the whole family with the mark of infamy. It is, moreover, paradoxical to claim that the death penalty alone makes

repentance possible; it certainly totally precludes the rehabilitation of the human being concerned. The finality of the death penalty makes it impossible to adapt it to the gravity of the offence committed; all the attempts to draw a distinction between capital murder and other forms of homicide have proved arbitrary. In a progressive society, the death penalty appears on reflection as being the opposite of true atonement.

229. A further argument advanced by the abolitionists is that there is a contradiction in claiming that the death penalty has a deterrent effect and, at the same time, surrounding the execution with secrecy. The curiosity aroused by an execution is notoriously morbid, and it is increasingly realized that the penalty of death may itself have criminogenous effects, particularly upon those abnormal individuals who, in spite of all legal and judicial precautions, are often executed. And in some countries (it is added) the death penalty is applied most unequally, both from the social and from the racial points of view; some persons have not sufficient financial means to defend themselves or are morally unable to do so. The conclusion reached is, therefore, that this penalty, which should be the expression of absolute justice, often leads in practice to injustices against individuals.

230. These are the reasons generally given for and against capital punishment. Most of them have no doubt been stated over and over again. However, since the controversy has recently been revived and has even become heated, the author felt that he could hardly refrain from mentioning the arguments briefly in the present report." (Report, pages 53-62)

## APPENDIX "H"

### Extracts from and Description of the Report for the Model Penal Code Project of the American Law Institute Entitled "The Death Penalty" Prepared by Professor Thorsten Sellin

#### "THE DEATH PENALTY

##### THE STATUS OF THE DEATH PENALTY

The death penalty is found in Australia, except in Queensland; in Africa; and in Asia, except in Israel, Ceylon (temporary moratorium), and the Indian provinces of Travancore and Nepal. It is in Europe and the Americas that the cleavage of opinion is found. The countries of Eastern Europe and the Balkans have retained it, but in Western Europe it has been abolished in all nations except in Spain, France, the United Kingdom and the Irish Republic. In Latin America, it has been abolished in Argentina, Brazil, Colombia, Ecuador, Venezuela, Uruguay, Costa Rica, the Dominican Republic, Panama, and Mexico (federal law and all but eight of the states). In North America, Canada has retained it.

##### *In the United States*

The death penalty is found in various statutes of the federal government of the United States, and in those of most of the states. Five states have completely renounced it: Wisconsin, since 1853; Maine, since 1876, except from 1882 to 1887, when it temporarily restored it; Minnesota, since 1911; Alaska, in 1957; and Delaware, in 1958. Michigan abolished it in 1846 for murder, but retained it for treason. Rhode Island removed it in 1852 but revived it twenty years later as an alternative punishment for murder committed by a prisoner serving a life sentence for murder; and North Dakota, while removing it as a penalty for murder in 1915, retained it for treason and adopted the formula of Rhode Island. Since these three states have found no occasion to apply the death penalty since the original dates of its abolition, one may claim that for all practical purposes the eight states mentioned are abolitionist states. To this list we should add Puerto Rico which abolished this penalty in 1929, and the Virgin Islands and Hawaii, which abandoned it in 1957.<sup>1a</sup>

In the past, several other states have experimented with abolition: Arizona, 1916-1918 (except for treason); Colorado, 1897-1901; Iowa, 1872-1878; Kansas, 1907-1935 (no execution previously since 1872); Missouri, 1917-1919; Oregon, 1915-1920; South Dakota, 1915-1939; Tenn-

<sup>1a</sup> Puerto Rico abolished the death penalty in 1917 temporarily until April 30, 1921; the 1929 act removed it permanently. The Virgin Islands Code which went into effect September 1, 1957 contains no death penalty. Previously the 1921 Code of the Municipality of St. Croix had contained it, but not the Code of Laws of St. Thomas and St. John of the same year.

essee, 1915-1919 (for murder); and Washington, 1913-1919. The experience of these as well as of other states with abolition will be examined later in this report.

If we consider the countries abroad which have retained or abolished the death penalty, one might assume that those with high homicide rates would fall into the former class and those with low rates into the latter. One might even expect, perhaps, that there would be some other similarities which would differentiate the countries of each group. Such is not the case. We find in both groups countries with the same level of civilization, the same religion, the same kind of population, the same form of government, the same sense of justice and morality and the same homicide death rates, just as we find in each class countries that in these respects differ greatly from one another. The following table (Table 1) shows that some Western nations like and others dislike the death penalty, no matter how high or low their homicide death rates may be. There are apparently other reasons than those which a crime rate provides that account for this fact, reasons of a more or less intangible character, connected with the political, social and economic structure of a country and rooted in traditions that are supported by sentiments and beliefs which are not influenced by the level of criminality.

TABLE 1  
COMPARATIVE HOMICIDE DEATH RATES IN 1948 OF SOME COUNTRIES  
WITH OR WITHOUT THE DEATH PENALTY FOR MURDER

Rates per 100,000 population

Countries with death penalty		Countries without death penalty	
Name of Country	Rate	Name of Country	Rate
El Salvador.....	44.3	Colombia.....	15.9
Bolivia <sup>1</sup> .....	6.6	Puerto Rico.....	14.1
U.S.A.....	5.8	Costa Rica <sup>1</sup> .....	5.0
Spain.....	1.4	Dominican Republic.....	4.9
Canada.....	1.2	Finland.....	4.6
Australia.....	1.1	Italy.....	2.4
New Zealand.....	1.1	Austria.....	2.1
France.....	0.8	Portugal.....	1.6
Ireland.....	0.6	Belgium.....	1.4
Scotland.....	0.6	Western Germany <sup>2</sup> .....	1.2
England and Wales.....	0.5	Denmark.....	1.0
		Switzerland.....	1.0
		Sweden.....	0.8
		Norway.....	0.5
		Netherlands.....	0.4

SOURCE: United Nations, Demographic Yearbook, 1952. New York, 1952, Table 20.

<sup>1</sup> 1947 rate.

<sup>2</sup> 1949 rate."

(Report, pages 1-3)

"The arguments for or against the death penalty may be divided into two classes. One of them contains what might be called the *dogmas*. Among the dogmas that uphold the death penalty, one might mention, in particular, the following: (1) the death penalty is the only punishment by which the murderer can really *expiate* his crime; (2) the death penalty is the only *just* punishment for murder; (3) the death penalty is *more humane* than life imprisonment. Against the death penalty we find

arrayed dogmas such as these: (1) man has no right to take away life, the gift of the Creator; (2) retaliation is not a defensible basis for a penal system; (3) the death penalty is unjust.

Variations on the above themes could be added. All dogmas have one thing in common. They rest on absolute or categorical principles. They must be accepted on faith. Those who embrace them most fully and earnestly would maintain that faith even if experience would demonstrate that the use of the death penalty is socially harmful or beneficial, or lacks or possesses this or that practical value.

In the other class fall the arguments which might be called empirical or utilitarian. It is characteristic of modern man, reared in an age of scientific orientation, that he wishes to use scientific thoughtways in the approach to his problems. He does not like to be considered irrational. When he formulates public policies he wants to think that such policies are based on scientific facts and not alone on sentiments and emotions, but the strength of the latter is often such that he is led to invent or pervert facts in order to justify actions that are basically prompted by his feelings. Therefore it is often difficult to determine whether or not those who advance utilitarian arguments for or against the death penalty base their position fully on them or merely use them to disguise irrational feelings which really motivate their behaviour but which they cannot or do not wish to expose.

Whether these utilitarian arguments are or are not basic to those who use them, they differ from dogmas in one fundamental way. They lay no claim to infallibility. They rest on evidence showing, or purporting to show, that the death penalty, as practiced, produces certain demonstrable effects.

The main utilitarian arguments focus on the problem of deterrence. The supporters of the death penalty claim that it is a *specific* deterrent. They say that if there were no capital punishment more people would commit murders. Some say that the restraining influence of the death penalty is particularly strong on psychopaths or that it stays the hand of the fleeing criminal who might otherwise turn on his pursuer and kill him or a witness to the crime in order to escape capture. The argument is, of course, an offshoot of the more inclusive one which holds that the threat of punishment in general has deterrent power, and in its purest form it would hold that no other kind of punishment could possess the same preventive effect as the death penalty.

Another argument of the same class is that, were the death penalty removed, an outraged community would in certain cases resort to lynch justice and the victim's family to private vengeance or vendetta.

Occasionally one hears the arguments that the death penalty has eugenic value in that it prevents the procreation of dysgenic human strains, that it is more economical than imprisonment or that it affords society maximum protection by removing the offender permanently from society.

The opponents of the death penalty either challenge the validity of the above claims or maintain that in so far as they are valid the same effects could be produced by other and to them more acceptable means. They admit that the death penalty prevents an executed offender from causing future injury to society, but they say that this certainly is bought at the

risk of possible miscarriages of justice, the irreparable nature of the punishment preventing the later rectification of judicial errors. They also claim that when juries or judges regard a death penalty as too severe, they may render verdicts contrary to facts and thus make a mockery of justice. They point to the fact that the existence of the death penalty sometimes incites to murder and they claim that no evidence exists to prove that it is a specific preventive of murder." (Report, pages 15-17).

"In this report we shall examine in greater detail a few of the utilitarian claims about the death penalty. No exhaustive treatment of any one of them is possible. It would seem desirable to find an answer to the following questions at least. (1) Is it true that the death penalty is a specific deterrent to murder? A subsidiary question in this connection could be examined. Is it true that the death penalty effectively protects law enforcement officers in the exercise of their duties? Is it true that innocent persons are, at times, executed? (3) Is it true that the availability of the death penalty at times acts as a stimulus to murder? (4) Is it true that imprisonment of murderers does not afford adequate protection of society, because they will remain a threat to fellow prisoners or the prison staff while incarcerated and may, if pardoned or paroled, again commit murder? (5) Is it true that the removal of the death penalty would result in a resort to lynch justice?

#### DETERRENCE

Among the utilitarian arguments there is no doubt that the most widely used is the argument that the death penalty is a social necessity because it effectively deters people from committing murder.

When we think of deterrence, restraint or prevention—these terms are used interchangeably—we usually think of the effect which a punishment has (1) on the future conduct of the person punished and (2) on the future conduct of others. Some writers distinguish these two effects by calling the one individual and the other general prevention. In the case of the executed death penalty individual prevention is, of course, completely effective. This is the one executed punishment in connection with which general prevention alone can be studied." (Report, page 19).

"It seems reasonable to assume that if the death penalty exercises a deterrent or preventive effect on prospective murderers, the following propositions would be true:

- (a) Murders should be less frequent in states that have the death penalty than in those that have abolished it, other factors being equal. Comparisons of this nature must be made among states that are as alike as possible in all other respects—character of population, social and economic conditions, etc.—in order not to introduce factors known to influence murder rates in a serious manner but present in only one of these states.
- (b) Murders should increase when the death penalty is abolished and should decline when it is restored.
- (c) The deterrent effect should be greatest and should therefore affect murder rates most powerfully in those communities where the crime occurred and its consequences are most strongly brought home to the population.



(d) Law enforcement officers would be safer from murderous attacks in states that have the death penalty than in those without it.<sup>6</sup>

(Report, page 21).

In the following Tables the rates are per 100,000 estimated population.

"TABLE 6  
CRUDE HOMICIDE DEATH RATES AND NUMBER OF EXECUTIONS IN  
CERTAIN AMERICAN STATES: 1920-1955

Year	Maine*	N.H.		Vt.		Mass.		R.I.*	Conn.	
		Rates	Exec.	Rates	Exec.	Rates	Exec.		Rates	Exec.
1920.....	1.4	1.8	—	2.3	—	2.1	1	1.8	3.9	1
1921.....	2.2	2.2	—	1.7	—	2.8	—	3.1	2.9	2
1922.....	1.7	1.6	—	1.1	—	2.6	—	2.2	2.9	1
1923.....	1.7	2.7	—	1.4	—	2.8	1	3.5	3.1	—
1924.....	1.5	1.5	—	.6	—	2.7	1	2.0	3.5	—
1925.....	2.2	1.3	—	.6	—	2.7	—	1.8	3.7	—
1926.....	1.1	.9	—	2.2	—	2.0	1	3.2	2.9	1
1927.....	1.9	.7	—	.8	—	2.1	6	2.7	2.3	2
1928.....	1.6	1.3	—	1.4	—	1.9	3	2.7	2.7	—
1929.....	1.0	1.5	—	1.4	—	1.7	6	2.3	2.6	1
1930.....	1.8	.9	—	1.4	—	1.8	—	2.0	3.2	2
1931.....	1.4	2.1	—	1.1	1	2.0	2	2.2	2.7	—
1932.....	2.0	.2	—	1.1	—	2.1	1	1.6	2.9	—
1933.....	3.3	2.7	—	1.6	—	2.5	—	1.9	1.8	—
1934.....	1.1	1.4	—	1.9	—	2.2	4	1.8	2.4	—
1935.....	1.4	1.0	—	.3	—	1.8	4	1.6	1.9	—
1936.....	2.2	1.0	—	2.1	—	1.6	2	1.2	2.7	1
1937.....	1.4	1.8	—	1.8	—	1.9	—	2.3	2.0	1
1938.....	1.5	1.8	—	1.3	—	1.3	3	1.2	2.1	1
1939.....	1.2	2.3	1	.8	—	1.4	2	1.6	1.3	—
1940.....	1.5	1.4	—	.8	—	1.5	—	1.4	1.8	2
1941.....	1.1	.4	—	2.2	—	1.3	1	.8	2.2	—
1942.....	1.7	.2	—	.9	—	1.3	2	1.2	2.5	—
1943.....	1.7	.9	—	.6	—	.9	3	1.5	1.6	2
1944.....	1.5	1.1	—	.3	—	1.4	—	.6	1.9	1
1945.....	.9	.7	—	2.9	—	1.5	—	1.1	1.5	.1
1946.....	1.4	.8	—	1.7	—	1.4	1	1.5	1.6	3
1947.....	1.2	.6	—	1.1	1	1.6	2	1.5	1.9	—
1948.....	1.7	1.0	—	.8	—	1.4	—	2.7	1.7	1
1949.....	1.7	1.5	—	.5	—	1.1	—	.5	1.8	—
1950.....	1.5	1.3	—	.5	—	1.3	—	1.5	1.4	—
1951.....	2.3	.6	—	.5	—	1.0	—	.9	2.0	—
1952.....	1.0	1.5	—	.5	—	1.0	—	1.5	1.7	—
1953.....	1.4	.9	—	.3	—	1.0	—	.6	1.5	—
1954.....	1.7	.5	—	1.6	2	1.0	—	1.3	1.3	—
1955.....	1.2	1.1	—	.5	—	1.2	—	1.7	1.3	3

\* Maine and Rhode Island have no death penalty for ordinary murder.<sup>11</sup>

(Report, page 25)

<sup>6</sup> The most extensive, recent and well documented discussion of deterrence is found in the Report of the Royal Commission on Capital Punishment, 1949-53 (506 pp. London: Her Majesty's Stationery Office, 1953), Appendix 6, pp. 328-380, "The Deterrent Value of Capital Punishment". See also Karl F. Schuessler, "The Deterrent Influence of the Death Penalty". *The Annals of the American Academy of Political and Social Science*, 284: 54-62. Nov., 1952.

"TABLE 7

CRUDE HOMICIDE DEATH RATES AND NUMBER OF EXECUTIONS IN CERTAIN AMERICAN STATES: 1920-1955

Year	Mich.*	Ohio		Ind.		Minn.*	Iowa		Wis.*	N.D.*	S.D.		Neb.	
		Rate	Ex.	Rate	Ex.		Rate	Ex.			Rate	Ex.	Rate	Ex.
1920.....	5.5	6.9	3	4.7	2	3.1	†	—	1.7	†	†	†	4.2	—
1921.....	4.7	7.9	10	6.4	—	4.4	—	—	2.2	—	—	—	4.9	—
1922.....	4.3	7.3	12	5.7	2	3.6	—	3	1.8	—	—	—	4.5	—
1923.....	6.1	7.8	10	6.1	—	2.9	2.1	2	2.2	—	—	—	4.1	—
1924.....	7.1	6.9	10	7.3	—	3.2	2.7	1	1.8	2.1	—	—	4.4	—
1925.....	7.4	8.1	13	6.6	1	3.8	2.7	2	2.3	2.0	—	—	4.0	—
1926.....	10.4	8.6	7	5.8	3	2.2	2.3	—	2.6	1.8	—	—	2.7	—
1927.....	8.2	8.6	8	6.3	1	2.6	2.4	—	2.6	1.6	—	—	3.5	—
1928.....	7.0	8.2	7	7.0	1	2.8	2.3	—	2.1	1.0	—	—	3.7	—
1929.....	8.2	8.3	5	7.0	1	2.2	2.6	—	2.3	1.2	—	—	3.0	—
1930.....	6.7	9.3	8	6.4	1	3.8	3.2	—	3.1	3.5	1.0	—	3.5	—
1931.....	6.2	9.0	10	6.5	1	2.9	2.5	1	3.6	2.0	2.3	—	3.6	—
1932.....	5.7	8.1	7	6.7	2	2.9	2.9	—	2.8	1.2	1.6	—	3.7	—
1933.....	5.1	8.2	11	5.6	3	3.5	2.9	—	1.9	1.2	1.7	—	3.2	—
1934.....	4.2	7.7	7	7.1	4	3.4	2.3	—	2.4	1.6	3.0	—	4.4	—
1935.....	4.2	7.1	10	4.4	2	2.6	2.0	3	1.4	2.3	2.0	—	3.4	—
1936.....	4.0	6.6	6	5.2	2	2.3	1.8	—	1.7	2.0	1.2	—	2.5	—
1937.....	4.6	5.7	1	4.7	5	1.6	2.2	—	2.2	1.6	.1	—	2.0	—
1938.....	3.4	5.1	12	4.4	8	1.6	1.4	4	2.0	2.4	.9	—	1.6	—
1939.....	3.1	4.8	10	3.8	3	1.6	1.8	—	1.4	1.2	2.8	—	2.1	—
1940.....	3.0	4.6	2	3.3	—	1.2	1.3	1	1.3	1.4	2.2	—	1.0	—
1941.....	3.2	4.2	4	3.1	1	1.7	1.3	1	1.4	2.3	1.0	—	2.1	—
1942.....	3.2	4.6	2	3.2	1	1.7	1.2	—	1.6	1.4	.9	—	1.8	—
1943.....	3.3	4.4	5	2.8	—	1.2	1.0	—	1.1	.6	1.4	—	2.4	—
1944.....	3.3	3.9	2	2.8	—	1.4	1.7	1	.9	.9	1.6	—	1.3	—
1945.....	3.7	4.9	7	4.0	1	1.9	1.6	1	1.6	1.0	2.0	—	1.2	1
1946.....	3.2	5.2	2	3.9	1	1.6	1.8	2	.9	1.5	1.1	—	2.1	—
1947.....	3.8	4.9	5	3.8	—	1.2	1.9	—	1.4	.4	1.0	1	2.2	—
1948.....	3.4	4.5	7	4.2	—	1.9	1.4	—	.9	.9	2.0	—	2.5	1
1949.....	3.5	4.4	15	3.2	3	1.1	.9	1	1.3	.7	2.3	—	1.8	—
1950.....	3.9	4.1	4	3.6	1	1.2	1.3	—	1.1	.5	1.1	—	2.9	—
1951.....	3.7	3.8	4	3.9	1	1.3	1.5	—	1.1	.5	.9	—	1.0	—
1952.....	3.3	4.0	4	3.8	—	1.3	1.5	1	1.6	.8	2.3	—	1.6	1
1953.....	4.6	3.6	4	4.0	—	1.5	1.1	—	1.2	1.1	1.1	—	2.0	—
1954.....	3.3	3.4	4	3.2	—	1.0	1.0	—	1.1	.5	1.5	—	2.3	—
1955.....	3.3	3.1	—	3.1	—	1.1	1.2	—	1.1	.8	1.8	—	1.3	—

\* Michigan, Minnesota, Wisconsin, and North Dakota have no death penalty for ordinary murder.

† Iowa, North Dakota and South Dakota were not admitted to the national death registration area until 1923, 1924, and 1930 respectively.

‡ South Dakota introduced the death penalty in 1930."

(Report, page 28)

"TABLE 8

CRUDE HOMICIDE DEATH RATES AND NUMBER OF EXECUTIONS IN  
CERTAIN AMERICAN STATES: 1920-1955

Year	Colorado		Kansas†		Missouri	
	Rate	Exec.	Rate	Exec.	Rate	Exec.
1920.....	9.2	1	4.7	—	7.8	*
1921.....	11.8	—	7.5	—	10.1	—
1922.....	11.8	1	7.2	—	11.3	—
1923.....	9.4	—	6.7	—	12.2	—
1924.....	10.2	1	5.4	—	13.0	—
1925.....	8.5	—	5.1	—	12.2	—
1926.....	7.0	2	5.6	—	11.4	—
1927.....	5.8	—	4.4	—	10.5	—
1928.....	6.0	2	5.5	—	11.1	—
1929.....	8.7	—	6.2	—	9.7	—
1930.....	8.5	7	5.9	—	11.2	5
1931.....	8.3	4	6.9	—	10.9	—
1932.....	8.1	2	6.7	—	10.9	3
1933.....	7.7	2	6.6	—	11.8	6
1934.....	7.3	1	6.1	—	11.5	2
1935.....	6.0	3	4.8	—	9.6	5
1936.....	7.7	1	4.3	—	8.2	1
1937.....	6.0	1	4.0	—	7.3	4
1938.....	5.3	—	4.0	—	6.1	8
1939.....	4.1	4	3.3	—	6.2	2
1940.....	4.6	—	2.2	—	5.4	2
1941.....	2.3	2	3.5	—	5.1	1
1942.....	3.6	2	3.1	—	5.6	1
1943.....	4.6	2	2.8	1	5.0	—
1944.....	3.4	—	3.3	3	4.1	2
1945.....	4.6	3	2.3	—	5.9	2
1946.....	5.4	—	2.8	—	7.5	2
1947.....	4.6	2	3.5	2	5.9	3
1948.....	4.8	—	3.3	—	6.2	—
1949.....	5.0	2	2.5	—	5.7	2
1950.....	3.3	—	3.4	1	5.9	1
1951.....	2.5	1	2.5	1	5.0	1
1952.....	3.1	—	3.1	1	6.2	1
1953.....	4.6	—	2.5	—	5.5	2
1954.....	3.3	—	3.1	2	5.3	—
1955.....	4.2	—	2.5	—	5.3	1

\* Missouri execution figures not available prior to 1930, when the Bureau of the Census began collecting national execution statistics based on death certificates. Missouri executions took place in local counties until 1937.

† Kansas introduced the death penalty in 1935."

(Report, page 32)

"The data examined reveal that

1. The *level* of the homicide death rates varies in different groups of states. It is lowest in the New England areas and in the northern states of the middle west and lies somewhat higher in Michigan, Indiana and Ohio.

2. Within each group of states having similar social and economic conditions and populations, it is impossible to distinguish the abolition state from the others.

3. The *trends* of the homicide death rates of comparable states with or without the death penalty are similar.

The inevitable conclusion is that executions have no discernible effect on homicide death rates which, as we have seen, are regarded as adequate indicators of capital murder rates.”

(Report, page 34)

The author goes on to consider the effect of the abolition or reintroduction of the death penalty on homicide death rates in American States and such foreign countries as Germany, Austria, the Netherlands, Sweden, Australia and New Zealand. Coming to England the author says:

“The month following the enactment of the act [The Homicide Act, 1957] showed a considerable increase in murders known to the police of England and the experience of subsequent months appeared to the defenders of the old system as justifying their fears. Since then, however, an improvement appears to have occurred, as is seen by the following table:<sup>32</sup>

TABLE 20

NUMBER OF MURDERS KNOWN TO THE POLICE IN ENGLAND AND WALES, INCLUDING CASES SUBSEQUENTLY FOUND NOT TO BE MURDERS

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
1950.....	12	17	17	12	11	19	15	21	12	5	8	16	165
1951.....	17	9	11	11	9	10	20	13	9	10	19	19	157
1952.....	10	10	19	19	13	20	18	13	11	14	17	16	180
1953.....	19	22	17	13	12	18	14	9	15	12	11	12	174
1954.....	9	12	19	15	20	13	3	7	22	14	19	13	166
1955.....	8	19	22	15	15	7	12	13	14	6	13	8	152
1956.....	10	13	17	12	16	15	15	11	13	24	14	19	179
1957.....	13	13	21*	27	21	34	15	20	11	18	13	17	223
1958.....	11	15	18	15	17	16	21	.....	.....	.....	.....	.....	.....

\* Including 11 recorded as crimes known, prior to March 21st; in addition there was one case of manslaughter, which would previously have been murder.”

The author then proceeds to consider a case study of the deterrent effect of a number of specific executions in a single locality—of Philadelphia—for periods during 1927, 1929, 1930, 1931 and 1932. Then there is a discussion of “police safety”:

“Police officials, at least in jurisdictions that have the death penalty, usually oppose any move to secure its abolition, because it is their strong belief that the threat of possible execution deters criminals from carrying lethal weapons or from using them against the police when they are in danger of being arrested. These beliefs were voiced time and again by witnesses appearing before the Royal Commission on Capital Punishment in 1950, and in 1954 the president of the Chief Constables Association of Canada made the following statement before the Joint Committee of the Senate and the House of Commons on Capital Punishment: ‘Our main objection is that abolition would adversely affect the personal safety of police officers in the daily discharge of their duties. It would be

<sup>32</sup> Provided by Sir Ernest Gowers, with the aid of the Home Office, and supplied to the writer by Mr. Herbert Cobin, president of the Prisoners’ Aid Society of Delaware.

(Report, pages 49-50)

interesting to know, and if time had permitted I would have tried to obtain this vital information as to the number of policemen murdered in the execution of their duty in those parts of the world where capital punishment has been abolished. I submit that it will be found the number is much higher than in those countries where the death penalty is still in effect, and this point is the main one in our submission that our government should retain capital punishment as a form of security.'

No attempt to verify the claim by the police had been made, when the above quoted statement was made. As a matter of fact, the often great cultural differences of the countries of the world that have retained or abolished the death penalty would make a comparative study such as that implied in the quotation above rather difficult. Indeed, nowhere would conditions be as ideal for such a study as in the United States, where death penalty states and abolition states of quite similar traditions, populations, and culture can be found bordering on one another. The author of this report, therefore, decided to test the claims of the police that the death penalty makes the lives of policemen safer.

...

Seventeen states were selected for the study. All the six states which have no death penalty and had abolished it before 1919 were included and eleven states bordering on the abolition states. Because of the great variations in the homicide rate in the United States, it was assumed that states from about the same culture areas would afford the best basis for comparison.

During the middle of December, 1954, a letter was mailed to police departments in the 593 cities with more than 10,000 population according to the Census of 1950 in Maine, Michigan, Minnesota, North Dakota, Rhode Island, and Wisconsin; and in Connecticut, Illinois, Indiana, Iowa, Massachusetts, Montana, New Hampshire, New York, Ohio, South Dakota, and Vermont. This letter requested information, year by year, beginning with 1919 and ending with 1954, on each case of a wounding or a killing of a member of the police department by a lethal weapon in the hands of a criminal or suspect. A brief description of each incident was requested indicating, if possible, the nature of the offence involved. Furthermore, in each case information was asked about the kind of weapon used and whether or not the offender was insane.

Fifty-five per cent of the cities in the abolition and 41 per cent of those in the death penalty states returned usable schedules, 266 in all. No replies were received from Detroit, Minneapolis, New York City, Cleveland or Boston. The largest cities represented were Chicago Milwaukee, Cincinnati, and Buffalo. Because Chicago proved to have had more policemen killed than all the other cities combined, it has not been included in the tables that will be presented. The Chicago police supplied, however, the best report and the contents of that report will be separately analyzed.

...

Table 21 contains the data secured. The rate of fatal attacks on police in 82 cities in the abolition states was 1.2 and in 182 cities in the death penalty states, 1.3, an insignificant difference.

TABLE 21

CASES OF POLICE HOMICIDE, BY CITIES GROUPED ACCORDING TO SIZE: AND RATES  
PER 100,000 POPULATION IN EACH GROUP OF CITIES, BY STATE

A. Abolition States	10,000-30,000				30,000-60,000				60,000-100,000			
	No. Cit.	No. Cases	Population	Rate	No. Cit.	No. Cases	Population	Rate	No. Cit.	No. Cases	Population	Rate
Maine.....	4	—	54,280	0.0	1	—	31,558	0.0	1	—	77,634	0.0
Michigan.....	24	8	419,904	1.9	4	1	189,609	0.5	2	3	187,912	1.6
Minnesota.....	14	4	259,461	1.5	—	—	—	—	—	—	—	—
North Dakota.....	3	1	51,369	1.9	—	—	—	—	—	—	—	—
Rhode Island.....	3	—	46,084	0.0	3	1	116,463	0.9	—	—	—	—
Wisconsin.....	13	2	207,940	0.9	7	4	252,580	1.6	1	3	96,056	3.1
Total.....	61	15	1,039,038	1.3	15	6	590,210	1.0	4	6	361,602	1.6
A. Abolition States	100,000-350,000				500,000-650,000				All Cities			
	No. Cit.	No. Cases	Population	Rate	No. Cit.	No. Cases	Population	Rate	No. Cit.	No. Cases	Population	Rate
Maine.....	—	—	—	—	—	—	—	—	6	—	163,472	0.0
Michigan.....	1	1	176,515	0.6	—	—	—	—	31	13	973,940	1.3
Minnesota.....	—	—	—	—	—	—	—	—	14	4	259,461	1.5
North Dakota.....	—	—	—	—	—	—	—	—	3	1	51,369	1.9
Rhode Island.....	—	—	—	—	—	—	—	—	6	1	162,547	0.6
Wisconsin.....	—	—	—	—	1	5	637,392	0.8	22	14	1,193,968	1.2
Total.....	1	1	176,515	0.6	1	5	637,392	0.8	82	33	2,804,757	1.2

B. Capital Punishment States	10,000-30,000				30,000-60,000				60,000-100,000			
	No. Cit.	No. Cases	Population	Rate	No. Cit.	No. Cases	Population	Rate	No. Cit.	No. Cases	Population	Rate
Connecticut.....	11	—	190,746	0.0	5	1	212,213	0.5	1	—	74,293	0.0
Illinois.....	14	4	206,214	1.9	6	1	225,701	0.4	1	1	92,927	1.1
Indiana.....	10	3	170,785	1.7	4	7	171,048	4.1	—	—	—	—
Iowa.....	6	—	85,429	0.0	2	2	64,244	3.1	1	—	72,296	0.0
Massachusetts.....	31	6	499,841	1.2	5	1	221,877	0.4	1	1	66,112	1.5
Montana.....	1	1	17,581	5.7	—	—	—	—	—	—	—	—
New Hampshire.....	4	—	59,809	0.0	1	1	34,469	2.9	1	—	82,732	0.0
New York.....	24	3	426,631	0.7	7	—	290,304	0.0	2	4	171,546	2.3
Ohio.....	21	7	371,623	1.9	7	3	223,303	1.3	2	1	146,379	0.7
South Dakota.....	2	—	24,920	0.0	—	—	—	—	—	—	—	—
Vermont.....	1	—	12,411	0.0	—	—	—	—	—	—	—	—
Total.....	125	24	2,065,990	1.2	37	16	1,443,159	1.1	9	7	706,285	1.0
B. Capital Punishment States	100,000-350,000				500,000-650,000				All Cities			
	No. Cit.	No. Cases	Population	Rate	No. Cit.	No. Cases	Population	Rate	No. Cit.	No. Cases	Population	Rate
Connecticut.....	2	3	263,186	1.1	—	—	—	—	19	4	740,438	0.5
Illinois.....	—	—	—	—	—	—	—	—	21	6	524,342	1.1
Indiana.....	1	1	133,607	0.7	—	—	—	—	15	11	475,440	2.3
Iowa.....	1	6	177,965	3.3	—	—	—	—	10	8	399,934	2.0
Massachusetts.....	1	—	203,486	0.0	—	—	—	—	38	8	991,316	0.8
Montana.....	—	—	—	—	—	—	—	—	1	1	17,581	5.7
New Hampshire.....	—	—	—	—	—	—	—	—	6	1	177,010	0.5
New York.....	2	3	434,019	0.7	1	8	580,132	1.4	36	18	1,902,632	0.9
Ohio.....	3	14	635,389	2.2	1	13	503,998	2.6	34	38	1,880,692	2.2
South Dakota.....	—	—	—	—	—	—	—	—	2	—	24,920	0.0
Vermont.....	—	—	—	—	—	—	—	—	1	—	12,411	0.0
Total.....	10	27	1,847,652	1.5	2	21	1,084,130	1.9	133	95	7,147,216	1.3

Taking the cities of the smallest class—those between 10,000 and 30,000 inhabitants—and using only rates from states with at least ten such cities reporting, the following comparative rates were found:

Abolition States		Capital Punishment States	
Michigan .....	1.9	Ohio .....	1.9
Minnesota .....	1.5	Illinois .....	1.9
Wisconsin .....	0.9	Indiana .....	1.7
		New York .....	0.7
		Connecticut .....	0.0
		Massachusetts .....	1.2

In the group of cities with populations between 30,000 and 60,000, the abolition cities had a total rate of 1.0 and the capital punishment cities 1.1, but there were considerable variations among the states ranging from a high of 4.1 in Indiana to a low of .4 for Massachusetts. In the third to fifth groups of cities the number reporting was, of course, small but it may be observed that compared with Milwaukee's (Wisconsin) rate of .8, the rates for Cincinnati, Ohio—2.6, and Buffalo, New York—1.4, were somewhat higher.

It is obvious from an inspection of the data that it is impossible to conclude that the states which had no death penalty had thereby made the policeman's lot more hazardous. It is also obvious that the same differences observable in the general homicide rates of the various states were reflected in the rate of police killings. ...

It will be recalled that the letter which asked for data also requested that the reporter indicate whether or not he believed that the existence of the threat of possible execution gave the police a certain amount of protection which was lacking in the abolition states. Only 69 replies to this request were received from cities in capital punishment states and 27 replies from abolition states, i.e., 36.5 per cent of the responding cities in the capital punishment states and 31.7 per cent of the cities in the abolition states gave an opinion. In the death penalty states, the police officer reporting believed in the added protective force of the death penalty in 62 out of 69 cities, or 89.8%. In the abolition states, 20 out of 27, i.e., 74.1% did not believe that there was any connection between the possible threat of the death penalty and the likelihood of a criminal using a lethal weapon in encounters with the police." (Report, pages 52-59)

The author then goes on to study the situation in Chicago and concludes that "an examination of the data suggests that it would be indiscreet for anyone to claim that the death penalty in Chicago discouraged the killing of policemen in that city". (Report, page 62)

"In preceding pages, one of the aspects of this issue has been considered, namely, the question of whether or not the death penalty appears to have any effect on homicide death rates. We have examined comparatively such rates in selected states that do and those that do not have the death penalty; we have compared the rates of capital crimes in specific states or countries that have experimented with abolition in order to observe the effect of the abolition or the introduction of capital punishment on such rates; we have noted the specific effect of highly publicized executions on homicides in a metropolitan city; and we have tried to learn if the claim of the police is true, when they say that their lives are safer in the states that have the death penalty.



Any one who carefully examines the above data is bound to arrive at the conclusion that the death penalty, as we use it, exercises no influence on the extent or fluctuating rates of capital crimes. It has failed as a deterrent. If it has utilitarian value, it must rest in some other attribute than its power to influence the future conduct of people." (Report, page 63)

The author then went on to consider whether the imprisonment of the murderer endangers his fellow convicts or his custodians and the danger to the community from paroled or pardoned murderers. As to prison assaults he said: "Generally speaking, such murderous offences are committed by prisoners serving sentences for other crimes than murder." (Report, page 72). As to prisoners who are pardoned or paroled he said: "It is generally agreed that those who are allowed to return to the community after serving a term of years for a capital crime, had behaved themselves better than do other criminals similarly released." (Report, page 76). Summing up, the author says: "The conclusion seems inescapable that the murderer who is not executed but instead sentenced to life imprisonment is not nearly so great a danger to the prison community, nor to the outside world when he is paroled or pardoned, as are many other classes of prisoners, who are regularly released after serving much shorter periods of imprisonment". (Report, pages 77-8). Ending this part of the discussion the author says: "In the last analysis, the argument that the life sentence does not offer an adequate safeguard against further homicidal criminality by a murderer who is not executed appears untenable. Basically, those who advance it probably feel that the life sentence, in practice, is not an adequate *punishment* for murder." (Report, pages 78-9).

## APPENDIX "I"

### Canadian Statistics

TABLE A

#### PROPORTION OF EXECUTIONS TO SENTENCES, 1867-1965

NOTE: This Table carries each case through to its conclusion under the decade in which the sentence was imposed.

Period	Sentenced to death*	Executed	Percentage
1867-69.....	26	12	46.2
1870-79.....	114	33	28.9
1880-89.....	95 (1)	55	57.9
1890-99.....	80 (2)	46	57.5
1900-09.....	107 (3)	63	58.7
1910-19.....	221 (4)	105	47.5
1920-29.....	162	93	57.4
1930-39.....	167	125	74.9
1940-49.....	142 (2)	94	66.2
1950-59.....	142 (1)	70	49.3
1960-65†.....	39	5	12.8

\* "Sentenced to death" does not include cases in which the conviction was set aside on appeal.

† Up to May 25, 1965. An additional 9 cases, which are still on appeal, have not been included in period 1960-65.

- (1) Includes 2 condemned persons who committed suicide.
- (2) Includes 1 condemned person who committed suicide and 1 condemned person who died.
- (3) Includes 1 condemned person who died before consideration of case by Governor in Council.
- (4) Includes 1 condemned person who died before date fixed for execution and 2 condemned persons who committed suicide.

TABLE B

NOTE: While Table A, immediately preceding, and the Tables in Appendix D, carry each case through to its conclusion in the year or decade in which the sentence was imposed, this Table and Table C, following, deal with cases according to the year or other relevant period in which they were considered by the Governor-In-Council.

CAPITAL CASES CONSIDERED BY GOVERNOR IN COUNCIL  
1951-65

Year	Cases	Executed	Commuted
1951.....	9	7	2
1952.....	14	11	3
1953.....	21	11	10
1954.....	10	8	2
1955.....	14	8	6
1956.....	17	8	9
1957.....	10	4	6
1958.....	16	2	14
1959.....	16	3	13
1960.....	9	3	6
1961.....	13	2	11
1962.....	4	(2)	2
1963.....	7	0	7
1964.....	5	0	5
1965*.....	5	0	5
	170	69	101

\* Up to May 25, 1965.

TABLE C

CAPITAL CASES CONSIDERED BY GOVERNOR IN COUNCIL  
FOR THREE PERIODS SINCE 1950

Period	Cases	Executed		Commuted	
		No.	Per cent	No.	Per cent
From Jan. 1, 1951, to June 30, 1957.....	90	55	61.1	35	38.9
From July 1, 1957, to Apr. 15, 1963.....	66	14	21.2	52	78.8
From Apr. 16, 1963, to May 25, 1965.....	14	0	0.0	14	100.0

TABLE D

## LEADING CHARACTERISTICS OF CAPITAL CASES OCCURRING SINCE JANUARY, 1957

NOTE: This Table covers all capital cases considered by the Governor-in-Council between January 1, 1957 and May 25, 1965. As of September 1, 1961 the Criminal Code was amended to exclude certain kinds of murder from the capital category and to provide that sentence of death should not be passed upon a person who was under the age of eighteen years at the time of the offence. All persons referred to in the Table are males, no female having been sentenced to death during this period.

Case	Age	Date of decision by Governor in Council	Motive	Recommendation of mercy		Murdered	Murder Weapon	Whether murder premeditated <sup>(1)</sup>	Mental Condition <sup>(2)</sup>	Commuted or Executed
				Jury	Judge					
1	29	Feb. 14, 1957	Sexual assault.....	No	No	9 yr. old step daughter.	Blows by fists...	No	No independent psychiatrist's report.....	Executed
2	27	April 1, 1957	Escape arrest.....	No	No	Police constable.....	Revolver.....	No	No independent psychiatrist's report.....	Executed
3	38	April 1, 1957	Escape arrest.....	No	No	Police constable.....	Revolver.....	No	No independent psychiatrist's report.....	Commuted
4	31	June 14, 1957	Revenge.....	No	Yes	Separated wife's male friend.....	Rifle.....	Yes	No independent psychiatrist's report.....	Commuted
5	33	June 14, 1957	Robbery—escape arrest.	No	Yes	Police captain.....	Revolver.....	No	No independent psychiatrist's report.....	Commuted
6	50	July 12, 1957	Sexual assault.....	No	No	8 yr. old girl.....	Tire iron.....	No	No independent psychiatrist's report.....	Executed
7	26	July 26, 1957	Robbery.....	No	No	61 yr. old deaf mute...	Stick.....	No	No independent psychiatrist's report.....	Commuted
8	29	Dec. 6, 1957	Sexual assault.....	No	No	13 yr. old girl.....	Strangled with clothing.....	No	No independent psychiatrist's report.....	Executed
9	22	Dec. 12, 1957	No apparent motive...	No	No	25 yr. old ambulance driver.....	Revolver.....	Yes	No independent psychiatrist's report.....	Commuted
10	23	Dec. 12, 1957	Robbery.....	Yes	No	Chinese merchant.....	Knife.....	No	No independent psychiatrist's report.....	Commuted
11	22	Jan. 15, 1958	Robbery (prevent identification by victim)...	No	No	30 yr. old married man	Hammer.....	Yes	No independent psychiatrist's report.....	Executed
12	32	Jan. 15, 1958	Jealousy.....	Yes	No	Common-law wife.....	Shotgun.....	Yes	No independent psychiatrist's report.....	Commuted
13	23	Feb. 5, 1958	Revenge.....	No	Yes	Wife.....	Knife.....	Yes	No independent psychiatrist's report.....	Commuted
14	40	April 4, 1958	Robbery.....	No	No	Taxi driver.....	Shotgun.....	No	No independent psychiatrist's report.....	Commuted
15	35	April 17, 1958	Murder and suicide plan.	No	No	Wife.....	Hammer.....	Yes	Depressed.....	Commuted
16	36	April 17, 1958	Murder and suicide plan.	No	No	Former common-law wife.....	Cord.....	Yes	Chronic alcoholic.....	Commuted
17	26	June 6, 1958	Jealousy.....	Yes	Yes	Wife.....	Revolver.....	No	No independent psychiatrist's report.....	Commuted
18	17	July 10, 1958	Robbery.....	Yes	Yes	Bank manager.....	Rifle.....	No	No symptoms.....	Commuted
19	42	July 10, 1958	Robbery.....	No	No	Bank manager.....	Rifle.....	No	No symptoms.....	Executed
20	17	Aug. 26, 1958	Robbery.....	No	No	26 yr. old salesman...	Stick.....	Yes	No independent psychiatrist's report.....	Commuted
21	17	Aug. 26, 1958	Robbery.....	No	No	26 yr. old salesman...	Stick.....	Yes	No independent psychiatrist's report.....	Commuted
22	64	Sept. 8, 1958	Revenge and jealousy ..	No	Yes	Daughter-in-law.....	Revolver.....	Yes	Under intense emotional strain.....	Commuted
23	26	Oct. 9, 1958	No apparent motive, possibly sex.....	No	No	8 yr. old girl.....	Stone and hands.	?	No signs of psychosis—low intelligence level.....	Commuted
24	20	Nov. 27, 1958	Murder and suicide plan.	No	No	Girl friend.....	Knife.....	Yes	Very low mentality.....	Commuted

25	43	Dec. 30, 1958	Jealousy.....	No	No	43 yr. old male acquaintance.....	.22 calibre rifle..	No	No evidence of a psychosis—below average mentality	Commuted
26	30	Dec. 30, 1958	No apparent motive....	No	Yes	Wife.....	Knife.....	No	Hysterical "fugues".....	Commuted
27	20	Feb. 14, 1959	Sexual assault.....	Yes	No	16 yr. old girl.....	Hunting knife....	No	No symptoms—compulsive sexual drive..	Commuted
28	52	Feb. 24, 1959	Robbery.....	No	No	16 yr. old man.....	Piece of iron.....	No	No symptoms.....	Executed
29	23	Mar. 17, 1959	Robbery.....	No	No	Female grocery-restaurant owner.....	Revolver.....	No	No unusual psychiatric features.....	Commuted
30	44	April 18, 1959	Jealousy and frustration.	No	No	Sister-in-law.....	Baseball bat.....	No	Schizophrenic tendency.....	Commuted
31	19	April 23, 1959	Quarrel.....	Yes	Yes	Brother.....	Shot gun.....	No	No symptoms.....	Commuted
32	31	April 23, 1959	Crime of Passion.....	No	No	Homosexual partner.....	Hunting knife....	Yes	No psychotic trends.....	Executed
33	49	April 30, 1959	Quarrel.....	Yes	Yes	Landlady.....	Revolver.....	No	No evidence of psychosis.....	Commuted
34	33	June 13, 1959	Jealousy & drunkenness..	Yes	No	Wife.....	Not established..	No	Schizophrenia.....	Commuted
35	27	June 29, 1959	Anger & drunkenness....	No	No	Policeman.....	.38 calibre revolver	No	Not psychotic but possibility of D.T.'s and accompanying hallucinations	Executed
36	18	July 9, 1959	Sexual assault.....	Yes	Yes	Female stranger.....	Hands.....	No	Below normal intelligence.....	Commuted
37	28	July 16, 1959	Robbery.....	No	No	Male acquaintance.....	Hands.....	No	Normal.....	Commuted
38	19	Aug. 13, 1959	Robbery.....	No	No	Restaurant owner.....	Hunting knife....	No	Below average intelligence.....	Commuted
39	55	Nov. 19, 1959	Revenge—supposed infidelity of his wife	No	No	Son.....	Heavy stick and knife	Yes	Abnormal—under great emotional stress..	Commuted
40	42	Dec. 10, 1959	Robbery.....	Yes	No	Accomplice.....	Pistol.....	No	Normal.....	Commuted
41	31	Dec. 15, 1959	Robbery.....	No	No	73 year old store keeper	Hammer.....	No	No symptoms.....	Commuted
42	22	Dec. 15, 1959	Anger.....	No	No	14 year old boy.....	Shoelace (strangled)	No	Tendency to introspection with other schizoid and paranoid elements	Commuted
43	27	Jan. 12, 1960	Robbery.....	No	No	Storekeeper.....	Revolver.....	No	Normal.....	Commuted
44	14	Jan. 21, 1960	Sexual assault.....	Yes	No	Female classmate.....	Blouse (strangled)	No	No symptoms.....	Commuted
45	20	Feb. 8, 1960	Robbery.....	No	No	Taxi driver.....	Rifle and a rock.	Yes	Below average mentality.....	Executed
46	36	Mar. 8, 1960	Robbery.....	No	No	Bank manager.....	Gun.....	No	Psychopathic personality with paranoid manifestations of a neurotic order	Executed
47	39	April 11, 1960	Quarrel and drunkenness	Yes	Yes	Fiancee.....	Cord.....	No	No evidence of psychosis.....	Commuted
48	19	May 11, 1960	Resentment towards T.C.A.	No	No	T.C.A. employee.....	Rifle.....	Yes	Schizoid personality.....	Commuted
49	25	Aug. 17, 1960	Sexual assault.....	No	No	10 year old girl.....	Pop bottle.....	No	Advanced schizophrenia.....	Commuted
50	22	Nov. 11, 1960	Robbery.....	No	No	Father.....	Shot gun.....	Yes	No indications of mental abnormality...	Executed
51	30	Dec. 1, 1960	Anger—domestic difficulties	No	Yes	Sister-in-law.....	.22 calibre rifle..	Yes	Normal, though likely borderline case...	Commuted
52	22	Mar. 23, 1961	Quarrel.....	Yes	Yes	Wife.....	.303 calibre rifle.	No	Normal.....	Commuted
53	36	April 18, 1961	Anger—domestic difficulties	Yes	No	Common law wife....	Knife.....	No	Normal.....	Commuted
54	21	May 19, 1961	To conceal pregnancy of step-sister	No	No	Step-sister.....	Blunt instrument	Yes	Normal.....	Commuted
55	20	June 2, 1961	Quarrel.....	No	No	28 year old stranger...	Knife.....	No	Emotionally unstable sociopathic personality	Commuted
56	23	June 8, 1961	To conceal admission of previous murder	No	No	Girl friend.....	Hunting knife....	No	Below normal intelligence.....	Executed

LEADING CHARACTERISTICS OF CAPITAL CASES OCCURRING SINCE JANUARY, 1957—Conc.

Case	Age	Date of decision by Governor in Council	Motive	Recommendation of mercy		Murdered	Murder Weapon	Whether murder premeditated <sup>(1)</sup>	Mental condition <sup>(2)</sup>	Commuted or Executed
				Jury	Judge					
57	27	June 15, 1961	Robbery.....	No	No	Bootlegger.....	Knife and automobile	No	Psychotic.....	Commuted
58	24	June 22, 1961	To conceal illicit sexual relations	No	No	Female acquaintance..	Knife.....	No	Normal.....	Executed
59	20	July 12, 1961	No apparent motive....	No	Yes	Mother.....	Fish knife.....	No	Schizophrenia.....	Commuted
60	19	Aug. 9, 1961	Robbery.....	Yes	No	Scrap dealer.....	Pipe wrench.....	No	Mentally immature & of low intelligence..	Commuted
61	25	Aug. 21, 1961	Quarrel—wanted wife to return.....	Yes	Yes	Estranged wife.....	.22 calibre rifle..	Yes	Mental state bordering on the psychotic..	Commuted
62	31	Nov. 8, 1961	Intoxication and animosity towards child	No	No	Infant daughter of common law wife	Hands.....	No	Normal.....	Commuted
63	76	Nov. 8, 1961	Quarrel with neighbours	No	Yes	Neighbour's wife.....	.22 calibre rifle..	Yes	Illiterate but not mentally deficient or psychotic	Commuted
64	19	Dec. 5, 1961	Get rid of husband.....	No	Yes	Husband of paramour..	.22 calibre rifle..	Yes	Normal.....	Commuted
65	51	April 9, 1962	Get rid of wife.....	Yes	Yes	Wife.....	Knife.....	Yes	Bestial but neither mentally deficient nor psychotic	Commuted
66	22	July 31, 1962	Avoid arrest.....	Yes	Yes	Policeman.....	Pistol.....	No	Normal.....	Commuted
67	54	Dec. 4, 1962	Racket discipline.....	No	No	Informor and witness..	Revolver & knife	Yes	Low intelligence.....	Executed
68	29	Dec. 6, 1962	Avoid arrest.....	No	No	Policeman.....	Semi-automatic pistol	No	No symptoms.....	Executed
69	19	Feb. 21, 1963	Sex (pervert).....	Yes	Yes	Two young boys.....	Hands.....	No	Pervert, dull normal.....	Commuted
70	44	Mar. 12, 1963	To obtain woman and estate	Yes	No	Husband of paramour..	Socket wrench..	Yes	Normal.....	Commuted
71	29	Mar. 12, 1963	To obtain woman and estate	Yes	No	Husband of paramour..	Socket wrench..	Yes	Psychopath.....	Commuted
72	23	May 9, 1963	Robbery and sex (pervert)	Yes	No	83 year old woman....	Hands.....	No	Mentally deficient and psychotic symptoms	Commuted
73	22	June 27, 1963	Robbery.....	Yes	No	48 yr. old man casually encountered drunk	Stick.....	No	Alcoholic and psychopathic traits.....	Commuted
74	63	Sept. 12, 1963	Robbery.....	Yes	Yes	90 yr. old man whose home he entered	Beating & fire...	No	Doubt as to whether or not mentally ill..	Commuted
75	45	Oct. 3, 1963	Robbery.....	Yes	No	54 year old man.....	Feet and hands and exposure	No	Alcoholic and human derelict.....	Commuted
76	23	Jan. 7, 1964	Revenge.....	Yes	No	Ex-fiancee.....	Knife.....	Yes	No symptoms.....	Commuted
77	32	April 23, 1964	Robbery.....	Yes	No	79 year old man whose home he entered	Blows by fists and hands	No	Psychopathic personality but not psychotic	Commuted
78	39	June 18, 1964	Robbery.....	Yes	No	Proprietor of grocery store	Pistol	No	Aggressive and vindictive attitude toward crime and justice but not psychotic	Commuted

79	30	Nov. 3, 1964	Sex.....	No	No	12 year old girl.....	Hands and rope..	No	Barely average intelligence but not mentally ill or a sexual psychopath, no character disorder but having neurotic mechanism	Commuted
80	34	Dec. 3, 1964	Robbery.....	No	No	Policeman.....	Semi-automatic rifle	No	Not psychotic but having psychopathic personality	Commuted
81	44	Jan. 20, 1965	Robbery.....	Yes	Yes	President of stevedoring company	Pistol.....	No	Normal.....	Commuted
82	44	Mar. 4, 1965	Wanted to be executed..	No	No	35 year old man.....	Revolver.....	Yes	Not a psychopath—suffering from pedophilia	Commuted
83	22	April 14, 1965	Robbery.....	Yes	Yes	Employee of super-market	Revolver.....	No	Not mentally ill.....	Commuted
84	26	May 4, 1965	Sexual assault.....	No	No	14 year old girl.....	Hunting knife....	No	No gross psychotic features—low average intelligence	Commuted
85	24	May 6, 1965	Robbery.....	Yes	Yes	43 year old part-time waitress	Ice pick.....	No	Emotionally unstable and having an immature personality	Commuted

<sup>(1)</sup> *Whether Murder Premeditated.* The test applied here is not whether the murder was "planned and deliberate" within the meaning of section 202A of the Criminal Code defining capital murder but, rather, whether the murder itself, as distinguished from the robbery or other event giving rise to it, was premeditated a significant time in advance of committing it.

<sup>(2)</sup> *Mental Condition.* The information in this column is derived from the report of the psychiatrist engaged by the Department of Justice to make an independent report on the mental condition of the condemned person.

TABLE E

## MURDERS KNOWN TO POLICE AND HOMICIDAL DEATHS

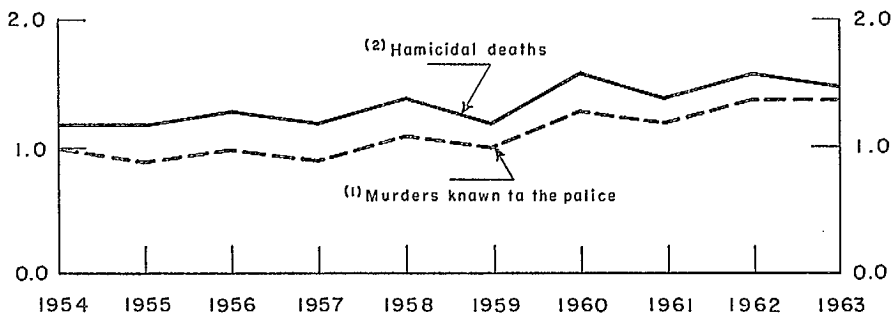
Number of Murders Known to the Police<sup>(1)</sup> and Homicidal Deaths<sup>(2)</sup>,  
Rate per 100,000 Population 7 Years of Age and Over, Canada, 1954-1963.

Year	Murders Reported by Police <sup>(1)</sup>	Homicidal Deaths <sup>(2)</sup>	Murders Reported by Police <sup>(1)</sup>	Homicidal Deaths <sup>(2)</sup>
	Number		Rate	
1954.....	125	157	1.0	1.2
1955.....	118	158	0.9	1.2
1956.....	131	171	1.0	1.3
1957.....	129	165	0.9	1.2
1958.....	153	198	1.1	1.4
1959.....	141	167	1.0	1.2
1960.....	190	244	1.3	1.6
1961.....	186	211	1.2	1.4
1962.....	217	249	1.4	1.6
1963.....	215	240	1.4	1.5

<sup>(1)</sup> From 1954 to 1960 adjustments are made in previously published figures as a result of revised R.C.M.P. and O.P.P. figures on murder offences known to the police. From 1954 to 1960 inclusive the Q.P.P. did not report. From 1961 to 1963 inclusive the Q.P.P. reported to D.B.S.

<sup>(2)</sup> Homicidal deaths as officially recorded on provincial death certificates reported to D.B.S. Includes murders, infanticides, non-accidental manslaughters, assaults (by any means) and poisonings (by another person); excludes manslaughter, assaults and poisonings reported by coroners as accidental, homicides as result of intervention of police and legal executions. Deaths are classified by residence; hence above figures include deaths of Canadian residents occurring in U.S.A., but exclude deaths of all non-Canadian residents occurring in Canada.

MURDERS KNOWN TO THE POLICE<sup>(1)</sup> AND HOMICIDAL DEATHS<sup>(2)</sup>,  
RATE PER 100,000 POPULATION 7 YEARS OF AGE AND OVER,  
CANADA, 1954-1963.



Source: Dominion Bureau of Statistics.



TABLE F

CAPITAL CASES IN WHICH POLICEMEN WERE VICTIMS IN COURSE OF DUTY  
JANUARY 1, 1940 TO MAY 25, 1965

No.	Victim	Motive	Murder Weapon	Year Convicted	Recommendation for Mercy		Executed or Committed
					Judge	Jury	
511	RCMP	Escape arrest— murder suspect	Rifle	1940	No	Yes	Executed
528	OPP	Avoid questioning about break-ins	Revolver	1941	Yes	Yes	Committed
565†	City detective	Escape arrest— break-in suspect	Revolver	1944	Yes	Yes	Committed
595	City detective	Escape arrest— break-in suspect	Revolver	1946	No	No	Executed
629††	City constable	Escape arrest— bank robbery	Revolver	1947	No	No	Executed
665	City constable	Escape arrest— bank robbery	Revolvers	1949	No	No	Executed
666	City constable			1949	No	No	Executed
670	City constable			1949	No	No	Executed
710	RCMP	Escape arrest— bank robbery	Automatic pistol	1950	No	No	Executed
724	City policeman	Escape arrest— following knifing	Shotgun	1952	No	No	Executed
749(1)	City detective	Escape arrest— escaped convict and companion	Revolver	1952	No	No	Executed
749(2)	City detective			1952	No	No	Executed
820(1)	City constable	Escape arrest— break-in suspects	Revolver	1957	No	No	Executed
820(2)	City constable			1957	No	No	Committed
826	Town constable	Escape arrest— break-in suspect	Revolver	1957	Yes	No	Committed
862	OPP	Escape arrest— murder suspect Revenge	Revolver	1959	No	No	Executed
900†††	QPP		Rifle	1962	No	No	New trial ordered
901	City detective	Escape arrest— theft suspect	Automatic pistol	1962	Yes	Yes	Committed
904	City constable	Escape arrest— robbery suspect	Automatic pistol	1962	No	No	Executed
914††	City constable	Escape arrest— bank robbery	Semi- automatic rifle	1963	No	No	Committed
932	RCMP	Escape arrest— escaped convict	Revolver	1965	Yes	Yes	Before Appeal Court

RCMP—Royal Canadian Mounted Policeman.

OPP—Ontario Provincial Policeman.

QPP—Quebec Provincial Policeman.

\*Three convictions in respect of two constables.

\*\*Two convictions in respect of one detective.

\*\*\*Two convictions in respect of one constable.

†The detective in this case was in night attire, off duty.

††Two policemen murdered in this incident.

†††The policeman in this case was not actually on duty but the incident leading to his death arose out of his employment as a policeman.

TABLE G

## REPORTED CASES OF POLICE OFFICERS KILLED ON DUTY, 1961-1963

For convenience, the person responsible is referred to as "accused", though a charge may not have been laid. Information on this comprehensive and detailed basis is not available for previous years.

<i>Case No. 1</i> <i>May 5, 1961</i>	The killing took place in Montreal, P.Q. on May 5, 1961 and the victim was a police constable. Accused entered police headquarters through garage, asked to see two detectives who had arrested him the previous month for illegal possession of weapon, pulled a rifle from a box, pointed it at one constable and in the scuffle which followed the victim was killed. The weapon was a .22 cal. Mauser semi-automatic. Accused was 17 years of age. Trial was halted on first day for medical examination. Accused was declared insane.
1 victim	
<i>Case No. 2</i> <i>September 15, 1961</i>	The killing took place in Montreal, P.Q. on September 15, 1961 and the victim was a police sergeant. Victim suspended accused because he was found asleep on duty. When accused was informed of suspension by telephone he went to the C.N.R. Guardroom, took his revolver from his locker, entered victim's office, shot him twice and turned the gun on himself and committed suicide. Accused was 40 years of age.
1 victim	
<i>Case No. 3</i> <i>August 29, 1962</i>	The killing took place in Hamilton, Ontario on August 29, 1962 and the victim was a police constable. Accused declared mentally ill by D.V.A. psychiatrist since 1959; set fire to house and killed mother and neighbour with hammer; fled to Dundas, Ontario, bought 16 gauge shotgun and returned to shoot victim on city sidewalk in Hamilton. Passer-by grabbed the dying victim's revolver and wounded the accused who then turned his gun on himself and committed suicide. Accused was 38 years of age.
1 victim	
<i>Case No. 4</i> <i>October 17, 1962</i>	The killing took place in Woodstock, Ontario on October 17, 1962 and the victim was a police constable. While accompanying two escaped mental patients back to hospital, one patient started to struggle. While victim was subduing him the other patient took victim's revolver and shot him in neck. Accused was 26 years of age. He was found to be insane and unfit to stand trial.
1 victim	
<i>Case No. 5</i> <i>June 18, 1962</i>	The killings took place in the Peterson Creek area of B.C. on June 18, 1962 and the 3 victims were police constables. The R.C.M.P. answered a complaint that the accused had threatened to kill a Game Conservation officer and had been seen carrying a rifle into the Provincial Welfare office. Accused shot victims when they attempted to disarm him. Accused was 32 years old. He was shot and killed by R.C.M.P. officers.
3 victims	
<i>Case No. 6</i> <i>December 14, 1962</i>	The killings took place in Ville St. Laurent, P.Q. on December 14, 1962 and the 2 victims were police constables. Police officers answered bank robbery alarm. They were killed by a spray of tommy-gun fire. Two other officers were injured. One accused, 37 years old, was convicted of capital murder and his sentence commuted to life imprisonment. A second, 41 years old, was convicted of non-capital murder and sentenced to life imprisonment. A third, 30 years old, became mentally unfit to stand trial.
2 victims	

<p><i>Case No. 7</i> <i>February 9, 1962</i></p> <p>1 victim</p>	<p>The killing took place in Vancouver, B.C. on February 9, 1962 and the victim was a police detective. Accused was being questioned in hotel room concerning a stolen airlines credit card and forgery. He shot the detective and hotel manager. Accused was 22 years old. He was convicted of capital murder and his sentence commuted to life imprisonment.</p>
<p><i>Case No. 8</i> <i>January 9, 1962</i></p> <p>1 victim</p>	<p>The killing took place in Montreal, P.Q. on January 9, 1962 and the victim was a police detective. An escaped convict from St. Vincent de Paul Penitentiary was approached for questioning. He fled but was cornered on a balcony where he shot the victim and wounded a second police officer. Accused was 28 years old. He was shot and killed by police.</p>
<p><i>Case No. 9</i> <i>August 25, 1962</i></p> <p>1 victim</p>	<p>The killing took place in Joliette, P.Q. on August 25, 1962 and the victim was a police constable. Two constables answered a complaint that a man was locked in a firearms store shooting at the street. Victim went to back door and while attempting to open it was shot with a .303 calibre rifle. Accused was 21 years old. He was declared insane and held at the pleasure of the Lieutenant-Governor in Council.</p>
<p><i>Case No. 10</i> <i>February 12, 1962</i></p> <p>1 victim</p>	<p>The killing took place in Toronto, Ontario on February 12, 1962 and the victim was a police constable. Victim was on patrol in a police vehicle when he stopped accused, also in a motor vehicle, who was wanted for questioning concerning a previous shooting. Accused shot victim three times. Accused was 28 years old. He was convicted of capital murder and executed.</p>
<p><i>Case No. 11</i> <i>1962</i></p> <p>1 victim</p>	<p>The killing took place in Stamford Township, Ontario in 1962 and the victim was a police constable. Victim was killed by a hit and run driver while investigating a criminal offence.</p>
<p>1963</p>	<p>No cases reported.</p>

---

NOTE: In addition, in Cap St-Ignace, P.Q., on August 24, 1961 an off-duty constable was killed out of revenge by a man who accused him of having, while on duty, annoyed him on the highway. Accused was first convicted of capital murder but upon retrial was convicted of non-capital murder and sentenced to life imprisonment.

TABLE H

GUARDS MURDERED IN FEDERAL PENITENTIARIES, JANUARY 1, 1945  
TO JUNE 14, 1965.

---

---

1. John Kennedy was shot and killed at Kingston Penitentiary, Ontario on April 26, 1948 by an inmate who was serving 10 years for armed robbery. The inmate was convicted of murder and was executed on January 24, 1949.
  2. William Clement Wentworth was stabbed to death in a dormitory at Kingston Penitentiary, Ontario on November 24, 1961. The murderer was never discovered.
  3. James Eugene Tellier was shot and killed at St. Vincent de Paul Penitentiary, P.Q. on May 2, 1963. He had been forced into a cell by two inmates who were threatening and stabbing him. When the guards fired into the cell, Tellier was hit. Of the inmates who were detaining Tellier, one was serving 10 years for armed robbery and the other was serving 4 years for robbery. The former was killed at the same time as Tellier and the latter was sentenced to an additional 7 years for his part in the incident.
  4. Edwin James Masterton was stabbed to death at Dorchester Penitentiary, N.B. on September 23, 1964 and an inmate, eighteen years of age, who was serving concurrent sentences of 10 and 12 years respectively for robbery with violence, was charged with and convicted of capital murder. His conviction is under appeal to the Supreme Court of Canada.
- 

SOURCE: Federal Penitentiary Service.

TABLE I

PERSONS CONVICTED, AND CONVICTIONS, FOR INDICTABLE OFFENCES,  
AND RATE PER 100,000 POPULATION, 16 YEARS OF AGE AND OVER,  
1954-1962

Year	Convictions		Persons	
	Number	Rate	Number	Rate
1954.....	56,847	556	30,848	302
1955.....	54,252	521	28,273	274
1956.....	45,913	433	27,413	259
1957.....	54,900	504	31,765	292
1958.....	62,839	566	34,546	311
1959*.....	57,639	509	31,847	281
1960.....	64,707	561	35,443	307
1961.....	71,262	608	38,679	330
1962.....	71,507	599	38,663	324

\*Revised

SOURCE: Dominion Bureau of Statistics.

## APPENDIX "J"

STATISTICS SUPPLIED BY THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE IN THEIR 1955 BRIEF ON CAPITAL PUNISHMENT TO THE JOINT COMMITTEE OF THE SENATE AND HOUSE OF COMMONS

"CANADIAN ASSOCIATION OF CHIEFS OF POLICE

Extracts From Uniform Crime Reports of United States  
Issued by the Federal Bureau of Investigation

APPENDIX "A"

State	Population Reporting 1953	One per 100,000 1953	No. of Murders 1953	Population 1952	No. of Murders	Population 1951	No. of Murders	Population 1950	No. of Murders	Population 1949	No. of Murders	Total Murders n 5 years	Remarks
1 *Maine.....	317,802	1.6	5	317,802	3	335,119	7	305,489	5	269,289	7	27	
2 *Rhode Island.....	592,322	1.2	7	592,322	7	558,273	5	541,331	6	594,977	3	28	
3 *Michigan.....	3,850,500	4.5	174	3,850,500	150	3,810,542	174	3,796,403	159	3,275,289	149	806	
4 *Wisconsin.....	1,785,401	1.1	20	1,785,401	35	1,781,038	24	1,769,471	15	1,606,286	20	115	
5 *Minnesota.....	1,460,248	1.1	16	1,460,248	16	1,425,700	12	1,435,357	24	1,306,591	11	79	
6 *North Dakota.....	157,009	Nil	Nil	157,009	Nil	157,009	Nil	149,856	Nil	121,649	2	2	
*Denotes States which do not have death penalty.	8,163,282		222	8,163,282	212	8,073,681	222	7,997,714	209	7,174,081	192	1,057	(8,163,282 population had 1057 murders in 5 years)
THE FOLLOWING STATES HAVE CAPITAL PUNISHMENT													
7 Connecticut.....	1,103,563	1.8	21	1,103,563	21	926,688	17	993,979	14	928,464	17	90	
8 Massachusetts.....	3,729,795	1.3	50	3,729,795	28	3,130,321	36	3,150,907	32	3,691,157	41	187	
9 New Hampshire.....	264,306	4	1	264,306	5	243,696	1	247,824	2	289,235	1	10	
10 Vermont.....	99,762	Nil	Nil	99,762	1	101,213	Nil	108,357	Nil	89,577	Nil	1	
11 New Jersey.....	3,271,268	2.7	89	3,271,268	80	2,807,423	72	2,676,918	64	2,592,698	79	384	
12 New York.....	11,665,437	3.1	364	11,665,437	374	3,698,292	49	3,762,066	59	3,558,613	50	895	
13 Pennsylvania.....	3,703,154	1.7	65	3,703,154	77	5,521,062	191	5,401,624	193	5,699,131	191	717	
14 Illinois.....	5,982,544	5.6	340	5,982,544	348	5,930,220	300	5,794,816	312	5,421,344	346	1,646	
15 Indiana.....	1,988,123	3.9	79	1,988,123	106	1,933,443	97	1,926,575	92	1,718,845	88	462	
16 Ohio.....	4,629,078	4.2	199	4,629,078	201	3,244,372	216	4,862,738	201	4,399,102	298	1,055	
17 Iowa.....	1,079,341	1.1	12	1,079,341	19	1,074,935	16	1,043,019	14	812,265	10	71	
18 Kansas.....	827,482	3.8	31	827,482	41	826,469	23	787,616	31	683,684	18	144	
19 Missouri.....	1,842,190	7.5	137	1,842,190	157	1,926,397	130	1,894,861	140	1,706,805	123	687	
20 Nebraska.....	534,344	1.9	10	534,344	13	526,138	7	516,706	18	448,503	12	60	
21 South Dakota.....	174,799	Nil	Nil	174,799	4	176,695	Nil	157,004	2	116,219	Nil	6	
22 Delaware.....	124,845	3.1	4	124,846	4	121,758	6	129,496	8	124,828	11	33	
23 Florida.....	1,071,859	10.9	114	1,071,859	103	1,140,440	102	1,217,985	148	829,075	139	606	
24 Georgia.....	550,781	15.5	71	550,781	89	955,532	175	966,639	175	794,750	174	684	
25 Maryland.....	1,133,507	6.9	80	1,133,506	95	1,137,698	88	1,130,013	86	1,021,478	84	433	
26 North Carolina.....	1,023,267	11.3	114	1,023,267	115	1,051,122	110	1,022,311	138	848,909	118	595	
27 South Carolina.....	398,367	8.3	35	398,367	30	418,670	52	404,531	40	310,647	44	201	
28 Virginia.....	1,197,639	11.6	139	1,197,639	108	1,094,781	114	1,043,566	127	870,982	120	608	
	46,400,450		1,955	46,400,450	2,019	39,718,365	1,801	39,239,566	1,896	36,976,311	1,904	9,575	Note: New York City did not report in 1949, 50 and 51

29 West Virginia.....	449,950	6	27	449,950	26	468,012	14	458,736	13	445,277	34	114
30 Alabama.....	963,560	14.9	146	963,560	133	924,087	148	867,430	174	648,833	136	737
31 Kentucky.....	752,071	19.7	81	752,071	71	703,697	76	756,622	79	683,887	58	365
32 Mississippi.....	331,333	9.2	31	331,333	46	431,139	35	398,522	54	266,472	39	205
33 Tennessee.....	1,029,328	11.6	120	1,029,328	143	1,042,944	136	976,043	152	840,481	139	690
34 Arkansas.....	280,558	10.2	29	280,558	26	321,892	27	371,914	28	256,877	29	139
35 Louisiana.....	912,883	8.3	75	912,883	84	1,084,959	88	1,106,427	109	826,596	95	451
36 Oklahoma.....	831,575	5.6	47	831,575	50	800,438	43	781,387	30	650,160	34	204
37 Texas.....	2,886,857	11.4	340	2,886,857	352	3,273,279	345	3,424,937	382	2,245,940	342	1,761
38 Arizona.....	214,040	6.7	14	214,040	16	224,040	6	212,136	12	151,420	8	56
39 Colorado.....	716,559	5.3	39	716,559	27	654,662	19	641,755	18	537,247	28	131
40 Idaho.....	200,713	2	4	200,713	4	190,673	6	188,873	7	145,366	8	29
41 Montana.....	168,723	1.9	3	168,723	4	189,940	4	147,754	4	165,447	5	20
42 Nevada.....	49,651	3.5	2	49,651	4	45,351	2	60,143	5	55,775	3	16
43 New Mexico.....	128,859	1.9	3	127,859	4	224,340	6	210,675	7	93,091	11	31
44 Utah.....	333,184	3.1	10	333,184	7	366,690	5	345,456	6	259,437	7	35
45 Wyoming.....	120,389	.8	1	120,389	6	108,512	2	103,752	3	68,919	7	19
46 California.....	6,596,251	3.5	231	6,596,251	238	6,676,927	234	6,605,580	214	4,762,178	237	1,154
47 Oregon.....	655,443	2.1	14	655,443	21	616,858	12	654,748	12	498,556	17	76
48 Washington.....	1,159,047	3.8	45	1,159,047	28	1,184,899	27	1,117,963	34	868,684	32	166
Brought Forward from page 1—Items 7-28.....	18,779,974		1,262	18,779,974	1,290	19,523,339	1,235	19,430,853	1,343	14,470,643	1,269	6,399
Total.....	65,180,424		3,217	65,180,424	3,309	59,241,704	3,036	58,670,419	3,239	51,446,954	3,173	15,974
Brought Forward from page 1—Items 1-6 inclusive.....	8,163,282		222	8,163,282	222	8,073,681	222	7,997,714	209	7,174,081	192	1,057
GRAND TOTAL.....	73,343,706		3,439	73,343,706	3,521	67,315,385	3,258	66,668,133	3,448	58,621,035	3,365	17,031

Total for States with death penalty  
States without the death penalty

Montreal, March 24, 1955

GEO. A. SHEA  
SECRETARY-TREASURER

NOTE: The figures set out in the above Table in the columns headed "No. of Murders" are described, in the "Uniform Crime Reports" from which they are taken, as relating to "Murder and non-negligent manslaughter."

## APPENDIX "K"

### I. U.S. Crime Statistics

The following Table has been compiled from the Uniform Crime Reports of the Federal Bureau of Investigation, United States Department of Justice, for 1958 to 1963 inclusive. The figures used in this Table for any one year are the revised figures appearing in the Report for the subsequent year except in the case of 1963 where the revised figures are not yet available.

The following explanation is taken from the Uniform Crime Reports themselves:

"...The measure used is a Crime Index consisting of seven important offenses which are counted as they become known to the law enforcement agencies. Crime classifications used in the index are: murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary—breaking or entering, larceny \$50 and over, and auto theft.

The total number of criminal acts that occur is unknown, but those that are reported to the police provide the first means of a count. Not all crimes come readily to the attention of the police; not all crimes are of sufficient importance to be significant in an index; and not all important crimes occur with enough regularity to be meaningful in an index. With these considerations in mind, the above crimes were selected as a group to furnish an abbreviated and convenient measure of the crime problem." (Uniform Crime Reports—1963, page 46)

In the Table below are shown only the totals of these classifications and, separately, the totals for the classification of murder and nonnegligent manslaughter.

State	Year	Population	Total Offences		Murder & non-negligent manslaughter	
			No.	Rate per 100,000	No.	Rate per 100,000
Alabama.....	1958	3,211,000	22,474	699.8	417	13.0
	1959	3,244,386	24,343	750.3	418	12.9
	1960	3,266,740	25,853	791.4	406	12.4
	1961	3,302,000	24,878	753.4	427	12.9
	1962	3,358,000	26,060	776.0	316	9.4
	1963	3,347,000	28,409	848.8	340	10.2
Alaska.....	1958	202,000	1,665	824.3	19	9.4
	1959	223,888	2,158	963.9	12	5.4
	1960	226,167	2,332	1,031.1	23	10.2
	1961	234,000	2,452	1,047.9	27	11.5
	1962	246,000	2,625	1,067.1	11	4.5
	1963	248,000	3,202	1,291.1	16	6.5



State	Year	Population	Total Offences		Murder & non-negligent manslaughter	
			No.	Rate per 100,000	No.	Rate per 100,000
Arizona.....	1958	1,140,000	19,518	1,711.5	75	6.6
	1959	1,282,405	19,239	1,500.2	67	5.2
	1960	1,302,161	21,283	1,634.4	78	6.0
	1961	1,391,000	24,074	1,730.7	84	6.0
	1962	1,509,000	27,370	1,813.2	86	5.7
	1963	1,559,000	30,171	1,935.3	93	6.0
Arkansas.....	1958	1,766,000	11,196	633.9	166	9.4
	1959	1,772,428	9,906	558.9	184	10.4
	1960	1,786,272	10,317	577.6	152	8.5
	1961	1,797,000	10,481	583.2	163	9.1
	1962	1,823,000	10,822	593.6	144	7.9
	1963	1,858,000	12,043	648.2	137	7.4
California.....	1958	14,337,000	257,569	1,796.6	531	3.7
	1959	15,530,973	254,055	1,635.8	508	3.3
	1960	15,717,204	309,552	1,969.5	616	3.9
	1961	16,397,000	316,208	1,928.5	605	3.7
	1962	16,970,000	343,498	2,024.2	657	3.9
	1963	17,590,000	380,690	2,164.2	673	3.8
Colorado.....	1958	1,711,000	20,659	1,207.8	70	4.1
	1959	1,735,315	20,550	1,184.2	94	5.4
	1960	1,753,947	21,635	1,233.5	73	4.2
	1961	1,781,000	25,708	1,443.5	83	4.7
	1962	1,907,000	29,801	1,562.3	96	5.0
	1963	1,961,000	30,090	1,534.5	94	4.8
Connecticut.....	1958	2,316,000	15,141	653.8	30	1.3
	1959	2,514,397	15,867	630.9	33	1.3
	1960	2,535,234	17,276	681.4	41	1.6
	1961	2,614,000	18,892	722.7	25	1.0
	1962	2,597,000	20,525	790.3	34	1.3
	1963	2,666,000	25,980	974.5	47	1.8
Delaware.....	1958	454,000	3,709	816.9	14	3.1
	1959	443,158	3,852	869.2	18	4.1
	1960	446,292	4,299	963.3	30	6.7
	1961	458,000	4,563	996.3	18	3.9
	1962	469,000	4,999	1,065.8	18	3.8
	1963	476,000	5,849	1,228.7	22	4.6
Florida.....	1958	4,442,000	60,988	1,372.9	524	11.8
	1959	4,890,001	67,775	1,386.0	500	10.2
	1960	4,951,560	76,980	1,554.7	527	10.6
	1961	5,222,000	74,324	1,432.9	477	9.1
	1962	5,459,000	77,630	1,422.1	420	7.7
	1963	5,652,000	90,003	1,592.4	463	8.2
Georgia.....	1958	3,818,000	32,493	851.1	527	13.8
	1959	3,917,240	31,643	807.8	524	13.4
	1960	3,943,116	33,758	856.1	469	11.9
	1961	3,987,000	37,612	943.4	400	10.0
	1962	4,100,000	41,798	1,019.5	422	10.3
	1963	4,140,000	45,803	1,106.3	390	9.4

State	Year	Population	Total Offences		Murder & non-negligent manslaughter	
			No.	Rate per 100,000	No.	Rate per 100,000
Hawaii.....	1958	633,000	7,626	1,204.7	21	3.3
	1959	620,582	7,453	1,201.0	17	2.7
	1960	632,772	6,977	1,102.6	15	2.4
	1961	657,000	8,358	1,272.1	15	2.3
	1962	693,000	9,333	1,353.7	20	2.9
1963	694,000	9,418	1,357.0	12	1.7	
Idaho.....	1958	662,000	4,444	671.0	16	2.4
	1959	663,606	4,364	657.6	15	2.3
	1960	667,191	4,701	704.6	16	2.4
	1961	684,000	5,025	734.6	14	2.0
	1962	693,000	5,585	800.2	21	3.0
1963	713,000	5,614	787.4	18	2.5	
Illinois.....	1958	9,889,000	87,065	880.4	398	4.0
	1959	10,012,612	128,648	1,284.9	455	4.5
	1960	10,081,158	168,724	1,673.7	489	4.9
	1961	10,258,000	174,022	1,696.5	492	4.8
	1962	10,146,000	171,449	1,689.7	537	5.3
1963	10,182,000	166,980	1,640.0	523	5.1	
Indiana.....	1958	4,531,000	36,916	805.9	134	2.9
	1959	4,637,005	35,980	775.9	158	3.4
	1960	4,662,498	39,596	849.2	202	4.3
	1961	4,711,000	42,112	893.9	190	4.0
	1962	4,715,000	45,131	957.2	165	3.5
1963	4,694,000	51,128	1,089.2	129	2.7	
Iowa.....	1958	2,822,000	12,435	440.7	43	1.5
	1959	2,736,408	12,782	467.1	39	1.4
	1960	2,757,537	14,099	511.3	17	.6
	1961	2,779,000	13,846	498.2	36	1.3
	1962	2,777,000	15,108	544.0	31	1.1
1963	2,780,000	16,039	577.0	35	1.3	
Kansas.....	1958	2,116,000	12,931	611.2	56	2.6
	1959	2,161,421	13,618	630.0	51	2.4
	1960	2,178,611	14,464	663.9	64	2.9
	1961	2,194,000	14,531	662.3	41	1.9
	1962	2,219,000	15,745	709.6	63	2.8
1963	2,225,000	17,413	782.6	57	2.6	
Kentucky.....	1958	3,080,000	21,359	693.4	165	5.4
	1959	3,012,051	22,649	751.9	159	5.3
	1960	3,038,156	24,235	797.7	205	6.7
	1961	3,076,000	24,266	788.9	201	6.5
	1962	3,082,000	26,928	873.7	201	6.5
1963	3,095,000	28,672	926.4	172	5.6	
Louisiana.....	1958	3,110,000	24,464	786.5	183	5.9
	1959	3,230,932	22,680	702.0	183	5.7
	1960	3,257,022	30,799	945.6	270	8.3
	1961	3,321,000	27,223	819.7	211	6.4
	1962	3,330,000	27,577	828.1	225	6.8
1963	3,418,000	33,860	990.6	235	6.9	

State	Year	Population	Total Offences		Murder & non-negligent manslaughter	
			No.	Rate per 100,000	No.	Rate per 100,000
Maine.....	1958	952,000	4,458	468.5	24	2.5
	1959	964,235	4,615	478.6	14	1.5
	1960	969,265	5,226	539.2	16	1.7
	1961	992,000	4,980	502.0	16	1.6
	1962	999,000	5,252	525.7	14	1.4
	1963	982,000	5,360	545.8	19	1.9
Maryland.....	1958	2,956,000	27,490	929.8	161	5.4
	1959	3,072,999	27,467	898.8	136	4.4
	1960	3,100,689	28,815	929.3	168	5.4
	1961	3,188,000	31,887	1,000.2	143	4.5
	1962	3,191,000	33,654	1,054.6	183	5.7
	1963	3,289,000	40,321	1,225.9	207	6.3
Massachusetts.....	1958	4,862,000	37,701	775.5	69	1.4
	1959	5,114,558	36,218	708.1	60	1.2
	1960	5,148,578	38,645	750.6	74	1.4
	1961	5,234,000	48,531	927.2	77	1.5
	1962	5,161,000	53,162	1,030.1	95	1.8
	1963	5,218,000	59,333	1,137.1	101	1.9
Michigan.....	1958	7,866,000	82,495	1,048.8	246	3.1
	1959	7,774,787	83,749	1,077.2	325	4.2
	1960	7,823,194	95,817	1,224.8	334	4.3
	1961	7,954,000	97,731	1,228.7	309	3.9
	1962	7,991,000	103,368	1,293.6	260	3.3
	1963	8,116,000	109,450	1,348.6	268	3.3
Minnesota.....	1958	3,375,000	19,912	590.0	31	.9
	1959	3,393,302	20,132	593.3	35	1.0
	1960	3,413,864	25,338	742.2	42	1.2
	1961	3,470,000	26,098	752.1	34	1.0
	1962	3,475,000	27,366	787.5	33	.9
	1963	3,500,000	30,240	864.0	41	1.2
Mississippi.....	1958	2,186,000	7,340	335.8	144	6.6
	1959	2,162,422	9,090	420.4	247	11.4
	1960	2,178,141	9,551	438.5	218	10.0
	1961	2,215,000	10,208	460.9	229	10.3
	1962	2,248,000	10,035	446.4	164	7.3
	1963	2,290,000	9,005	393.2	164	7.2
Missouri.....	1958	4,271,000	43,109	1,009.2	215	5.0
	1959	4,273,174	43,535	1,018.8	246	5.8
	1960	4,319,813	52,521	1,215.8	189	4.4
	1961	4,378,000	52,189	1,192.2	223	5.1
	1962	4,346,000	54,384	1,251.3	241	5.5
	1963	4,328,000	60,030	1,387.0	223	5.2
Montana.....	1958	688,000	5,321	773.8	17	2.5
	1959	668,022	5,770	863.7	27	4.0
	1960	674,767	6,534	968.3	26	3.9
	1961	682,000	6,786	995.0	17	2.5
	1962	709,000	6,800	959.1	15	2.1
	1963	707,000	7,977	1,128.3	14	2.0

State	Year	Population	Total Offences		Murder & non-negligent manslaughter	
			No.	Rate per 100,000	No.	Rate per 100,000
Nebraska.....	1958	1,457,000	6,325	434.0	46	3.2
	1959	1,398,875	6,271	448.3	39	2.8
	1960	1,411,330	7,385	523.3	33	2.3
	1961	1,431,000	8,245	576.2	34	2.4
	1962	1,484,000	8,739	588.9	23	1.5
	1963	1,460,000	9,689	663.6	29	2.0
Nevada.....	1958	267,000	4,298	1,610.6	26	9.7
	1959	281,348	5,390	1,915.8	22	7.8
	1960	285,278	5,686	1,993.1	25	8.8
	1961	299,000	6,531	2,184.3	21	7.0
	1962	335,000	8,184	2,442.9	27	8.1
	1963	368,000	11,004	2,990.1	29	7.9
New Hampshire.....	1958	584,000	2,386	408.2	4	.7
	1959	599,543	2,821	470.5	16	2.7
	1960	606,921	2,077	342.2	8	1.3
	1961	621,000	2,706	435.7	4	.6
	1962	632,000	3,308	523.4	15	2.4
	1963	627,000	3,330	531.1	20	3.2
New Jersey.....	1958	5,749,000	47,272	822.2	132	2.3
	1959	6,018,570	51,012	847.6	144	2.4
	1960	6,066,782	58,246	960.1	104	2.7
	1961	6,244,000	62,783	1,005.5	153	2.5
	1962	6,245,000	70,296	1,125.6	187	3.0
	1963	6,470,000	79,866	1,234.4	181	2.8
New Mexico.....	1958	842,000	9,992	1,187.0	36	4.3
	1959	943,348	11,039	1,170.2	57	6.0
	1960	951,023	11,564	1,216.0	68	7.2
	1961	983,030	11,087	1,127.9	65	6.6
	1962	1,020,000	12,393	1,215.0	62	6.1
	1963	1,018,000	13,374	1,313.7	55	5.4
New York.....	1958	16,229,000	152,896	942.1	461	2.8
	1959	16,596,507	159,764	962.6	497	3.0
	1960	16,782,304	175,029	1,042.9	479	2.9
	1961	17,033,000	181,566	1,066.0	603	3.5
	1962	17,402,000	199,617	1,147.1	628	3.6
	1963	17,708,000	228,385	1,289.7	669	3.8
North Carolina.....	1958	4,549,000	30,137	662.5	428	9.4
	1959	4,523,651	29,535	652.9	401	8.9
	1960	4,556,155	31,706	695.9	456	10.0
	1961	4,614,000	32,044	694.5	401	8.7
	1962	4,731,000	34,016	719.0	353	7.5
	1963	4,760,000	37,587	789.6	370	7.8
North Dakota.....	1958	650,000	2,131	327.7	4	.6
	1959	626,976	2,112	336.9	3	.5
	1960	632,446	2,357	372.7	3	.5
	1961	640,000	2,490	389.1	6	.9
	1962	642,000	2,635	410.4	8	1.2
	1963	634,000	2,998	472.9	13	2.1

State	Year	Population	Total Offences		Murder & non-negligent manslaughter	
			No.	Rate per 100,000	No.	Rate per 100,000
Ohio.....	1958	9,345,000	65,875	704.9	290	3.1
	1959	9,637,371	63,312	656.9	307	3.2
	1960	9,706,397	73,200	754.1	311	3.2
	1961	9,876,000	75,320	762.7	306	3.1
	1962	10,097,000	77,560	768.1	321	3.2
	1963	10,173,000	85,444	839.9	306	3.0
Oklahoma.....	1958	2,285,000	21,229	929.0	150	6.6
	1959	2,300,513	19,858	863.2	154	6.7
	1960	2,328,284	24,968	1,072.4	174	7.5
	1961	2,360,000	24,745	1,048.5	119	5.0
	1962	2,448,000	25,461	1,040.1	126	5.1
	1963	2,487,000	26,763	1,076.2	129	5.2
Oregon.....	1958	1,773,000	14,016	790.3	43	2.4
	1959	1,756,366	14,392	819.4	39	2.2
	1960	1,768,687	16,322	922.8	43	2.4
	1961	1,799,000	17,011	945.6	48	2.7
	1962	1,864,000	19,026	1,020.7	54	2.9
	1963	1,826,000	20,865	1,142.7	55	3.0
Pennsylvania.....	1958	11,101,000	72,755	655.4	282	2.5
	1959	11,219,034	73,591	655.9	285	2.5
	1960	11,319,366	73,958	653.4	292	2.6
	1961	11,468,000	75,065	654.6	294	2.6
	1962	11,376,000	79,681	700.4	307	2.7
	1963	11,424,000	87,652	767.2	265	2.3
Rhode Island.....	1958	875,000	9,335	1,066.8	6	.7
	1959	845,019	8,942	1,058.2	8	.9
	1960	859,488	10,934	1,272.2	9	1.0
	1961	867,000	9,607	1,108.1	9	1.0
	1962	865,000	9,603	1,110.2	7	.8
	1963	885,000	10,789	1,219.1	12	1.4
South Carolina.....	1958	2,404,000	18,127	754.0	251	10.4
	1959	2,358,251	18,205	772.0	288	12.2
	1960	2,382,594	19,789	830.6	314	13.2
	1961	2,407,000	21,552	895.4	280	11.6
	1962	2,436,000	22,764	934.6	247	10.1
	1963	2,483,000	27,192	1,095.1	249	10.0
South Dakota.....	1958	699,000	3,474	496.9	11	1.6
	1959	676,738	4,045	597.7	14	2.1
	1960	680,514	3,850	565.8	14	2.1
	1961	690,000	3,879	562.2	12	1.7
	1962	721,000	4,185	580.4	24	3.3
	1963	737,000	4,317	585.7	9	1.2
Tennessee.....	1958	3,469,000	27,468	791.7	293	8.4
	1959	3,531,809	29,014	821.5	247	7.0
	1960	3,567,089	29,457	825.8	302	8.5
	1961	3,615,000	31,648	875.5	290	8.0
	1962	3,634,000	33,404	919.2	220	6.1
	1963	3,694,000	37,458	1,014.0	239	6.5

State	Year	Population	Total Offences		Murder & non-negligent manslaughter	
			No.	Rate per 100,000	No.	Rate per 100,000
Texas.....	1958	9,377,000	96,318	1,027.2	837	8.9
	1959	9,503,035	97,585	1,026.9	915	9.6
	1960	9,579,677	110,225	1,150.6	821	8.6
	1961	9,788,000	110,194	1,125.8	785	8.0
	1962	10,118,000	115,693	1,143.7	727	7.2
	1963	10,323,000	127,412	1,234.3	757	7.3
Utah.....	1958	865,000	7,056	816.1	10	1.2
	1959	883,066	7,304	827.1	9	1.0
	1960	890,627	7,838	880.1	9	1.0
	1961	916,000	8,082	882.3	16	1.7
	1962	967,000	10,074	1,041.8	22	2.3
	1963	983,000	11,062	1,125.4	24	2.4
Vermont.....	1958	372,000	1,710	459.2	12	3.2
	1959	387,291	1,420	366.6	2	.5
	1960	389,881	2,115	542.5	1	.3
	1961	395,000	2,280	577.2	6	1.5
	1962	390,000	2,270	582.0	1	.3
	1963	390,000	2,606	668.2	2	.5
Virginia.....	1958	3,935,000	32,452	824.7	340	8.6
	1959	3,898,778	29,954	768.3	343	8.8
	1960	3,966,949	32,648	823.0	395	10.0
	1961	4,059,000	35,671	878.8	283	7.0
	1962	4,177,000	36,686	878.3	293	7.0
	1963	4,331,000	40,115	926.2	249	5.8
Washington.....	1958	2,769,000	27,357	987.9	42	1.5
	1959	2,824,144	27,055	958.0	54	1.9
	1960	2,853,214	29,385	1,029.9	61	2.1
	1961	2,902,000	29,447	1,014.7	63	2.2
	1962	3,006,000	32,040	1,065.8	74	2.5
	1963	3,050,000	33,998	1,114.7	76	2.5
West Virginia.....	1958	1,969,000	8,541	433.8	95	4.8
	1959	1,847,082	8,438	456.8	81	4.4
	1960	1,860,421	8,469	455.2	81	4.4
	1961	1,850,000	8,312	449.3	82	4.4
	1962	1,773,000	8,099	456.8	66	3.7
	1963	1,778,000	8,422	473.7	95	5.3
Wisconsin.....	1958	3,938,000	18,096	459.6	38	1.0
	1959	3,925,854	16,823	428.5	45	1.1
	1960	3,951,777	20,076	508.0	50	1.3
	1961	4,022,000	20,962	521.2	63	1.6
	1962	4,092,000	21,020	513.7	37	.9
	1963	4,061,000	24,151	594.7	70	1.7
Wyoming.....	1958	320,000	2,776	867.7	9	2.8
	1959	326,578	2,489	762.1	14	4.3
	1960	330,066	2,803	849.2	16	4.8
	1961	338,000	2,953	873.7	11	3.3
	1962	365,000	2,629	720.4	12	3.3
	1963	337,000	3,018	895.6	12	3.6
United States Total.....	1958	174,095,000	1,573,210	903.6	8,222	4.7
	1959	177,709,512	1,630,403	917.5	8,583	4.8
	1960	179,323,175	1,862,703	1,038.7	8,971	5.0
	1961	182,953,000	1,926,119	1,052.8	8,599	4.7
	1962	185,822,000	2,050,624	1,103.5	8,404	4.5
	1963	188,531,000	2,259,081	1,198.3	8,504	4.5

## II. Department of Justice Release on Capital Punishment

“[CREST]

### DEPARTMENT OF JUSTICE

*For immediate release*  
*Friday, March 26, 1965*

Fifteen executions, the fewest since 1930, were carried out by civil authorities in the United States during calendar year 1964, Attorney General Nicholas deB. Katzenbach reported today.

The eight states which executed prisoners were: Texas with five; Florida, Georgia and Missouri with two each; and Alabama, Arkansas, Colorado and Mississippi with one each.

Eleven of the 15 executions were by electrocution, and the remaining four were carried out in the gas chamber. Nine men were sentenced for murder and six for rape. Eight were white and seven were Negro. Five whites and four Negroes were sentenced for murder, and three whites and three Negroes for rape.

At the beginning of 1964, 300 prisoners were under sentence of death. During the year, 98 additional prisoners were received from court with death sentences, bringing the total number of prisoners under sentence of death during 1964 to 398. Fifteen of these were executed, 68 received a disposition other than execution, and 315 were awaiting execution at the end of the year. This marks the highest year-end population awaiting execution since 1953 when such statistics first became available.

The five-year period from 1960 through 1964 saw (1) a *decrease* in the annual number of prisoners received from court under sentence of death; (2) a *decrease* in the number of prisoners executed under civil authority in the United States each year; (3) an *increase* in the number of prisoners under sentence of death receiving a disposition other than execution; (4) an *increase* in the number of prisoners awaiting execution at year's end and (5) an *increase* in the time period between first imposition of the death penalty and the date of execution.

The National Prisoner Statistics program of the Federal Bureau of Prisons compiles this information from cooperating officials in all jurisdictions which have legal provision for the death penalty. In 1964, these included 42 states, the District of Columbia and the Federal government.

Oregon abolished capital punishment in the November 1964 general election. At the close of the year, the death penalty also was illegal in Michigan, Alaska, Hawaii, North Dakota, Minnesota, Maine, Wisconsin and Rhode Island. Since the beginning of 1965, Iowa and West Virginia also have abolished the death penalty.

Detailed information on this topic will soon be available with the publication of the Federal Bureau of Prisons' National Prisoner Statistics Bulletin Executions 1930-1964."

### III. Tables 2 and 3 from N.P.S. (National Prisoner Statistics) Bulletin of U.S. Bureau of Prisons, April, 1964 showing Executions 1930-1964

"TABLE 2

#### PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY STATE AND YEAR: 1930-1964

(Method of Execution in 1964: E-Electrocution, G-Lethal Gas, H-Hanging, S-Shooting or hanging.)

Region and State	Total	1964	1963	1962	1961	1960	1959	1958	1957	1956	1955	1950-54	1945-49	1940-44	1935-39	1930-34
United States.....	3,849	15	21	47	42	56	49	49	65	65	76	413	639	645	891	776
FEDERAL <sup>(a)</sup> .....	33	—	1	—	—	—	—	—	2	1	—	6	6	7	9	1
TOTAL STATE.....	3,816	15	20	47	42	56	49	49	63	64	76	407	633	638	882	775
NORTHEAST.....	608	—	3	4	3	7	9	4	4	9	25	56	74	110	145	155
Maine <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
New Hampshire..... H	1	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—
Vermont..... E	4	—	—	—	—	—	—	—	—	—	—	2	1	—	—	1
Massachusetts..... E	27	—	—	—	—	—	—	—	—	—	—	—	3	6	11	7
Rhode Island <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Connecticut..... E	21	—	—	—	—	1	2	—	—	—	3	—	5	5	3	2
New York..... E	329	—	2	—	2	6	4	4	4	6	7	27	36	78	73	80
New Jersey..... E	74	—	1	2	—	—	—	—	—	1	8	8	8	6	16	24
Pennsylvania..... E	152	—	—	2	1	—	3	—	—	2	7	19	21	15	41	41
NORTH CENTRAL.....	398	2	3	7	2	2	2	7	2	4	1	42	64	42	113	105
Ohio..... E	172	—	2	2	1	2	1	6	1	4	—	20	36	15	39	43
Indiana..... E	41	—	—	—	1	—	—	—	—	—	—	2	5	2	20	11
Illinois..... E	90	—	—	2	—	—	—	1	—	—	—	8	5	13	27	34
Michigan <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Wisconsin <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Minnesota <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Iowa..... H	18	—	—	2	—	—	—	—	—	—	—	1	4	3	7	1
Missouri..... G	61	2	1	—	—	—	—	—	1	—	1	5	9	6	20	16
North Dakota <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
South Dakota <sup>(b)</sup> ..... E	1	—	—	—	—	—	—	—	—	—	—	—	1	—	XX	XX
Nebraska..... E	4	—	—	—	—	—	1	—	—	—	—	1	2	—	—	—
Kansas <sup>(b)</sup> ..... H	11	—	—	1	—	—	—	—	—	—	—	5	2	3	—	XX



SOUTH.....	2,304	12	10	22	26	32	31	29	44	41	38	244	419	413	524	419
Delaware <sup>(b)</sup> .....	H 12	—	—	—	—	XX	XX	XX	—	—	—	—	2	2	6	2
Maryland.....	G 68	—	—	—	1	—	2	—	—	—	1	—	19	26	10	6
Dist. of Col.....	E 40	—	—	—	—	—	—	—	1	—	—	3	13	3	5	15
Virginia.....	E 92	—	—	1	4	1	2	3	2	—	1	15	22	13	20	8
West Virginia.....	E 40	—	—	—	—	—	1	2	—	1	—	5	9	2	10	10
North Carolina.....	G 263	—	—	—	1	—	—	2	1	1	1	14	62	50	80	51
South Carolina.....	E 162	—	—	2	5	1	—	—	2	4	4	16	29	32	30	37
Georgia.....	E 366	2	2	1	3	6	4	6	14	6	4	51	72	58	73	64
Florida.....	E 170	2	1	5	2	2	10	3	3	7	4	22	27	38	29	15
Kentucky.....	E 103	—	—	1	—	—	—	—	—	3	5	8	15	19	34	18
Tennessee.....	E 93	—	—	—	—	1	1	—	2	—	4	1	18	19	31	16
Alabama.....	E 134	1	—	1	1	1	2	1	2	1	—	14	21	29	41	19
Mississippi.....	G 154	1	2	1	5	1	—	3	2	8	8	15	26	34	22	26
Arkansas.....	E 118	1	—	—	—	8	6	—	—	1	—	11	18	20	33	20
Louisiana.....	E 133	—	—	—	1	—	—	3	7	1	2	14	23	24	19	39
Oklahoma.....	E 59	—	1	1	—	3	—	—	2	1	—	4	7	6	9	25
Texas.....	E 297	5	4	9	3	8	3	6	5	7	4	49	36	38	72	48
WEST.....	506	1	4	14	11	15	7	9	13	10	12	65	76	73	100	96
Montana.....	H 6	—	—	—	—	—	—	—	—	—	—	—	—	1	4	1
Idaho.....	H 3	—	—	—	—	—	—	—	1	—	—	2	—	—	—	—
Wyoming.....	G 6	—	—	—	—	—	—	—	—	—	—	—	—	2	1	3
Colorado.....	G 46	1	—	2	1	1	—	—	1	1	—	1	7	6	9	16
New Mexico.....	G 8	—	—	—	—	1	—	—	—	1	—	2	2	—	—	2
Arizona.....	G 38	—	2	—	1	1	1	2	1	—	2	2	3	6	10	7
Utah.....	S 13	—	—	—	—	1	—	1	—	2	1	2	1	3	2	—
Nevada.....	G 29	—	—	—	1	1	—	—	—	—	—	9	5	5	3	5
Washington.....	H 47	—	1	—	—	1	—	—	1	1	—	4	7	9	13	10
Oregon <sup>(b)</sup> .....	G 19	—	—	1	—	—	—	—	—	—	—	4	6	6	1	1
California.....	G 291	—	1	11	8	9	6	6	9	5	9	39	45	35	57	51
Alaska.....	XX	XX	XX	XX	XX	XX	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)
Hawaii.....	XX	XX	XX	XX	XX	XX	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)

(a) See the text for the States and years in which the 33 Federal executions occurred.

(b) Death penalty is illegal as indicated (XX), except for the provisions indicated in the text.

(c) Alaska and Hawaii when territories abolished capital punishment in 1957. As States, Alaska and Hawaii are included in series beginning January 1, 1960."

TABLE 3

PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY OFFENSE, RACE, AND STATE: 1930-1964

(For years 1930-1959, excludes Alaska and Hawaii except for three Federal executions in Alaska, one each in 1939, 1948 and 1950.)

Region and State	All offenses				Murder				Rape				Other offenses							
													Total			Armed robbery		Kid-napping	Other offenses <sup>(a)</sup>	
	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro	White	Negro	White	White	Negro
United States.....	3,849	1,743	2,064	42	3,325	1,657	1,628	40	455	48	405	2	60	38	31	5	19	20	13	12
Percent.....	100.0	—	—	—	86.4	—	—	—	11.8	—	—	—	1.8	—	—	—	—	—	—	—
FEDERAL.....	33	28	3	2	16	11	3	2	2	2	—	—	15	15	—	1	—	6	8	—
TOTAL STATE.....	3,816	1,715	2,061	40	3,309	1,646	1,625	38	453	46	405	2	54	23	31	4	19	14	5	12
NORTHEAST.....	608	424	177	7	606	422	177	7	—	—	—	—	2	2	—	—	—	2	—	—
Maine <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
New Hampshire.....	1	1	—	—	1	1	—	—	—	—	—	—	—	—	—	—	—	—	—	XX
Vermont.....	4	4	—	—	4	4	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Massachusetts.....	27	25	2	—	27	25	2	—	—	—	—	—	—	—	—	—	—	—	—	—
Rhode Island <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Connecticut.....	21	18	3	—	21	18	3	—	—	—	—	—	—	—	—	—	—	—	—	—
New York.....	329	234	90	5	327	232	90	5	—	—	—	—	2	2	—	—	—	2	—	—
New Jersey.....	74	47	25	2	74	47	25	2	—	—	—	—	—	—	—	—	—	—	—	—
Pennsylvania.....	152	95	57	—	152	95	57	—	—	—	—	—	—	—	—	—	—	—	—	—
NORTH CENTRAL.....	398	253	143	2	388	250	136	2	10	3	7	—	—	—	—	—	—	—	—	—
Ohio.....	172	104	67	1	172	104	67	1	—	—	—	—	—	—	—	—	—	—	—	—
Indiana.....	41	31	10	—	41	31	10	—	—	—	—	—	—	—	—	—	—	—	—	—
Illinois.....	90	59	31	—	90	59	31	—	—	—	—	—	—	—	—	—	—	—	—	—
Michigan <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Wisconsin <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Minnesota <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Iowa.....	18	18	—	—	18	18	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Missouri.....	61	29	32	—	51	26	25	—	10	3	7	—	—	—	—	—	—	—	—	—
North Dakota <sup>(b)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
South Dakota <sup>(c)</sup> .....	1	1	—	—	1	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Nebraska.....	4	3	—	1	4	3	—	1	—	—	—	—	—	—	—	—	—	—	—	—
Kansas <sup>(c)</sup> .....	11	8	3	—	11	8	3	—	—	—	—	—	—	—	—	—	—	—	—	—

SOUTH.....	2,304	635	1,659	10	1,822	583	1,231	8	443	43	398	2	39	9	30	4	19	5	—	11	
Delaware <sup>(c)</sup> .....	12	5	7	—	8	4	4	—	4	1	3	—	—	—	—	—	—	—	—	—	
Maryland.....	68	13	55	—	44	7	37	—	24	6	18	—	—	—	—	—	—	—	—	—	
District of Columbia.....	40	3	37	—	37	3	34	—	3	—	3	—	—	—	—	—	—	—	—	—	
Virginia.....	92	17	75	—	71	17	54	—	21	—	21	—	—	—	—	—	—	—	—	—	
West Virginia.....	40	31	9	—	36	28	8	—	1	—	1	—	3	3	—	—	—	3	—	—	
North Carolina.....	263	59	199	5	207	55	149	3	47	4	41	2	9	—	9	—	—	—	—	9	
South Carolina.....	162	35	127	—	120	30	90	—	42	5	37	—	—	—	—	—	—	—	—	—	
Georgia.....	366	68	298	—	299	65	234	—	61	3	58	—	6	—	6	—	6	—	—	—	
Florida.....	170	57	113	—	133	55	78	—	36	1	35	—	1	1	—	—	—	1	—	—	
Kentucky.....	103	51	52	—	88	47	41	—	10	1	9	—	5	3	2	3	2	—	—	—	
Tennessee.....	98	27	66	—	66	22	44	—	27	5	22	—	—	—	—	—	—	—	—	—	
Alabama.....	134	27	107	—	105	25	80	—	22	2	20	—	7	—	7	—	5	—	—	2	
Mississippi.....	154	30	124	—	130	30	100	—	21	—	21	—	3	—	3	—	3	—	—	—	
Arkansas.....	118	27	90	1	99	25	73	1	19	2	17	—	—	—	—	—	—	—	—	—	
Louisiana.....	133	30	103	—	116	30	86	—	17	—	17	—	—	—	—	—	—	—	—	—	
Oklahoma.....	59	41	15	3	53	39	11	3	4	—	4	—	2	2	—	1	—	1	—	—	
Texas.....	297	114	182	1	210	101	108	1	84	13	71	—	3	—	3	—	3	—	—	—	
WEST.....	506	403	82	21	493	391	81	21	—	—	—	—	13	12	1	—	—	7	5	1	
Montana.....	6	4	2	—	6	4	2	—	—	—	—	—	—	—	—	—	—	—	—	—	
Idaho.....	3	3	—	—	3	3	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Wyoming.....	6	5	1	—	6	5	1	—	—	—	—	—	—	—	—	—	—	—	—	—	
Colorado.....	46	40	5	1	46	40	5	1	—	—	—	—	—	—	—	—	—	—	—	—	
New Mexico.....	8	6	2	—	8	6	2	—	—	—	—	—	—	—	—	—	—	—	—	—	
Arizona.....	38	28	10	—	38	28	10	—	—	—	—	—	—	—	—	—	—	—	—	—	
Utah.....	13	13	—	—	13	13	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Nevada.....	29	27	2	—	29	27	2	—	—	—	—	—	—	—	—	—	—	—	—	—	
Washington.....	47	40	5	2	46	39	5	2	—	—	—	—	1	1	—	—	—	1	—	—	
Oregon <sup>(c)</sup> .....	19	16	3	—	19	16	3	—	—	—	—	—	—	—	—	—	—	—	—	—	
California.....	291	221	52	18	279	210	51	18	—	—	—	—	12	11	1	—	—	6	5	1	
Alaska <sup>(d)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Hawaii <sup>(d)</sup> .....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX

<sup>(a)</sup> In this category the 8 Federal executions were for espionage. The 9 executions in North Carolina and the 2 in Alabama were for burglary. In California, the 6 executions were for aggravated assault committed by prisoners under a life sentence.

<sup>(b)</sup> Death penalty illegal during entire period, except for provisions indicated in the text.

<sup>(c)</sup> See text for period during which death penalty was in force.

<sup>(d)</sup> Alaska and Hawaii when territories abolished capital punishment in 1957. As States, Alaska and Hawaii are included in this series beginning January 1, 1960."

#### IV. FBI Bulletins on Capital Punishment

“[CREST]”

#### UNITED STATES DEPARTMENT OF JUSTICE

Federal Bureau of Investigation  
Washington 25, D.C.  
June 1, 1960

#### TO ALL LAW ENFORCEMENT OFFICIALS:

The question of capital punishment has sent a storm of controversy thundering across our Nation—millions of spoken and written words seek to examine the question so that decisions may be reached which befit our civilization.

The struggle for answers concerning the taking of men's lives is one to which every American should lend his voice, for the problem in a democracy such as ours is not one for a handful of men to solve alone.

As a representative of law enforcement, it is my belief that a great many of the most vociferous cries for abolition of capital punishment emanate from those areas of our society which have been insulated against the horrors man can and does perpetrate against his fellow beings. Certainly, penetrative and searching thought must be given before considering any blanket cessation of capital punishment in a time when unspeakable crimes are being committed. The savagely mutilated bodies and mentally ravaged victims of murderers, rapists and other criminal beasts beg consideration when the evidence is weighed on both sides of the scales of Justice.

At the same time, nothing is so precious in our country as the life of a human being, whether he is a criminal or not, and on the other side of the scales must be placed all of the legal safeguards which our society demands.

Experience has clearly demonstrated, however, that the time-proven deterrents to crime are sure detection, swift apprehension, and proper punishment. Each is a necessary ingredient. Law-abiding citizens have a right to expect that the efforts of law enforcement officers in detecting and apprehending criminals will be followed by realistic punishment.

It is my opinion that when no shadow of a doubt remains relative to the guilt of a defendant, the public interest demands capital punishment be invoked where the law so provides.

Who, in all good conscience, can say that Julius and Ethel Rosenberg, the spies who delivered the secret of the atomic bomb into the hands of the Soviets, should have been spared when their treachery caused the shadow of annihilation to fall upon all of the world's peoples? What place would there have been in civilization for these two who went to their deaths unrepentant, unwilling to the last to help their own country and

their own fellow men? What would have been the chances of rehabilitating Jack Gilbert Graham, who placed a bomb in his own mother's luggage and blasted her and 43 other innocent victims into oblivion as they rode an airliner across a peaceful sky?

A judge once said, "The death penalty is a warning, just like a lighthouse throwing its beam out to sea. We hear about shipwrecks, but we do not hear about the ships the lighthouse guides safely on their way. We do not have proof of the number of ships it saves, but we do not tear the lighthouse down."

Despicable crimes must be dealt with realistically. To abolish the death penalty would absolve other Rosenbergs and Grahams from fear of the consequences for committing atrocious crimes. Where the death penalty is provided, a criminal's punishment may be meted out commensurate with his deeds. While a Power transcending man is the final Judge, this same Power gave man reason so that he might protect himself. Capital punishment is an instrument with which he may guard the righteous against the predators among men.

We must never allow misguided compassion to erase our concern for the hundreds of unfortunate, innocent victims of bestial criminals.

Very truly yours,

JOHN EDGAR HOOVER,  
*Director.*

”

"[CREST]

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

Washington 25, D.C.

June 1, 1961

**TO ALL LAW ENFORCEMENT OFFICIALS:**

The capital punishment question, in which law enforcement officers have a basic interest, has been confused recently by self-styled agitators "against the evil of capital punishment." A brochure released not long ago, pleading for "rehabilitation" of murderers while passing lightly over the plight of the killers' innocent victims and families, charges that law enforcement officers "become so insensitized by their dealings with vicious criminals that they go to the extreme of feeling that the death penalty is absolutely necessary."

To add to the burden of conscience borne by peace officers, prosecutors, and jurists and to brand law enforcement officers as callous, unfeeling men "insensitized" to the sanctity of human life are gross acts of injustice to these servants of the public. This ridiculous allegation is mutely refuted by the compassion which wells up in quiet tears flowing down the cheeks of hardened, veteran officers who too often see the ravaged bodies of victims of child molesters.

There can be no doubt of the sincerity of many of those who deplore capital punishment. A realistic approach to the problem, however, demands that they weigh the right of innocent persons to live their lives free from fear of bestial killers against statistical arguments which boast of how few murderers kill again after "rehabilitation" and release. No one, unless he can probe the mind of every potential killer, can say with any authority whatsoever that capital punishment is not a deterrent. As one police officer has asked, how can these "authorities" possibly know how many people are not on death row because of the deterrent effect of executions?

Maudlin viewers of the death penalty call the most wanton slayer a "child of God" who should not be executed regardless of how heinous his crime may be because "God created man in his own image, in the image of God created he him." (Genesis 1:27) Was not this small, blonde 6-year-old girl a child of God? She was choked, beaten, and raped by a sex fiend whose pregnant wife reportedly helped him lure the innocent child into his car and who sat and watched the assault on the screaming youngster. And when he completed his inhuman deed, the wife, herself bringing a life into the world, allegedly killed the child with several savage blows with a tire iron. The husband has been sentenced to death. Words and words and words may be written, but no plea in favor of the death penalty can be more horribly eloquent than the sight of the battered, sexually assaulted body of this child, truly a "child of God."

The proponents of "rehabilitation" for all murderers quote those portions of the Bible which they believe support their lavender-and-old-lace world where evil is neither recognized nor allowed. But the Bible clearly reveals that enforcement of moral justice is nothing new to our age. In fact, in referring to man as the "image of God", the Old Testament, so freely quoted by opponents of the death penalty, also states, "Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man." (Genesis 9:6) There are many passages in the Old Testament which refer to capital punishment being necessary to enforce the laws of society. Since the Old Testament was written about and to a nation while the New Testament was written to individuals and to a non-political body known as the Church, there is a difference in emphasis and approach. Certainly, however, the moral laws of the Old Testament remain with us today.

Misguided do-gooders frequently quote the Sixth Commandment, "Thou shalt not kill," to prove that capital punishment is wrong. This Commandment in the 20th chapter, verse 13, of Exodus has also been interpreted to mean: "Thou shalt do no murder." Then the 21st chapter, verse 12, says, "He that smiteth a man, so that he die, shall be surely put to death." We can no more change the application to our society of this basic moral law in the Old Testament than we can change the meaning of Leviticus 19:18: "thou shalt love thy neighbor as thyself," which Jesus quoted in the New Testament.

To "love thy neighbor" is to protect him; capital punishment acts as at least one wall to afford "God's children" protection.

Very truly yours,

JOHN EDGAR HOOVER  
*Director*

”

## APPENDIX "L"

### Summary of Staff Report on the Subject of Capital Punishment Prepared for the Temporary Commission on Revision of the Penal Law and Criminal Code of the State of New York

The Staff Report notes that in 1963 the Legislature, upon the recommendation of the Commission, enacted legislation that "(1) completely eliminated the mandatory death feature and authorized a jury recommendation of life imprisonment in any first degree murder case; (2) made the jury's recommendation binding on the court; (3) permitted a plea of guilty under certain circumstances, to a first degree murder charge, with a sentence of life imprisonment; and (4) provided a 'two-stage' trial procedure, comparable to those employed in California and Pennsylvania, entailing jury consideration and determination of the guilty issue and the punishment issue separately from one another." (Report, page 21)

The Staff Report then reviews the history of capital punishment noting that, while England has not yet abolished it, thirty other nations have done so over the last century and still others have in effect achieved the same result by total disuse of the death penalty. In the United States, forty-two jurisdictions currently authorize the death penalty for, collectively, about thirty different offences although the death penalty legislation is mainly concentrated in murder, kidnapping and treason; the death penalty while authorized is not mandatory; and the actual carrying out of the death penalty has progressively decreased in the United States over the last two decades, statistics from 1930 to 1962 revealing a high of one hundred and ninety-nine executions in 1935 and a low of twenty-one in 1963. If Gallup polls are a valid reflection of sentiment it would appear that, at the present time, the country is about equally divided on the subject but with a marked trend toward abolition.

Turning to the contentions *pro* and *con* the death penalty, the Staff Report notes that the argument for abolition invariably begins with the premise that the death penalty is inhumane, barbaric and morally wrong, especially since other forms of severe punishment are available and that the morality argument is ordinarily supplemented by other more concrete contentions, chiefly as follows: the death penalty results in the execution of innocent persons; it discriminates on the basis of economic status, race and even sex; and it exerts unsavoury pressures on courts and disrupts the legal process.

Going on to the contentions of the retentionists, the Report lists the principal as follows: capital punishment is the only truly effective deter-



rent to murder; life imprisonment, with its parole features, is not a sufficient protection against convicted murderers; some retentionists further argue that moral and religious principles dictate the concept of a life for a life. Of these contentions the one most vigorously advanced is that of deterrence whereby innocent lives are saved.

Turning to the question of deterrence the Staff Report notes that murder falls roughly into three categories: by reason of mental abnormality, through emotionalism and for gain. The first two categories, according to a substantial and knowledgeable school of thought, are largely undeterrable; the third category is concededly more receptive to punitive threats and appreciably more deterrable by severe penalties. Some designate this category, however, as the smallest of the three and urge that life imprisonment is virtually as effective a deterrent as the death penalty. In addition to the foregoing there is the limited category of the prisoner serving an actual life sentence who is not likely to refrain from killing a guard or fellow prisoner through fear of another life sentence. North Dakota and Rhode Island, therefore, though abolishing capital punishment generally, retain it for the "lifer", and a Maryland committee has recently recommended the same principle.

Finally, the abolitionists argue that the greatest deterrent value of punishment lies not in severity but in certainty, and if this argument be sound then the deterrent value of the death penalty must be seriously weakened, particularly in the State of New York, since the chance of any given murderer being finally executed is slim indeed and the interval between conviction and execution very long. The abolitionists' claim that this uncertainty and remoteness destroy the deterrent effect might be countered by a retentionist argument that the remedy lies in simplification of the legal process rather than abolition.

A significant consideration, according to the retentionists, is the collective opinion of the vast majority of police officers that the death penalty is the only effective deterrent to homicide in general and the killing of police in particular, although there is an occasional dissenting note from the law enforcement group. The abolitionists characterize this position as no more than "feeling", to which the retentionists counter that while the police reaction may be partially instinctive, it is nevertheless meaningful and the very fact that the police actually feel more secure with the death penalty is itself a consideration in favour thereof. The retentionists point to the 1957 English legislation retaining the death penalty for the murder of a police officer and the abolitionist counters to the effect that this consideration is more telling in England where sentences for most offences are relatively short and the severe differential between the death penalty and the average prison sentence is conspicuous.

The Report then notes that Thorsten Sellin, in his 1959 Report,\* had sought to establish, statistically, whether the death penalty protected

---

\* Referred to in the Paper and Appendix H.

policemen and had decided that abolition, in the six States in question, had not made the policeman's lot more hazardous. The Staff Report doubts that this negative conclusion has any real impact on the question because the underlying statistics are not convincing. Sellin made other comparisons between jurisdictions which retained and which had abolished the death penalty and between time periods in the same jurisdiction before and after abolition or reinstatement. He concluded from his analysis of all the statistics that the death penalty exercises no influence on the extent or fluctuating rates of capital crime and has failed as a deterrent.

The retentionists, however, comment skeptically on the validity of the statistical foundation and urge, further, that Sellin's figures and comparisons are inherently unpersuasive on the issue of deterrence: while they show murders that were committed in spite of capital punishment they do not show the murders that were prevented by capital punishment and, on this point, the 1961 Report of the Joint Legislative Committee on Capital Punishment of Pennsylvania said:

"The plain fact is that it can never be known how many persons are actually deterred by threat of punishment, whether capital or otherwise".

The Staff Report goes on to say that a failure to resolve the crucial issue of deterrence does not necessarily foreclose a sound resolution of the problem; it simply raises the question as to who has the burden of proof, the retentionist to prove great deterrent value or the abolitionist to prove small deterrent value. If the question is insoluble, the person carrying the burden of proof loses. Here, the retentionist asserts that the existence of the death penalty bespeaks its justification and those who would disturb it have the burden; but the abolitionist says that the death penalty is indefensible in the absence of some strong factor of justification, so the retentionist has the burden.

Turning to the moral issue, the Staff Report notes that it is inextricably interwoven with the question of deterrence; if convinced that the death penalty were a real deterrent, many abolitionists would change over; while if persuaded that capital punishment was valueless as a deterrent many retentionists would then regard it as immoral. But some in each group take up a moral position to the exclusion of every other consideration and the problem of personal and religious morality will be determined by each person in accordance with his own conscience.

As to the possibility of error, the Report notes that it is indisputable that the execution of an innocent person is a moral atrocity. The abolitionist makes much of the possibility of this error while the retentionist takes the position that the risk is infinitesimal; that the tragedy of executing an innocent is insignificant compared with the number of murders that are averted; and that unavoidable imperfections are present in many fields of government operation which necessarily require some sacrifice of the individual for the benefit of society.

Turning to the question of inequality in application the Staff Report notes that discrimination is supposed to lie in favour of the rich over the poor, in favour of racial majorities over minorities and in favour of women over men. Abolitionists claim that the vast majority of executed persons come from the lower income echelons while people of financial substance are rarely convicted and hardly ever executed for murder. The retentionist partially concedes this proposition but counters that most homicides are committed by the indigent and others of unfortunate economic and social background and that, if calibre of counsel is a factor, the remedy lies in improvement of legal aid; and the retentionists make similar answer to the protest of racial discrimination. This answer is not completely satisfactory to everybody and the Pennsylvania Joint Legislative Committee on Capital Punishment, in its 1961 Report, quotes statistics tending to show that, especially in the southern states, economic factors alone could not account for the heavy disproportion of Negro death sentences and executions. The retentionists reply that these criticisms do not go to the principle but to curable operational defects and that it would be illogical to scrap a basically sound system because it does not reach out to all murderers.

Turning to the baneful effects of the death penalty on the judicial and administrative processes, the Staff Report notes that capital cases do take longer to litigate and are disruptive of the ordinary process of criminal justice but points out that the weight that would be given this consideration by any individual would depend on his appraisal of the advantages of the punishment.

The Staff Report then turns to the question whether the convicted murderer represents a homicidal menace upon release and concludes that the material examined would indicate that murderers are significantly better parole risks than other offenders. Retentionists might argue that this record derives from a hyper-select group but there does not appear to be a sound basis for this argument. Some retentionists would also presumably urge that any recidivist murder, following prison release, was too many and salvation of even a few innocent lives was good reason for liquidating many proven murderers; but this practical approach, pursued to a logical conclusion, would call for wholesale execution of all convicted criminals as the most effective method of preventing killings by release of prisoners.

In summary, notes the Report, the main case in favour of capital punishment is that it is necessary, moral and fully justifiable because it protects society from murder and the case mainly advanced against capital punishment is that it is basically immoral; that its immorality is aggravated by the fact that it sometimes takes an innocent life; that it discriminates against lower economic classes and minority racial groups; that it is disruptive of the administration of criminal justice; that it cannot be justified as a unique deterrent; that all available data indicate the contrary; that its proponents cannot prove it has substantial deter-

rent value; and that whatever value it may have in protecting the community against recidivist murders is insignificant in the light of statistics.

The following two tables from the Staff Report show the number of executions in the United States from 1930 to 1962 and the number in New York State from 1890 to 1965:

"APPENDIX

TABLE 1

UNITED STATES EXECUTIONS (1930-1962)

Year	Executions	Year	Executions
1930.....	155	1947.....	153
1931.....	153	1948.....	119
1932.....	140	1949.....	119
1933.....	160	1950.....	82
1934.....	168	1951.....	105
1935.....	199 (high)	1952.....	83
1936.....	195	1953.....	62
1937.....	147	1954.....	81
1938.....	190	1955.....	76
1939.....	159	1956.....	65
1940.....	124	1957.....	65
1941.....	123	1958.....	49
1942.....	147	1959.....	49
1943.....	131	1960.....	56
1944.....	120	1961.....	42 (low)
1945.....	117	1962.....	47
1946.....	131	Total.....	3,812

SOURCE: U.S. Department of Justice, Bureau of Prisons, Bull. No. 32, National Prisoner Statistics, Executions 1962 (April, 1963).

TABLE 2  
NEW YORK EXECUTIONS (1890-1965)

Year	Executions	Year	Executions
1890.....	1	1928.....	14
1891.....	5	1929.....	4
1892.....	5	1930.....	15
1893.....	10	1931.....	12
1894.....	2	1932.....	20
1895.....	6	1933.....	18
1896.....	5	1934.....	15
1897.....	8	1935.....	16
1898.....	2	1936.....	21
1899.....	7	1937.....	14
1900.....	3	1938.....	7
1901.....	7	1939.....	15
1902.....	3	1940.....	13
1903.....	13	1941.....	15
1904.....	8	1942.....	18
1905.....	7	1943.....	12
1906.....	0	1944.....	20
1907.....	8	1945.....	0
1908.....	6	1946.....	4
1909.....	11	1947.....	12
1910.....	12	1948.....	6
1911.....	14	1949.....	14
1912.....	22	1950.....	3
1913.....	13	1951.....	8
1914.....	11	1952.....	3
1915.....	19	1953.....	7
1916.....	14	1954.....	9
1917.....	6	1955.....	7
1918.....	8	1956.....	6
1919.....	2	1957.....	4
1920.....	16	1958.....	4
1921.....	11	1959.....	4
1922.....	17	1960.....	6
1923.....	16	1961.....	2
1924.....	4	1962.....	0
1925.....	15	1963.....	2
1926.....	14	1964.....	0
1927.....	14	1965.....	0

SOURCE: New York State Department of Correction, Division of Research". (Report, pages 56-7)

## APPENDIX "M"

### Bibliography

#### SUPREME COURT LIBRARY

- Society and the Criminal by Sir Norwood East, M.D., F.R.C.P., Chapter X, page 233, 1949.
- Capital Punishment as a Deterrent and the Alternative by Gerald Gardiner, Q.C., 1956.
- A Life for a Life; the problem of capital punishment by Sir Ernest Gowers, 1956.
- Reflections on Hanging by Arthur Koestler, 1956.
- Guilty but Insane by G. W. Keeton, 1961.
- The Crusade against Capital Punishment in Great Britain by Elizabeth Orman Tuttle, 1961.
- Report in favour of The Abolition of the Punishment of Death by law made to the Legislature of the State of New York, April 14, 1841 by John L. O'Sullivan, 1841.
- A History of English Criminal Law and its Administration from 1750 by Leon Radzinowicz
- Capital Punishment p. 1, 327, 330, 333(18), 334
  - range of, extended to minor offences, 1
  - proposed for convicted rogue on his second escape, 140(13)
  - for maliciously counselling anyone to commit highway robbery, 329(18)
  - for aiding and abetting a robber, 329(98)
  - for returned convicts, 63
  - for receivers of stolen goods, 22(91)
  - for offence of taking rewards for restoring stolen goods, 316(46)
  - for blood money conspirators 334; commuted to transportation, 334(29), 1956.
- Evidence for the Crown by Molly Lefebure, Chapter 12 entitled "The Gentle Art of Hanging", 1955.
- La Peine Capitale, Nations Unies, 1962.
- Hangman's Clutch by Nigel Morland, 1954.
- The Murder and the Trial by Edgar Lustgarten, 1960.
- The Best we Can Do; an account of the trial of John Bodkin Adams by Sybille Bedord, 1958.
- Hanged—and Innocent? by R. T. Paget, Q.C., M.P. and S. S. Silverman, M.P., 1953.

- Daughters of Cain; the story of eight women executed since Edith Thompson in 1923, 1956.
- United in Crime by H. Montgomery Hyde, 1955.
- The Man on Your Conscience; an investigation of the Evans Murder Trial by Michael Eddowes, 1955.
- The Case of Timothy Evans; An Appeal to Reason by Lord Altrincham and Ian Gilmour, 1956.
- The Case of Timothy John Evans, Supplementary Report by Mr. J. Scott Henderson, Q.C. (Presented by the Secretary of State for the Home Department to Parliament by Command of Her Majesty September, 1953).
- Debates of the Senate (Canada) June 27, 1956, pages 836-54.
- Royal Commission on Capital Punishment 1949-1953 Report.
- Canada Senat Rapport Definitif sur la Peine Capitale page 887, June 28, 1956.
- Report of the Royal Commission on the Revision of the Criminal Code, Reports of Special Committee (Session 1952-1953) On the Bill No. 93 (Letter O of the Senate) "An Act Respecting the Criminal Law" House of Commons December 15, 1953.
- The Homicide Act by Christopher Hollis, 1964.

#### JUSTICE LIBRARY

- Capital Punishment and British Politics by J. B. Christoph, 1962.
- Capital Punishment as a Deterrent and the Alternative by Gerald Gardiner, Q.C., 1956.
- Reflections on Hanging by Arthur Koestler, 1956.
- Mind of the Murderer by W. L. Neustatter, 1957.
- Hanged—and Innocent? by R. T. Paget, Q.C., M.P. and S. S. Silverman, M.P., 1953.
- The Crusade against Capital Punishment in Great Britain by Elizabeth Orman Tuttle, 1961.
- United Nations Publication ST/SOA/SD/9, 62.IV.2 "Capital Punishment", 1962.
- Report of the Joint Committee of the Senate and House of Commons on Capital Punishment, June 27, 1956.
- Royal Commission on Capital Punishment, 1949-1953, (U.K.) Report.
- The Death Penalty by Thorsten Sellin, 1959.
- Report of New Jersey Commission to Study Capital Punishment, October, 1964.
- Special Report on Capital Punishment of the New York Temporary Commission on Revision of the Penal Law and Criminal Code, March, 1965.
- Home Office Studies in the Causes of Delinquency and the Treatment of Offenders 4 Murder, 1961.
- The Death Penalty in America by Hugo Adam Bedau, 1964.

LIBRARY OF PARLIAMENT

*Selected Additions List*

GENERAL

Books and Official Reports

- Duff, Charles. *A handbook on hanging*. London, Putnam, 1961. 191 p.
- Eshelman, B. E. *Death row chaplain*. Englewood Cliffs, N.J., Prentice-Hall, 1962. 252 p.
- Gardiner, Gerald. *Capital punishment as a deterrent, and the alternative*. London, Gollancz, 1956. 95 p.
- Gollancz, Victor. *Capital punishment: the heart of the matter*. London, Gollancz, 1955. 23 p.
- Gowers, Sir E. A. *A life for a life? The problem of capital punishment*. London, Chatto and Windus, 1956. 144 p.
- Joyce, J. A. *Capital punishment: a world view*. New York, Nelson, 1961. 288 p. Bibliography.  
English edition has title: *The right to life: a world view of capital punishment*.
- Joyce, J. A. *The right to life: a world view of capital punishment*. London, Gollancz, 1962. 256 p.  
American edition has title: *Capital punishment: a world view*.
- Koestler, Arthur. *Reflections on hanging*. London, Gollancz, 1956. 193 p.
- McClellan, G. S. *Capital punishment*. New York, Wilson, 1961. 180 p.  
Contents: Death penalty—past and present; Arguments pro and con; Public reactions; What can be done?
- McGehee, E. G. and Hildebrand, W. H. eds. *The death penalty, a literary and historical approach: selected source materials for college research papers*. Boston, Heath, 1964. 160 p.
- Playfair, Giles. *The offenders: society and the atrocious crime*. London, Secker and Warburg, 1957. 278 p.
- Pritchard, J. L. *A history of capital punishment*. New York, Citadel Press, 1960. 230 p.
- St. John-Stevas, Norman. *The right to life*. London, Hodder and Stoughton, 1963. 128 p.
- Tidmarsh, Mannes and others. *Capital punishment: a case for abolition*. London, Sheed and Ward, 1963. 167 p.
- United Nations. Department of Economic and Social Affairs. *Capital punishment*. New York, United Nations, 1962. 76 p.

CANADA

I. Books and Official Reports

- Canada. Laws, statutes, etc. *An Act to amend the Criminal code (capital murder)* 9-10 Elizabeth II, ch. 44, 1960/61. 7 p.



Canada. Parliament. House of Commons. Debates (*Debate on capital punishment.*) *My* 30, 1958, p. 711-718; *Ag* 1, 1958, p. 2977-2983; *Mr* 24, 1959, p. 2198-2204; *Je* 19, 1959, p. 4960-4965; *F* 18, 1960, p. 1187-1223; *F*. 25, 1960, p. 1441-1474; *My* 23, 1961, p. 5220-5248, 5256-5278; *My* 24, 1961, p. 5299-5326; *My* 29, 1961, p. 5506-5565; *Je* 5, 1961, p. 5879-5915; *Je* 6, 1961, p. 5926-5930; *Mr* 24, 1964, p. 1418-1426.

Canada. Parliament. *Joint Committee on Capital and Corporal Punishment and Lotteries*, 1955. *Minutes of proceedings and evidence*. Ottawa, Queen's Printer, 1955. 21 p.

———. 1956. *Reports*. Ottawa, Queen's Printer, 1956. 86 p.

Canada. Parliament. Senate *Standing Committee on Banking and Commerce*, 1960/61. *Proceedings (pts. 11-12)* Ottawa, Queen's Printer, 1961.

Deals with Bill C-192 intituled: An Act to amend the Criminal Code (Capital Murder).

McGrath, W. T. *Should Canada abolish the gallows and the lash?* Winnipeg, Stovel-Advocate Press, 1956. 95 p.

United Church of Canada. Committee on Alternatives to Capital Punishment. *Alternatives to Capital Punishment*. Edmonton, Author, 1960. 14 p.

## 2. Periodical Articles

Abolition of capital punishment—a symposium. *Canadian Bar Review* 32:485-519 May 1954.

Hagarty, W.B. Capital punishment should be retained. *Canadian Bar Journal* 3:42-51 F 1960.

Morton, J.D. Murder most foul. *Canadian Bar Journal* 2:114-120 Ap 1959.

Nicol, Eric. If hangings continue—make them public. *Maclean's* 72:7, 41-42 Ag 1, 1959.

O'Hearn, P.J. Criminal law—capital punishment—corporal punishment—lotteries—Joint Committee reports *Canadian Bar Review* 34:844-855 Ag-S 1956.

Van Steen, Marcus. Is death penalty on the way out? *Saturday Night* 74:16-17, 33-34 Ja 3, 1959.

## GREAT BRITAIN

### 1. Books and Official Reports

Christoph, J.B. *Capital punishment and British politics: the British movement to abolish the death penalty, 1945-1957*. London, Allen and Unwin, 1962. 202p.

Great Britain. Laws, statutes, etc. *An Act to make . . . amendments of the law relating to homicide . . .* 5-6 Elizabeth II, ch. 11, 1957. 11 p.

———. *Murder (Abolition of Death Penalty)*. A (House of Commons) Bill to abolish capital punishment in the case of persons convicted in Great Britain of murder . . . (Bill 42). D 4, 1964 3 p.

Great Britain. Parliament. House of Commons. Debates. (*Debate on Homicide Bill*) N 15, 1956. p. 1144-1259.

———. Debate on Murder. (*Abolition of Death Penalty*) Bill. D 21, 1964. p. 870-1010.

———. House of Lords. Debates. (*Debate on Homicide Bill*) J1 9-10, 1956. p. 561-842.

Great Britain. *Royal Commission on Capital Punishment, 1949-1953. Report* London, H.M.S.O., 1953. 506 p. Cmd. 8932.

Koestler, Arthur and Rolph, C.H. *Hanged by the neck: an exposure of capital punishment in England.* Harmondsworth, Eng., Penguin, 1961. 143 p.

O'Dennell, Bernard. *Should women hang?* London, Allen, 1956. 205 p.

Tuttle, E. A. *The crusade against capital punishment in Great Britain,* Chicago, Quadrangle Books, 1961. 177 p.

## 2. Periodical Articles

Christoph, J.B. Capital punishment and British party responsibility. *Political Science Quarterly* 77:19-35 Mr 1962.

Hughes, Graham. The English Homicide Act of 1957. *Journal of Criminal Law, Criminology and Police Science* 49:521-532 Mr-Apr 1959.

## UNITED STATES

### 1. Books and Official Reports

Bedau, H.A. ed. *The death penalty in America: an anthology.* Garden City, N.Y., Doubleday, 1964. 584 p.

Mattick, H.W. *The unexamined death: an analysis of capital punishment.* Chicago, John Howard Association, 1963. 33 p.

Prettyman, Barrett. *Death and the Supreme Court.* New York, Harcourt, Brace and World, 1961. 311 p.

United States. Congress. House. Committee on the Judiciary, Subcommittee No. 2. *Abolition of Capital Punishment.* Hearing May 25, 1960. Washington, Government Printing Office, 1960. 181 p.

Williams, Brad. *Due process: the fabulous story of criminal lawyer George T. Davis, and his thirty-year struggle against capital punishment.* New York, Morrow, 1960. 336 p.

### 2. Periodical Articles

Ball, J.C. The deterrence concept in criminology and law. *Journal of Criminal Law, Criminology, and Police Science* 46:347-354 S 1955.

Bedau, H.A. The death penalty today. *Christian Century* 76:320-322 Mr 18, 1959.

———. The persistence of the executioner. *Nation* 194:217-220 Mr 10, 1962.

- Cook, F.J. Capital punishment, does it prevent crime? *Nation* 182: 194-198 Mr. 10, 1956.
- Ehrmann, S.R. For whom the chair waits. *Federal Probation* 26:14-25 Mr. 1962.
- McCafferty, J.A. Major trends in the use of capital punishment. *Federal Probation* 25:15-21 S 1961.
- Murdy, R.G. A moderate view of capital punishment. *Federal Probation* 25:11-15 S 1961.
- Oberer, W.E. The death penalty and fair trial. *Nation* 198:342-344 Ap 6, 1964.
- Packer, H.L. Making the punishment fit the crime. *Harvard Law Review* 77:1071-1082 Ap 1964.
- Playfair, Giles. Is the death penalty necessary? *Atlantic* 200:31-35 S 1957.
- Reifsnyder, Richard. Capital crimes in the states. *Journal of Criminal Law, Criminology, and Police Science* 45:690-693 Mr-Apr 1955.
- Savitz, L.D. A study in capital punishment. *Journal of Criminal Law, Criminology, and Police Science* 49:338-341 N-D 1958.
- Sellin, Thorsten. Capital punishment. *Federal Probation* 25:3-11 S 1961.
- . Two myths in the history of capital punishment. *Journal of Criminal Law, Criminology and Police Science* 50:114-117 J1-Ag 1959.

#### OTHER COUNTRIES

##### Periodical Articles

- Capital punishment. *Encyclopedia Britannica*, 1961 edition, v.4, p. 809-812. Includes table listing countries which have abolished the death penalty with dates when it was abolished.
- The death penalty and the USSR. *Bulletin of the International Commission of Jurists* 12:55-64 N 1961.
- Hollis, Christopher. The casuistry of capital punishment. *Dublin Review* 230:33-40 Summer 1956.
- Joyce, J. A. Capital punishment at UN. *Contemporary Review* 201:120-123 Mr 1962.
- Lipson, Leon. Execution: hallmark of "Socialist Legality". *Problems of Communism* 11:21-26 S-O 1962.

#### FOR ADDITIONAL REFERENCES SEE:

*Capital and corporal punishment; a list of books and some recent articles* available in the Library of Parliament, March 15, 1954.

In Canada. Parliament. Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries. *Minutes of proceedings and evidence*, Mr 16, 1954. Appendix "A", p. 190-193.

## BIBLIOTHÈQUE DU PARLEMENT

### Liste d'acquisitions récentes

#### OUVRAGES À CARACTÈRE GÉNÉRAL

##### 1. Livres et rapports officiels

Koestler, Arthur. *Réflexions sur la peine capitale* par Arthur Koestler et Albert Camus. Paris, Calmann-Lévy, 1957. 238 p.

Sommaire:—Réflexions sur la potence, par Arthur Koestler.—Réflexions sur la guillotine, par Albert Camus.—La peine de mort en France, par Jean Bloch-Michel.—Appendice: L'expérience des pays étrangers.

Nations Unies. Département des affaires économiques et sociales. *La peine capitale*. New York, Nations Unies, 1962. 68 p.

Naud, A. L. *Tu ne tueras pas*. Paris, Morgan, 1959. 307p.

##### 2. Articles de revues

Casamayor, Louis. Justice ou assassinat? *Informations catholiques internationales* 80:3-4, 15 sept 1958.

Croteau, Armand. La peine de mort. *Relations* 20:83-84 mars 1960.

Delhayé, P.-H. L'État et la peine de mort. *Maintenant* 1:220-222 juin 1962.

Delhayé, P.-H. L'usage de la peine de mort. *Maintenant* 1:247-248 juillet-août 1962.

Hamelin, A. M. Des discussions et des faits. *Culture* 21:203-207 juin 1960.

Hecquet, Stephen et Torrès, Henry. Pour ou contre la peine de mort. *Réalités* 105:52-58 oct 1954.

La peine de mort; les faits, les lois, les débats. *Informations catholiques internationales* 80:19-26, 15 sept 1958.

Vernet, R. P. Joseph. Le glaive et la croix: position de l'Église devant la peine de mort. *Revue internationale de criminologie et de police technique* 9:62-65 janv-mars 1955.

#### CANADA

##### 1. Rapports officiels

Canada, Lois, statuts, etc. *Loi modifiant le Code criminel (Meurtre qualifié)*. 9-10 Élisabeth II, chap. 44, 1961. 7 p.

Canada. Ministère de la justice. *Comité consultatif sur le service des pardons. Rapport*. Ottawa, Impr. de la Reine, 1956. 170 p. Bibliographie: p. 162-170.

Gérald Fauteux, William B. Commons, J. Alex Edmison et Jos. McCulley, commissaires.

Canada. Parlement. Chambre des Communes. *Comité spécial d'étude sur le bill no 6 intitulé: Loi modifiant le Code criminel (Peine de mort) Procès-verbaux et témoignages*. 9 février au 16 mars 1937. Ottawa, Impr. du Roi, 1937. 71 p.

G. W. McPhee, président.

Canada. Parlement. Chambre des Communes. *Débats. Le Code criminel (Peine capitale)*. 1958: 30 mai, p. 745-752; 1<sup>er</sup> août, p. 3130-3137. 1961: 23 mai, p. 5414-5443; 24 mai, p. 5494-5521; 29 mai, p. 5703-5762; 5 juin, p. 6055, 6087-6124; 6 juin, p. 6136-6143. 1964: 20 févr., p. 29; 24 mars, p. 1469, 1494-1503; 31 mars, p. 1698-1705.

Canada. Parlement. *Comité mixte chargé d'enquêter sur la peine capitale, les punitions corporelles et les loteries. Procès-verbaux et témoignages, 1953/54*. Ottawa, Impr. de la Reine, 1954. 18 fasc. en 1 vol.

———. 1955. Ottawa, Impr. de la Reine, 1955. 21 fasc. en 1 vol. Comprend les Rapports du Comité S. A. Hayden et D. F. Brown, coprésidents.

Canada. Parlement. *Comité mixte chargé d'enquêter sur la peine capitale, les punitions corporelles et les loteries, 1956. Rapports*. Ottawa, Impr. de la Reine, 1956. 88 p.

Comprend les Rapports finals du Comité, d'après les témoignages des sessions de 1953/54 et 1955. S. A. Hayden et D. F. Brown, coprésidents.

Canada. Parlement. Sénat. Comité permanent des banques et du commerce. *Délibérations*. 1960/61. Fasc. 10 et 12.

Loi modifiant le Code criminel (Meurtre qualifié).

## 2. Articles de revues

Boyer, Raymond. La peine capitale en Nouvelle-France. *Cité libre* 14-13-20 mars 1963. Bibliographie.

Poznanska, Alice. La peine capitale. *Cité libre* 12:21-4 août-sept 1961.

## AUTRES PAYS

### Articles de revues

Graven, Jean. *A propos d'un procès retentissant et d'un récent référendum sur la peine de mort*. Revue internationale de criminologie et de police technique 12:1-16 janv-mars 1958.

*Le problème de la peine de mort et de sa réapparition en Suisse*. Revue de criminologie et de police technique. Numéro spécial. Vol. 6, n° 1 janv.-mars 1952.

### POUR RENSEIGNEMENTS ADDITIONNELS, CONSULTER

*Peine capitale et punitions corporelles; liste de livres et de certains articles récents dont dispose la Bibliothèque du Parlement le 15 mars 1954.*

Dans Canada. Parlement. Comité mixte du Sénat et de la Chambre des communes chargé d'enquêter sur la peine capitale, les punitions corporelles et les loteries. *Procès-verbaux et témoignages*, fasc. 4, 16 mars 1954. Appendice «A» p. 44-47.