

Brown Contends That Courts Have Repealed Capital Punishment

By WEBSTER K. NOLAN
United Press International
SAN QUENTIN, Calif. (UPI) — The state of California, which almost every year executes more criminals than any other state in the Union, has sent only one person to the gas chamber this year.

The death of James Abernethy on Jan. 23 was the 500th execution at San Quentin Prison. It happened in a state where an average of eight persons die in the gas chamber annually; and it happened in a prison where 44 men currently live on Death Row.

In early November, Gov. Edmund G. Brown, long an outspoken foe of the death penalty, commented on these unusual statistics.

"It's a situation," he said, "that really means capital punishment has been repealed by the courts. I think I've granted only two commutations this year, and all the rest have been stays by either the Supreme Court, the circuit court or the state courts."

Three days after Brown made his statement, the U.S. Supreme Court granted a stay of execution to Harold A. Spencer, six days before his date with death. Then, within 10 days, the high court followed its action with two more stays, both for men scheduled to die in December.

Grow In Number
During the past year, in a state where the arguments for and against capital punishment often rise to fever pitch, there have been so many stays of executions that prison officials have had bookkeeping problems in maintaining an accurate count.

The situation has created, in effect, a backdoor moratorium on the death penalty, one that

neither California law nor the state constitution provides for. For the past 30 years, state legislators who have opposed capital punishment have attempted to pass laws making the death penalty illegal. The matter has been debated either in committee or on the floors of the senate and the assembly 19 times.

It has failed of passage 19 times.

Routine Continues
Yet, while judges sit in solemn contemplation, listening to the pleas of attorneys for their condemned clients, and while legislators in Sacramento argue about the pros and cons of capital punishment, the dreary routine on death row continues.

—Despite attempts at compromise, such as establishing a moratorium or abolishing capital punishment except in certain cases.

—Despite parades of eminent witnesses, such as Episcopal Bishop James A. Pike, former San Quentin Warden Clinton Duffy, State Attorney General Stanley Mosk.

—Despite lofty rhetoric. Brown: "A barbaric custom, our modern equivalent of the Roman circus, the lurid and emotional atmosphere in which society must render its most awesome judgment — life or death for one of its citizens."

State Sen. Donald L. Grunsky, a vigorous opponent of abolition: "Let's stop worrying so much about these fiends, these killers, these sex maniacs and start worrying about their victims and their families."

—Despite attempts at drama: Assemblyman Lester McMillan proposed this year to televise a scheduled quadruple execution.

At 8:30 every morning, guards march down the double row, awakening the men and handing them their breakfasts. At 10:30, the convicts are permitted to leave their cells for three and a half hours.

They can watch television in

a special death row recreation room; they can play ping pong, checkers, scrabble and other games; or they can visit a library which has been set up for their exclusive use adjacent to their cell block.

The men are allowed to study

in their cells or read newspapers and magazines. A few have taken up painting as a hobby. Others are content to write letters, listen on earphones to the prison radio or talk to convicts in neighboring cells.

At 2 p.m., a combined dinner-supper is served. The dinner consists of the same kind of food served to the other 4,400 inmates at the prison, but the condemned men receive larger portions. The supper, which the convicts are advised to save until evening, is generally comprised of fruit and sandwiches.

The lights never go out on death row. But most of the men retire at about 10 p.m. All that remains in the silence are the 44 sleeping prisoners, a sergeant in charge and two gun rail officers, each armed with a rifle and a sidearm.

In a state where several executions have attracted national and international headlines (Barbara Graham, Burton Abbott, Caryl Chessman and Elizabeth "Ma" Duncan), none of the present condemned convicts has achieved widespread notoriety.

May Claim Attention
But some of the cases may yet come into nationwide prominence:

Paul Kern Imbler, a 45-year-old truck driver who was convicted of the 1961 murder of a Los Angeles grocer during a holdup, received a stay of execution when one of the witnesses at his trial repudiated his own testimony.

— Joseph B. Morse, a 19-year-old San Diego youth, who beat his mother to death with a rock and then fatally bludgeoned

his young sister with a baseball bat. The nature of his crimes and his youth may become controversial factors in future hearings.

— John F. Vlahovich, Donald G. Franklin and Joseph Rosoto, convicted as partners in crime in connection with the 1959 slaying of a southern California bar owner. The men were sentenced as conspirators—not murderers—and the actual killer has never been caught. A primary suspect has been cleared by a voluntary lie detector test, and in addition, serious questions have been raised about the reliability of testimony in their trial.

— Clyde Bates and Manuel Chavez have attracted some attention because they have been on death row for more than six years. They were sentenced to die for throwing a gasoline

bomb into a Los Angeles tavern after the bartender refused to serve them. Six persons were killed.

Double Killers
Several of the men on death row are double killers. Others are rape-slayers and still others killed during the course of a holdup (including Harold Spencer, who murdered a taxi cab driver while robbing him of \$4.81).

The latest effort to revise the capital punishment statutes came this year. The bill, introduced by McMillan, called for a four-year moratorium on the death penalty except in cases involving double killings, kidnap murders, slaying of law enforcement officers and killing in prison.

The assembly passed the measure by a close vote. But

the Senate Governmental Efficiency Committee killed a similar bill. A proposal to put the issue to the voters did not even receive a formal hearing.

Unless Brown decides to call a special session, the issue will not come before the legislature until at least 1965.

On Death Row
Meanwhile, the population on Death Row grows. At San Quentin, 44 men are waiting; and at Corona Institution for Women, California's only other condemned prisoner, double-slayer Iva Kroeger, is waiting.

Whatever their crime, they all know they still will have their day in court. If the past 10 months of court actions have any significance, this means they all have a chance, perhaps a good chance, to escape death in the temporarily out-of-use gas chamber.

Capitol Memo

By Zan Stark



Oregon Faces Fiscal Hangover

SALEM (UPI) — The special session of the legislature enacted the economy moves demanded by the voters' Oct. 15 tax referendum.

The result could be a \$40 million fiscal hangover.

That may be the amount of new revenue needed during the 1965-67 biennium just to maintain the austerity level of state services now in effect.

Even if you eliminate all capital construction for state institutions and higher education that has been planned for, or postponed to the next biennium, revenues may be \$20 million short of what will be needed.

By junking capital construction, chopping basic school aid and trimming general fund agency budgets, the legislature during the special session endorsed the governor's program

to slice the state's \$404 million general fund budget to about \$360 million.

Lawmakers also had to dip into next biennium's income for an additional \$12 million to keep the reduced budget in the black.

The \$12 million, added to \$8 million of one-shot revenues approved during the regular session, means that through book-keeping changes, \$20 million of income that normally would have been collected during the 1965-67 biennium has been moved ahead to help ease the bite this biennium.

This "rob Peter to pay Paul" move simply means the state's income will be \$20 million short next biennium.

Legislative Fiscal Officer Kenneth Bragg estimated the state's revenues next biennium may be about \$370 million.

He estimated a \$411 million general fund budget would be needed just to maintain cut-back services.

This means the 1963 legislature will start off more than \$40 million short of what it needs to help keep the state's books in the black.

Bragg is quick to point out there are many variables that could change this picture. Federal income tax cuts could increase the state's tax revenues. Further delay of building projects could ease spending requirements.

But the inescapable fact remains that normal increases in population at state institutions, schools, colleges and universities will demand more spending.

Lawmakers will be spending much of their time between now and the next legislative session trying to find an answer.

It seems there may be no way to avoid having to raise additional revenue.

Taxpayers are going to have to begin thinking now about such unhappy possibilities as sales and cigarette taxes, and revision of the state's personal income tax laws.

While the Oct. 15 referendum resulted in economy, another tax referendum in quick order could result in fiscal disaster for Oregon.

Scientists Exchange Research Findings

EUGENE — Eleven visiting scientists from Oregon, Washington, Arizona, Hawaii, and Alberta will exchange recent research findings in three panel discussions Dec. 6 and 7 on the University of Oregon campus.

The occasion will be the regional meeting of the Division of Comparative Endocrinology of the American Society of Zoologists to be held at the Erb Memorial Student Union.

The panel participants will discuss neurosecretions and neurohumoral effects in vertebrates, problems in vertebrate endocrinology, and invertebrate hormones and neurohumors.



FAMOUS PRISON — Convict-author Caryl Chessman (top) is shown behind bars of prison cell in this picture taken from a scene in motion picture titled "Justice and Caryl Chessman." Bottom picture shows entrance to the famous California State Prison. (UPI)

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