

On Capital Punishment

Testimony by Rev. Edwin M. Muller

My name is Edwin Muller. I am an ordained minister in The United Methodist Church and a certified prison chaplain. I have worked for the past 37 years in The New York State Prison System and am presently Chair of The Commission on Chaplains for The New York State Council of Churches. In 2001 I retired from The Department of Correctional Services after 35 years of service as a Protestant Chaplain, Ministerial Program Coordinator, and Acting Director of Ministerial and Family Services. In retirement I still continue to work each week with The Exodus Program at Eastern N.Y. Correctional Facility. Most of the men in this program are serving life sentences.

In 1967 I was appointed Protestant Chaplain at Green Haven Prison. There I found a very dangerous world, full of despair, and almost completely cut off from the outside. The inscription over the door of Dante's *Inferno* seemed appropriate, "You who enter here, leave all hope behind." It was the pre-Attica prison world, where inmates often described themselves as being "death struck." This was a jail house term meaning that the quality of life was so bad that it didn't make any difference if you were dead or alive.

Shortly after I became chaplain, the Death House was brought from Sing Sing to Green Haven. At the time there were several inmates at Green Haven who had been in Sing Sing's death house in the 40s, 50s and 60s.

The electric chair arrived at Green Haven under mysterious circumstances. For weeks there were rumors that it had arrived, but this could not be confirmed. I was eventually told that it was "brought in the night," so that no one would know it was there. Some of the inmates from Sing Sing, who were now at Green Haven, had watched men walk past their cell on the way to the chair. Others, who locked in the general population, claimed that on the night of an execution all the lights would go dim when the switch was thrown.

The arrival of the chair created a personal crisis for me. I had always opposed the death penalty and now I found myself a Death Row Chaplain and part of the "drama of

death." I was given a part to play in this drama that I never wanted and so I decided to submit a letter of resignation. Then I read something very helpful in the writings of Dietrich Bonhoeffer, a German Lutheran pastor, who was hanged by Hitler on Christmas Eve in 1944. He expressed his contempt for idealists who were only concerned with "staying clean" and saving their own souls. He believed that there were times when we need to get dirty in order to do the will of God. I pondered this and decided to stay at Green Haven, set long-term goals, and try to work for the things that are life-giving.

In my remarks today I want to give attention to four specific concerns I have relative to capital punishment. I will not go into many areas that have been covered by other testimony. In general I agree completely with a statement made by a former Governor of New York in a book entitled: Religion and The Death Penalty, A Call for Reckoning, (edited by Owens, Carlson, and Elshtain) the governor said this: "Always I have concluded the death penalty is wrong. It lowers us all; it is a surrender to the worst that is in us; it uses power—the official power to kill—it has never elevated a society, never brought back a life, never inspired anything but hate."

The four areas I wish to address are: 1) The Irrational Response of Society, 2) The Distortion of Justice, 3) The Second Death, and, 4) The Symbolic Factor.

I. THE IRRATIONAL RESPONSE OF SOCIETY

When I first became the chaplain to Death Row, I decided to oppose the death penalty in every way I could. On one occasion I was invited to debate the chaplain of The New York City Police Department at Columbia University. It was a tense situation. I remember at one point during the debate, a man stood up in the audience and screamed at me: "I don't care if we kill a few innocent people as long as we get the guilty." Then at the end of the debate my opponent blurted out: "Look, as a clergyman, I know what you are saying and I have to agree with you. But I'm still in favor of capital punishment, and I don't care what the reasons are. If somebody kills somebody, they've got to be killed."

On another occasion, I remember the angry picket lines outside a Broadway theater

when Paul Simon's musical, "The Capeman," opened. The Capeman was Salvador Agron who at the age of 15 caused the death of two other teenagers on a playground in New York. He was sentenced to death and was sent to Sing Sing. Later his sentence was changed to life, and he literally grew up in prison. He educated himself, became a poet and writer, and eventually attended college. I was his pastor during most of the years he was in prison and watched him grow and mature. The theme of Simon's musical was that of redemption and that was what angered the crowd out in front of the theater. Somehow many in society cannot handle our demons becoming human.

II. THE DISTORTION OF JUSTICE

I believe it was Martin Garbus who pointed out in his book, Ready For The Defense, that the higher the stakes, the higher the potential for the miscarriage of justice. In an article in *The Poughkeepsie Journal* in 1995, David Steinberg, a distinguished attorney, wrote the following: "A 1987 study in the Stanford Law Review found that at least 350 persons were mistakenly convicted of potentially capital crimes between 1900 and 1985. Of these 139 were sentenced to death and 23 were executed." He went on to say: "New York has the dubious distinction of leading the nation, with eight innocent people executed. Since 1965, 59 persons in New York have been wrongly convicted of homicide." [...] "the higher the stakes, the higher the potential for the miscarriage of justice."

I remember an inmate at Green Haven who had been convicted of a capital crime in the 50's. His wife, who was on the edge of a breakdown, begged him to plead guilty in order to avoid the electric chair. He did so even though he always insisted that he didn't commit the crime. He attempted to get a new trial in the late 60s when the only witness against him recanted. A new trial was denied. Then armed with a lie detector test which confirmed he didn't commit the crime, he applied to the governor for executive clemency and after two years it was granted. My point in telling this story is that the death penalty can sometimes intimidate people into pleading guilty to crimes they didn't commit.

I also know of another man who spent years on death row and was released into the general population as the result of the Furman decision. Years later he passed a lie detector test and was granted clemency. In his original trial he was offered a six year plea bargain which he refused and then received the death sentence.

Another man who was the chaplain's clerk at Green Haven, originally came to the Sing Sing Death House in 1945. Because the Court of Appeals split four to three in upholding his conviction, Governor Harriman commuted his sentence to life in prison. He spent 25 years trying to get a new trial to prove his innocence. The trial was granted only to be convicted again. When paroled after 26 yrs. 8 months, he spent the next 22 years outside before he died, attempting to find vindication.

III. THE SECOND DEATH

In 2003, the *Capital University Law Review*, reported on a symposium held entitled "Dying Twice: Incarceration on Death Row." In that report the Rev. Joseph Ingle comments: "The system tells them they are going to be killed. They are told when they are going to be killed and how; they have to think about that again and again and again until they are actually executed."

Blaise Pascal in *Pensees*, states: "Death is easier to bear when one does not think of it than the thought of death when one is not in danger." The theologian Carl Michalson called this "the second death." I recently asked a man on Death Row at Dannemora if he thinks about being executed. His response was: "There isn't a day or an hour when you don't think about it. You wake up in the night and it's all you think about." This second death can drive a person insane and I have seen this happen in solitary units in my work as a chaplain.

Again, in the *Capital University Law Review*, Michael B. Mushlin writes: "Dying twice is not just a report about conditions on death row. The conditions described in the report about death row in New York are almost identical to conditions in 'supermax' facilities used to house thousands of inmates not under a death sentence. Between 1998 and 2001, New York developed not only

the death row described in this report; it also built ten 'supermax' units. As in death row, these maximum security units lock people in their cells for twenty three hours every day.....the recreation facility, resembles a dog kennel with row after row of barred open 'recreation' cages, each of which holds one inmate." He goes on to state there are significant amounts of mental illness and some inmates are not scheduled to be released from the unit until 2014. And in the same report, Rev. Ingle adds: "I have been to every death row in the South. There is not one that is as bad as what is going on up at Dannemora. Not a single one."

IV. THE SYMBOLIC FACTOR

I firmly believe that the death penalty can only be fully understood when we consider its symbolic power. Every society lives by its symbols and they point the way to what we consider to be both good and evil.

When the Berlin wall came down and Russia was now our friend and no longer the "evil empire," we became a society in search of new demons. Russia allowed us to create the military industrial complex and we built enough atomic weapons to blow the world up thousands of times.

In the 80s and 90s with our old demons gone, we became a society in search of new demons, and we found one in the common criminal and especially the violent offender. We created new labels, lengthened sentences, re-established death penalties, denied parole and launched the largest prison construction program the country has ever known. Now that we no longer see the capital offender as a human being, what was considered cruel and unusual punishment in a past generation now has become cruel and usual punishment in our present day.

CONCLUSION

Justice Blackmun termed capital punishment to be "the machinery of death." Here in New York we have a unique opportunity to dismantle this machinery. It is not life-giving for the state or its citizens. As Sister Helen Prejean points out in Dead Man Walking, it doesn't benefit

anybody, especially the families of victims. At the end of her first chapter she refers to the writings of Albert Camus and his Reflections on the Guillotine as a moral compass on the issue of capital punishment. Camus states: “To assert, in any case, that a man must be absolutely cut off from society because he is absolutely evil amounts to saying that society is absolutely good, and no one in his right mind will believe this today.”