Subject: Abolition of the Death Penalty in Rhode Island

Compiled October 11, 2000.

In January 1838, a report entitled, "Report of the Committee On the Abolishment of Capital Punishments" was made to the General Assembly Committee to Revise the Penal Code. The recommendation was to abolish capital punishment. On December 31, 1843, Amasa Sprague, who was the brother of the first RI Governor named William Sprague, and the father of the second Governor (later U.S. Representative and U.S. Senator) William Sprague, was murdered. In January 1844, the General Assembly had abolished capital punishment for all crimes except murder and arson. Amasa Sprague was one of the wealthiest and most powerful industrialists in the state. John, Nicholas and William Gordon were indicted for the murder in March, 1844. Nicholas Gordon had been involved in a dispute with Amasa Sprague over the renewal of Gordon's liquor license.

The Gordons, who were Irish Catholics, received the support of the state labor movement, which consisted primarily of Irish and Italian immigrants. At the trial in 1844, Nicholas and William Gordon were found to have ironclad alibis, but considerable circumstantial evidence was presented against John Gordon. John Gordon was convicted of the murder in 1844 and was sentenced to death by hanging, to be carried out on February 14, 1845. The labor movement had seen the trial of the Gordons as part of the struggle with the commercially and politically powerful industrialists represented by the Sprague family. John Gordon's conviction was appealed to the House of Representatives, which denied it by a vote of 36 to 27. It was then appealed to Governor James Fenner, who reviewed the conviction but refused to intercede.

John Gordon was executed for the murder of Amasa Sprague on February 14, 1845. This was the last execution in Rhode Island. On January 23, 1852, after seven years of discussion and debate regarding the merits of Gordon's conviction and of capital punishment, the Senate Committee on Education issued a report on the history and merits of capital punishment. This report contains literary quotations on the death penalty and contemporary U.S. and European practices regarding capital punishment. On February 11, 1852, the RI General Assembly abolished capital punishment entirely. In 1872, the General Assembly enacted the penalty of death by hanging for murder committed while under sentence of life imprisonment.

In a special session held on June 26, 1973, the General Assembly enacted Public Law Chapter 280, which provided for the penalty of death by lethal gas for murders committed by persons while under confinement in the state correctional institutions. In 1979, the Rhode Island Supreme Court issued the opinion that the mandatory death sentence provisions of 1973 Chapter 280 (RI General Laws 11-23-2) violated the cruel and unusual punishment prohibitions of the 8th amendment to the U.S. Constitution (State v. Anthony, 398 A.2d 1157 and State v. Cline, 397 A.2d 1309). On May 9, 1984, the General Assembly enacted Public Law Chapter 221, which removed the mandatory death sentence language from RI General Law section 11-23-2. There have been many pieces of legislation introduced since 1984 to reinstate the death penalty for specific crimes, but nothing has been passed into law.

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REPORT OF THE COMMITTEE
ON THE ABOLISHMENT OF
CAPITAL PUNISHMENTS.

TO THE HONORABLE THE GENERAL ASSEMBLY:

JANUARY SESSION, A. D. 1838.

Respectfully Represent,

That it will appear by the Report of said Committee, which accompanies the bill presented by them, that they were divided equally on the abolition of capital punishments, and that it was agreed to report a bill that should not provide for their infliction in any case, that the point might be brought directly before the Legislature. In the report before referred to, the committee have given their reasons for many of the alterations which they propose, in the laws now in force, but it does not and could not rightfully contain a single word for or against the abolition of capital punishment. Hence, the subscribers, in this separate report, propose to lay before the Assembly some of the reasons why they think such punishments ought to be abolished in this State.

The severity of such punishments favors the escape of the guilty. There are many persons in our community who will not complain or prosecute for a crime punishable with death. No man willingly takes a part in a capital trial against the prisoner. Many men summoned as jurors in such cases refuse to appear, and some who do appear, resort to unwarrantable expedients to create a bias in their minds for or against the prisoner, that they may be challenged for cause. When a jury is empanelled in such a case, how often is it, that having reference to the consequences of a verdict of guilty, they adopt a bare, naked possibility of innocence as the legal reasonable doubt of guilt, and so acquit the prisoner. But if a verdict of guilty be rendered, and judgment of death passed, it is the settled practice to postpone the day of execution until after one, if not two sessions of the Assembly, that the convict may petition for pardon or commutation of sentence. How readily such petitions are granted, the records of the Assembly will show. When the life of any individual rests solely on the votes of the members of this Assembly, they can tell with what reluctance they pronounce the irrevocable doom, and how readily and gladly they seize upon every circumstance which seems to justify them in showing mercy. He who proposes to commit a capital crime is as well aware of these circumstances as we are. They enter into his calculation of chances of escape. He takes every means to escape detection. If detected he leans on the mercy of a jury, and if convicted relies with almost perfect security on the exercise of the pardoning power in his favor. The severity of the punishment which the law has affixed to his crime, is outweighed in his mind by the greater chances of escape from that punishment which that very severity creates. It is not the severity, but the certainty of punishment which deters men from the commission of crime.

Such punishments are unequal. The crimes punishable with death by our law are murder, rape, robbery, arson, burglary and petit treason. Some of these remotely affect property, some endanger life, and some are the destruction of life. Yet the same punishment awaits them all. He who willfully and maliciously poisons a whole family or assassinates his father, and he who raises a window in a dwelling-house in the night and puts in a finger with intent to steal, though he steal nothing, are hung on the same gallows. They are also unequal as regards the criminals themselves. Can it be pretended that he to whom life has become a burden, who has outlived friends and connections, and even hope itself, suffers equally with him who is surrounded with every thing to make life desirable? Does he who looks on death as the end of his existence, or as the end of all suffering, and he who has learned from reason and revelation a future existence of rewards and punishments, suffer equally? But the inequality of such punishments is conclusively shown from the fact, that they are frequently remitted, from the peculiar circumstances that attend either the crime or the criminal, or both. Nothing but a sense of their injustice, in certain cases, can justify the granting of a pardon, or even commutation of punishment.

Such punishments are considered peculiarly appropriate for murder and petit treason. This we apprehend arises from a mistaken idea of the design of punishments. Society has no revenge to seek against its delinquent members. The State deals out no vengeance to those who offend against its laws. Penal laws always look to the future.
The State requires obedience to its laws by the sanction of punishments for the good of the whole. The end in view is the prevention of crime. The sole object of punishment is to deter others from offending against the laws. Admit that death is the appropriate and the only appropriate punishment for murder; that life should be taken for life, and the law of retaliation ought to be re-established. An eye for an eye, and a tooth for a tooth, would constitute our whole penal code.

Capital punishments ought to be abolished, because they are irremediable. By false witnesses, and by wrong conclusions from testimony that is true, the innocent have been oftentimes condemned; nor will this cease to be the case, so long as man possesses such limited, finite means of ascertaining truth. Until he can unerringly decide, he should inflict no punishment that is in its nature irremediable.

Murder, with which we include petit treason, is readily admitted to be the most heinous offence that can be committed. All savage as well as civilized nations have so considered it. It is placed at the head of all penal codes, because it inflicts an irreparable injury on man. The life of a man is taken. Society is deprived of his services. His wife, his children, his parents, are deprived of a companion, a guide, and a support. The image of the Almighty is defaced, and the scene of his probation closed, by a fellow-being. Capital punishment produces the same results, and inflicts the same irreparable injury. The services of the most depraved may be useful to society. The most abandoned profligate cannot alienate the affections of a wife—a mother's heart still owns the felon for a son—a child regards him with reverence as a father. He stands the image of his God; though debased and dishonored, the object of the mercy of the indulgent Father of all men.

But it will be said, in the one case the evil is maliciously inflicted, in the other necessarily for the safety of society. We deny that necessity. We ask, we demand that it be proved. He who claims the right thus to trample under foot the holy ties of nature—to send unbidden his fellow-man to the presence of his Maker—to arraign the long-suffering of Heaven—and to impugn the justice of God, ought to be ready to show that he acts from necessity. Have capital punishments been demonstrated to be necessary? If it could be shown that they had eradicated crime, that would not prove them necessary. Other means might have produced the same result. It will not follow that imprisonment or some other punishment would not also have done it. This result not only would not prove the necessity of capital punishments, it would not even raise a probability of such a necessity. But such has not been the result. They have formed a part of the penal code of every nation under heaven, yet the golden age has existed only in the imagination of poets.

Crimes have ever existed, and history bears witness that in those nations whose codes have been the most bloody, there, crimes have more increased and multiplied. They have been fully tried and found insufficient to produce the desired result. When once a milder system has been fairly and fully tried, and found equally insufficient, then may the advocates of capital punishments contend that they have proved such punishments to be probably necessary.

The strongest argument against the abolition of such punishment, and the one most frequently resorted to, is, that it is a great innovation in criminal jurisprudence. To this it might be answered, if those punishments have been in use ever since society has been formed, and have not been found sufficient to repress crime, it is time some other system was tried. What possible evil can result from trying the experiment in this State? It will always be in the power of the General Assembly to repeal it, and it ill becomes a Rhode-Island man to yield to an argument of innovation. Up to the settlement of this colony, civil government had ever claimed the right to regulate the religious faith of its citizens. Only a single voice had been raised against it, in the whole human family. That was the voice of the founder of this State. The cry of innovation was raised against him. Dreadful scenes of anarchy and confusion, irreligion and immorality, were conjured up as the inevitable consequences of religious liberty. Yet, being convinced that "a most flourishing civil state may stand and best be maintained with a full liberty in religious concerns," against the concurrent practice of the whole world, the experiment was commenced. Two hundred years have passed and the experiment has succeeded—gloriously succeeded.

We appeal now to the Legislature of Rhode-Island to try another experiment—one which is approved by the philosophy of a Franklin, the philanthropy of a Rush, and the research of a Livingston. By adopting it before any of her sister States, Rhode-Island will show that she still possesses that independence of feeling, sentiment, and action, which characterized her first settlers, and will regain that proud pre-eminence among them, which she only lost by their imitating her example.

W. R. STAPLES.

SAMUEL Y. ATWELL.
THE HISTORY
OF THE STATE OF
RHODE ISLAND
AND
PROVIDENCE PLANTATIONS
BIOGRAPHICAL

NEW YORK
THE AMERICAN HISTORICAL SOCIETY, INC.
1920
of William (4) of Cranston, miller by trade, and saw mill. Considered in Providence a man of standing. His personal appearance was that of a robust man, five feet ten inches high, weighing perhaps one hundred and ninety pounds; light complexion, with dark brown hair. When his mind was relieved from personal appearance, he was a robust man, five feet ten inches high, weighing perhaps one hundred and ninety pounds; light complexion, with dark brown hair. When his mind was relieved from his cares, he seemed to enjoy himself best in the society of the common people in the humble walks of life.}

Amasa Sprague was murdered by an Irishman, John Gordon, December 31, 1843. He was returning from the print works when he was shot by Gordon in the arm, and then clubbed to death with a gun. Gordon's brother had been refused a license to sell intoxicating liquor, on the remonstrance of Mr. Sprague. The murderer was executed at Providence, after trial and conviction. Amasa Sprague married Fanny Morgan, of Groton, Conn., and they were the parents of the following children: 1. Mary Ann, who married (first) John E. Nichols; (second) Frank W. Latham. 2. Almira, who married Hon. Thomas A. Doyle, mayor of Providence. 3. Amasa, mentioned below. 4. William, mentioned below.

(VII) Governor William (5) Sprague, son of William (4) and Annie (Potter) Sprague, and brother of Amasa Sprague, above-mentioned, was born in Cranston, R.I., November 3, 1799. His education was limited to that furnished by the public schools of the day. He was, however, gifted with great mechanical genius, and when but a boy succeeded, after all other weavers in his father's employ had failed, in making cloth in the new Gilmore looms. He assisted in the building of the mill at Natick in 1821, and on the death of his father united with his brother under the old firm name of A. & W. Sprague. The business was pushed forward rapidly, and on July 6, 1828, the water privilege on the river in Coventry was purchased, a new dam built, and a stone mill erected with many new houses. In 1831 another mill was erected with two hundred and fifty looms, and more houses in what is now called Quindrick. In 1832 the firm added another small cotton mill to its holdings, between Centerville and River Point village, and there erected a new dam and a large cotton mill operating six hundred and twelve looms. On the west slope of the hill of the mills a large village of tenement houses was built for operatives and named Arctic. Mr. Sprague realized the necessity of good methods of transportation and assisted in procuring the charter of the Hartford, Providence & Fishkill Railroad Company, and his influence was successfully exerted to win the financial support of the city of Providence. He was able to have the line of the road pass near all the mills of his firm. While the railroad was building, the firm bought a water privilege on the Shetucket river between Willimantic and Norwich, Conn., and erected the largest cotton mill then existing in New England.

Early in life Mr. Sprague was an influence in politics. He was elected a representative to the General Assembly from Warwick, and took his seat, May 11, 1829; was re-elected in 1830 and in 1831. He had become a member of the Masonic order shortly after coming of age, but at the time of the anti-Masonic agitation withdrew from the fraternity and was one of its bitterest enemies. In the Assembly he succeeded after a stormy fight in having most of the Masonic charters of the State abrogated. He was elected speaker of the House in 1832, 1833, and 1834, and was defeated for
PUBLIC LAWS
OF THE
STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS
PASSED AT THE
GENERAL ASSEMBLY
AT THE
Special September Session, A. D. 1972
JANUARY SESSION, A. D., 1973
Special June Session, A. D., 1973

DEPARTMENT OF STATE
OFFICE OF THE SECRETARY OF STATE

PROVIDENCE
THE OXFORD PRESS, INC.
1973
AN ACT Relating to the Death Penalty.

It is enacted by the General Assembly as follows:

Section 1. Section 11-23-2 of the general laws in chapter 11-23 entitled “Homicide” is hereby amended to read as follows:

"11-23-2. PENALTIES FOR MURDER. — Every person guilty of murder in the first degree, unless he shall then be under sentence of imprisonment for life, except as hereinafter provided, shall be imprisoned for life. Every person guilty of murder in the second degree shall be imprisoned for not less than ten (10) years and may be imprisoned for life. Every person who shall commit murder while under sentence of imprisonment for life committed to confinement to the adult correctional institutions or the state reformatory for women shall be punished by death. The punishment of death shall be inflicted by the administration of a lethal gas.

Sec. 2. This act shall take effect upon passage.
STATE v. William H. ANTHONY.
Supreme Court of Rhode Island.
121 R.I. 954; 398 A.2d 1157; 1979 R.I. LEXIS 2285
No. 78-30-C.A.
March 16, 1979.

Counsel
Dennis J. Roberts II, Atty. Gen., Nancy Marks Rahmes, John S.
William F. Reilly, Public Defender, Barbara Hurst, Chief Appellate

Opinion

ORDER

This is an appeal in which a number of questions were certified to us pursuant to the provisions of
G.L. 1956 (1969 Reenactment) § 12-22-10. On February 19, 1979, we answered one of the questions
by ruling that the mandatory death provisions of § 11-23-2 violate the eighth amendment's prohibition
against "cruel and unusual punishments." Thereafter, we denied the defendant's motion that this case
be immediately remanded to the Superior Court.

The defendant has now filed a motion asking that we reconsider this denial, and the Attorney General
has joined in this request. Consequently, we shall treat the reconsideration motion, which is signed by
both the defense counsel and the Attorney General, as a stipulation that the certification was
premature.

Accordingly, it is hereby ordered that the case be remanded to the Superior Court for further
proceedings, including the imposition of sentence upon the defendant.
allowed to consider as a mitigating factor "any aspect of a defendant's character or record and any of
the circumstances of the offense that the defendant proffers as a basis for a sentence less than
death."

Thus, a review of the Supreme Court's pronouncements makes it clear that a death sentence
imposed by a sentencer who is not statutorily authorized to consider mitigating circumstances is a
nullity. The identical faults that existed in the statutes declared unconstitutional in Woodson and
Roberts are present in § 11-23-2. There is no provision for the trial justice, in imposing sentence, to
consider any mitigating factors whatsoever. It is obvious that the death-penalty portion of § 11-23-2 is
the same type as has been stricken down by the Supreme Court, and thus it cannot stand.

The state, apparently anticipating the patent unconstitutionality of § 11-23-2, asks that we construe
this legislation to meet the standards enunciated in the opinions of the Supreme Court that have
considered the various facets of the death-penalty issue. Actually, we see nothing to construe. The
General Assembly has said in clear and concise language that the death penalty will be imposed on
any person who commits murder "while committed to confinement to the adult correctional institutions
or the state reformatory for women* * *". The task which the state wishes us to perform is one that
comes within the exclusive purview of the legislative branch of our state government. Parenthetically,
it should be noted that on January 25, 1979, Representatives Zygmunt J. Friedemann
and Andrew E. McConnell introduced a bill (79-H 5360) entitled "An Act Relating to Capital
Punishment." The bill was referred to the House Committee on Judiciary. An explanation of the bill's
contents prepared by the Legislative Council indicates: "This act would provide for the imposition of
the death penalty in certain circumstances and establishes a procedure for the review of such
sentencing."

In conclusion, in response to those pertinent questions certified to us in State v. William H. Anthony,
we hold that the present death-penalty proviso of § 11-23-21 amounts to cruel and unusual
punishment and thus violates the Eighth Amendment to the United States Constituion. We shall defer
any responses to the other facets of the certification until some future time. The conclusion which we
have reached causes us to vacate the sentence of death imposed upon Robert Cline and remand his
case to the Superior Court with a direction to impose upon him forthwith the lifetime sentence called
for by § 11-23-2. After the imposition of sentence, the papers will be remitted to this court so that other
facets of his appeal can be considered.

Mr. Chief Justice Bevilacqua did not participate.

Footnotes

1 General Laws 1956 (1969 Reenactment) § 11-23-2 in its entirely reads:

"Every person guilty of murder in the first degree, except as hereinafter provided, shall be
imprisoned for life. Every person guilty of murder in the second degree shall be imprisoned for not
less than ten (10) years and may be imprisoned for life. Every person who shall commit murder
while committed to confinement to the adult correctional institutions or the state reformatory for
women shall be punished by death. The punishment of death shall be inflicted by the
administration of a lethal gas."
SECTION 3. This act shall take effect on July 1, 1984.
AN ACT PROVIDING FOR LIFE IMPRISONMENT WITHOUT PAROLE FOR FIRST DEGREE MURDER

It is enacted by the General Assembly as follows:

SECTION 1. Section 11-23-2 of the General Laws in Chapter 11-23 entitled "Homicide" is hereby amended to read as follows:

11-23-2. Penalties for murder. — Every person guilty of murder in the first degree, except as hereinafter provided, shall be imprisoned for life. Every person guilty of murder in the first degree 1) committed intentionally while such person was engaged in the commission of another capital offense or other felony for which life imprisonment may be imposed; or 2) committed in a manner creating a great risk of death to more than one person by means of a weapon or device or substance which would normally be hazardous to the life of more than one person; or 3) committed at the direction of another person in return for money or any other thing of monetary value from that person; or 4) committed in a manner involving torture or an aggravated battery to the victim; or 5) committed against any member of the judiciary, law enforcement officer, corrections employee, or fireman arising from the lawful performance of his official duties; or 6) committed by a person who at the time of the murder was committed to confinement in the adult correctional institutions or the state reformatory for women upon conviction of a felony, shall be imprisoned for life and if ordered by the court pursuant to chapter 12-19.2 of the general laws such person shall not be eligible for parole from said imprisonment. Every person guilty of murder in the second degree shall be imprisoned for not less than ten (10) years and may be imprisoned for life. Every person who shall commit murder while committed to confinement to the adult correctional institutions or the state reformatory for women shall be punished by death. The punishment of death shall be inflicted by the administration of a lethal gas.

SECTION 2. Title 12 of the General Laws entitled "Criminal Procedure" is hereby amended by adding thereto the following chapter:

CHAPTER 19.2
SENTENCING TO LIFE IMPRISONMENT WITHOUT PAROLE

12-19.2-1. Sentencing procedures — Trial by jury: — In all cases tried by a jury in which the penalty of life imprisonment without parole may be imposed pursuant to section 11-23-2 of the general laws and in which the attorney general has recommended to the court in writing within twenty (20) days of the date of the arraignment that such a sentence be imposed, the court shall, upon return of a verdict of guilty of murder in the first degree by the jury, instruct the jury to determine whether it has been proven beyond a reasonable doubt that the murder committed by the defendant involved one of the circumstances enumerated in section 11-23-2 of the general laws as the basis for imposition of a sentence of life imprisonment without parole. If after deliberation the jury finds that one or more of the enumerated circumstances was present, it shall state in writing, signed by the foreman of the jury, which such circumstance or circumstances it found beyond a reasonable doubt. Upon return of an affirmative verdict, the court shall conduct a presentence hearing. At said hearing, the court shall permit the attorney general and the defense to present additional evidence relevant to a determination of the sentence to be imposed as provided for in section 12-19.2-4. If after hearing evidence and all mitigating factors, the court finds that life imprisonment imposed on appeal be proceedings before the trial court of sentencing.

12-19.2-2. Sentencing hearing. — In all cases trial of life imprisonment within twenty (20) days of the sentence be imposed; the court in the first degree, beyond a reasonable doubt of one of the circumstances basis for imposition of a sentence that one or more of the record which suitable doubt. Upon an anence hearing, the court to present evidence to be imposed as p any argument relating to the factors, the court shall imprisonment without parole appeal because of error before the trial court whih.

12-19.2-3. Sentencing procedures — A defendant pleading guilty to life imprisonment with in writing within twenty (20) days of the sentence be imposed, the court of section 12-19.2-4. If after absence of aggravation sentence the defendant imprisonment. If the trial hearing, the sentence hearing, the record shall pertain only

12-19.2-4. Consideration of the presentence hearing, the circumstances enumerated in section a sentence of life to second degree murder determined by the evidence regarding the nature, character, record,
the sentencing determination. After hearing evidence and argument regarding such aggravating and mitigating circumstances relating to the offense and the defendant, the court shall, in its discretion, sentence the defendant to life imprisonment without parole or to life imprisonment. The court shall state on the record its reasons for imposing such sentence.

12-19.2-5. Review of life sentence without parole. — The defendant shall have the right to appeal a sentence of life imprisonment without parole to the supreme court of the state in accordance with the applicable rules of court. In considering an appeal of such a sentence, the court, after review of the transcript of the proceedings below, may in its discretion, ratify the imposition of the sentence of life imprisonment without parole or may reduce the sentence to life imprisonment.

SECTION 3. This act shall take effect on July 1, 1984.

AN ACT RELATING TO HEALTH CLUBS

It is enacted by the General Assembly as follows:

SECTION 1. Sections 5-50-2, 5-50-3 and 5-50-4 of the General Laws in Chapter 5-50 entitled "Health Clubs" are hereby amended to read as follows:

5-50-2. Right of cancellation. — Every contract for health club services shall provide that such contract may be cancelled within twenty-two (22) ten (10) business days after the date of receipt by the buyer of a copy of the contract by written notice mailed to the seller at the address specified in the contract. Cancellation shall be without liability on the part of the buyer, and the buyer shall be entitled to a refund of the entire consideration paid for the contract. The right of cancellation shall not be affected by the terms of the contract and may not be waivered or otherwise surrendered. Said contract for health club services shall also contain a clause providing that (a) if by reason of relocation further than twenty-five (25) miles from a health club facility operated by the seller, the buyer shall be relieved from any further obligation under the contract not then due and owing, and (b) if the person receiving the benefits of such contract dies or becomes disabled during the membership term following the date of such contract the buyer or his estate shall be relieved of any further obligation for payment under the contract. In the case of disability the health club may require that a doctor's certificate be submitted as verification.

5-50-3. Notice to buyer. — A copy of every health club contract shall be delivered to the buyer at the time the contract is signed. All health club contracts must be in writing if the buyer actually signs them.

(Insert)

You may also cancel this contract if the buyer actually signs it. If the buyer actual signs it, the buyer shall be entitled to a refund of the entire consideration paid for the contract. The buyer shall have a duration for a period of

SECTION 2. This act ...