

ASK STATE TO CEASE KILLING BY LAW

Constitutional Convention Committee Hears Death Penalty Assailed as "Barbarous."

SCHIFF CITES FRANK CASE

His Letter Read to Law Revisers— Rabbi Declares One Rosenthal Gunman Was Innocent.

Special to The New York Times.

ALBANY, June 16.—The Bill of Rights Committee of the Constitutional Convention has under consideration an invitation to witness an execution at Sing Sing. The invitation was extended by Warden Thomas Mott Osborne at a hearing this afternoon on the proposal of Charles H. Betts, a delegate from Wayne County, for an amendment to the Constitution providing for the abolition of capital punishment.

"Will you come down to Sing Sing and inspect the machinery used in inflicting the death penalty?" asked Warden Osborne, addressing himself to Louis Marshall, Chairman of the committee. "It would give you a clearer idea of the horror of this thing that we would like to see abolished."

Chairman Marshall said that he had received many letters from Sing Sing urging that the committee act favorably on the proposals pending before the convention to abolish the death penalty.

The hearing before the committee was replete with sensations. Rabbi Jacob Goldstein, the Jewish Chaplain of Sing Sing and the Tombs, told the committee that one of the gunmen sent to their death in connection with the murder of Herman Rosenthal was a victim of injustice. He added that practical admission of the fact that this particular gunman was not at the scene of the murder when it was committed was contained in a communication from the District Attorney who prosecuted the case, to the Governor. The District Attorney was Mr. Whitman, now Governor of the State of New York.

After the hearing, Rabbi Goldstein was asked to tell who the innocent gunman was.

"Better leave the matter as it stands," was his reply. "One of the men was innocent. That is all I care to say at present."

Dago Frank Cirofici always insisted that he did not participate in the murder, asserting that he was in Harlem at the time it was committed.

Mr. Schiff Cites the Frank Case.

Rabbi Goldstein before he spoke at the hearing handed a letter to Chairman Marshall which he had received from Jacob H. Schiff, in which the case of Leo M. Frank was advanced as a convincing argument in support of the contention that the death penalty should be abolished. Mr. Marshall read the letter to the committee. Here it is:

Rev. Jacob Goldstein, 175 Bay Twenty-ninth Street, Brooklyn, N. Y.

My Dear Sir—I am in receipt of your letter of yesterday in which you advise me of a hearing to be held in Albany next Wednesday before the Bill of Rights Committee of the Constitutional Convention on a proposed amendment to the Constitution abolishing capital punishment.

I am pleased to learn that the active interest of C. H. Betts, proprietor of The Lyons Republican and President of the New York State Press Association, himself a delegate to the Constitutional Convention, has been enlisted and that Mr. Betts is going to appear, with others, to argue in favor of this amendment.

Much to my regret I cannot arrange to go to Albany next Wednesday, but I earnestly hope the conviction may be borne upon the Bill of Rights Committee that the proposed amendment is one which deserves the committee's support.

If there were no other good and practicable reasons why capital punishment should be abolished, such as the fact that in countries and in States where this has been done the commitment of murder has actually decreased, the experience in the case of Leo Frank of Atlanta, Ga., furnishes the strongest argument in favor of the abolishment of capital punishment.

It is not known at this writing whether or not the Governor of Georgia has finally commuted the sentence of Leo Frank, but the fact remains that there is a man believed by many to be innocent of the crime

charged against him upon whom, in a trial by jury, capital punishment was pronounced, but who actually has been sentenced through popular passion which at the time of the trial ran riot. Similar convictions may arise anywhere, and it is too terrible to think that even a single human being should thus be ignobly put to death when there is a possibility of his innocence.

Trusting that Mr. Betts can see his way clear to place my views as above expressed before the Bill of Rights Committee, I am,

Yours very truly,
JACOB H. SCHIFF.

Rabbi Goldstein's Argument.

Rabbi Goldstein, who was the first speaker at the hearing, said that the death penalty on more than one instance to his knowledge had involved injustice and that it did not act as a deterrent against the commission of murder.

"I was present when a lad was put to death of whose innocence I am practically convinced," said the rabbi. "I took part officially in the execution of two lads who were more sinned against than sinning. The innocence of the first was practically admitted by the District Attorney in a quasi-official communication where he said that the lad was not present at the time of the shooting."

"Yes, but was it not a possibility that he might have been party to a conspiracy which resulted in murder?" Rabbi Goldstein was asked.

"He was convicted of that offense," said the rabbi. "He was condemned on the ground that his hand held the pistol which overawed the chauffeur."

Rabbi Goldstein said that it was ridiculous to assert that the killing of a murderer serves as a deterrent to murder. He said that executions had the effect of making heroes of slayers.

"The night the gunmen died at Sing Sing," said the Chaplain, "the youngsters of the east side turned out and came to Sing Sing until it became necessary for the Warden to place armed keepers on guard outside the prison walls. They were there for the purpose of being able to say afterward for their own glorification that they stood beyond the walls when their heroes were put to death."

"It is a common experience that you find no cowards either in the halter of the gallows or in the electric chair. No case has ever come under my observation where a victim of the death penalty has not met his doom with fortitude. This makes heroes of them. It makes the men who die in expiation of their crimes against humanity akin to the heroes and martyrs who die for humanity. Death is too great a thing to be vulgarized through capital punishment. We should not demean the dignity of death by using it as a penalty for a heinous crime."

Osborne's Changed View.

Warden Osborne said that he was in favor of the death penalty when he was "young and sentimental."

"Now, I have to deal with this question in a practical manner," he continued. "I come to you from the dread habitation of twenty-five men and one woman waiting to be put to death, and I am expected to see that they are put to death at the time the courts have fixed. You will scarcely find a human being who has anything to do with the carrying out of the death penalty who is not unalterably opposed to the death penalty, so I am no exception."

Warden Osborne said that his experience at Sing Sing had convinced him that nothing could act as a deterrent of murder in the case of men to whom it was a mere casual incident of a day's work.

"There is a man down at Sing Sing," he said, "who has told his pals that he likes me so well that he would do anything for me within reason. 'I would croak anybody for the Warden when I get out,' I have been reliably informed that he has told his intimate friends. I talked to one man the other day who confided to me that there wasn't any reason in the world why he should have escaped the same medicine that was handed to the gunmen, for he, as he told me, had killed two men himself."

"Another man, now in prison, asserted that he would commit murder when he got out. It is hard for us law-abiding citizens to think in the terms of such men."

Warden Osborne asserted that the present system caused the grossest injustice.

"In murder cases," he said, "you will find as often as not that the less guilty men go to the chair and the more guilty take a minor plea and escape. We make the mistake of trying to balance a debit in society's ledger with another debit. What we should do is to establish a credit by building a man up so that society may get from him what reparation is possible in such a case."

"If there was any good in an execution, would society go down into the dark corner of a cellar when the law puts a man to death?" asked Warden Osborne, a little further on in his ar-

gument. "Wouldn't it be done in the open? The conscience of society accuses society of wrongdoing every time a legal murder is committed—a crime against our religion. Capital punishment is out of tune with our religion, out of tune with our civilization."

Mr. Osborne was asked if he would substitute life imprisonment for the death penalty. He said he felt certain an indeterminate sentence would be better from every point of view, but life imprisonment would be a stronger deterrent of murder than capital punishment.

"If that is so, why do so many murderers take the plea that saves them from the chair but sends them to imprisonment for life?" asked William M. K. Olcott of New York, who has been both District Attorney and Judge of General Sessions in New York County.

"When I say a greater deterrent, I have in view the fact that it would be easier to get a conviction if life imprisonment was substituted," said Mr. Osborne. "It is not the severity of punishment, but the certainty, in my opinion, which acts as a deterrent."

"Barbarous," Says Cockran.

W. Bourke Cockran, another speaker, said that Warden Osborne's admission that he was the custodian of twenty-five men and one woman doomed to death was degrading to the State.

"In the worst state of society there never was such a spectacle," said Mr. Cockran. "Think of it, twenty-five human beings herded together, fed and pampered by the State, in order that they may be in fine physical condition on the day set aside for butchering them by the State. It is barbarity without a refining touch."

"The State cannot create life and what the State cannot give, the State cannot in justice take away. The supreme law of life is the preservation of life. The State is justified in taking life only when it will tend to the saving of life. But does it? Does the death penalty act as a deterrent of murder, and if not, it is not justified. The evidence is overwhelmingly the other way. Eleven States have abolished the death penalty and not one of the eleven has restored it. One State—Maine—abolished it, and restored it, only to find that an astounding increase in capital crimes resulted."

"Sheep stealing was an every day occurrence and highway robbery became almost a noble profession in the days when those offences were punished with death."

"The death penalty is barbarous. It is a negation of everything our civilization stands for. The State taking human life is worse than a cannibal who kills and at least attempts a decent pretense at justification by eating his victim. The State profits nothing from the lives it takes."

Before hearing the arguments on the abolition of capital punishment the committee listened to ex-Senator Brackett, who urged the acceptance of the Lincoln proposal permitting a defendant as a matter of right to inspect the minutes of the Grand Jury. Mr. Brackett assailed the practice of District Attorneys in New York County.

"It is so scandalous," said Mr. Brackett, "the way District Attorneys in New York, when they have a big case before them, seek an easy conviction to increase their own reputation by assigning this or that judge to try the case. It is virtually a conspiracy, and the defendant needs for his protection this right to inspect the Grand Jury minutes."