DECEMBER 11, 1967 GILBERT BETTMAN

In the Book of Exodus sundry laws of the Covenant are given by the Lord to Moses. Among others is the command, "thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe".

Scholars variously date this covenant code from the 12th to the 7th century B. C. They debate its relationship to the 17th century B. C. Code of Hammurabi and to an even earlier Sumerian Code.

This lex talionis or law of retaliation, like the Draconian laws of 7th century Athens, represented striking progress from the earlier tribal days of feud and blood revenge. That in part at least, it is still literally clung to as "justice" in the thinking of 20th century America cannot but be a source of amazment and concern.

No longer do we take an eye for an eye or a tooth for a tooth but a life for a life remains the law of Ohio and of 38 other states.

Capital punishment has been abolished in all the countries of Western Europe except France and Spain. A majority of the states of the Western Hemisphere have abandoned it. Can it still be justified here?

In centuries past it was easily sustained on the basis of good and evil. It was God's will that the wicked be punished. "Whoever sheds the blood of man, by man shall his blood be shed". Life is sacred. He who violates the law must pay the supreme penalty.

The Bible which for so long was almost the sole source of knowledge, has ample passages on which to bottom the conclusion that man must be punished commensurate with his crime.

Even today there are many who will literally cite the words of Exodus or Leviticus to justify their position, regardless of the fact that these books are full of commandments which they would not dream of following; regardless of other passages which speak of the sanctity of all life and of love and forgiveness;

regardless of the social and historical context in which these books were written; and regardless of millenia of Biblical exegesis.

Whatever we might say, the real reason we still perform these judicial homicides lies in the nature of man. Much as we want to think of ourselves as rational men, our sense of justice is not entirely built on a rational foundation. Deep emotional factors enter in. Within us all is an impulsive demand for retaliation. When struck we instinctively strike back. If someone hurts a loved one, what could be more natural than to hurt him. This impulsive demand for retaliation insists that blood be paid with blood.

The psychiatrist speaks of this instinctual desire for retaliation. He also speakds of the demand for atonement. When a criminal escapes his supposedly well deserved punishment, we feel aroused. The reason is that our Superego - our conscience - is highly dependent on outside authorities. If society does not properly punish the wrongdoer - the influence of our own standards - our Superego - is weakened. We each have instinctual drives of which we are conscious in varying degrees and we control them. Therefore when the transgressor does not receive the punishment he deserves, we ask ourselves "Why should I continue to conform"?

What creates the public demand for atonement is one's own anxiety lest his Superego be overturned and one's own instinctual drives, which have been curbed with so much difficulty, be loosed. The pressure of our drives, however repressed, remains strong. The Superego needs the support of the outside authorities to reinforce its power to hold us in check. Hence our ego makes an appeal for the atonement of the transgression to strengthen the Superego in its battles against our own drives. Interestingly enough the man who cries loudest for punishment - for atonement of the sin, is he who is most fearful of the power of his own repressed drives and most concerned lest his Superego lack the strength to control them.

We find that we feel quite differently toward the criminal who confesses his wrong, is repentant and promises to reform, than toward one who is spiteful and

refractory. Why? Because the contrite one has reinforced our repressions and shown he is an ally of our Superego while the recalcitrant sinner is a stimulator of our instinctual demands. In our own self defense we must be particularly severe with the unrepentant sinner.

A third emotional factor in addition to our need to strike back in retaliation and our demand for atonement is the need for socially acceptable outlets for our own aggressions. One must check one's own sadistic drives but they exist nonetheless. When society punishes - hurts - kills the wrongdoer, we can identify with it and this diminishes the amount of aggressive hostility one has to repress. The popularity of public hangings, the thirst for details of an execution, is ample testimony that they furnish an outlet for aggressions.

Should one doubt the intensity of these emotional factors, listen to the appeal of the chief law enforcement officer of the United States, Mr. J. Edgar Hoover in the F.B.I. Law Enforcement Bulletin?

"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 bacause 'God created man in his own image, in the image of God created he him'. Was not this small, blonde six-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'."

Reasonable men when asked why they favor capital punishment will seldom admit their feelings of retaliation or retribution. To the rational scientifically oriented man of the 20th century the old Biblical arguments have

slight meaning. He bases his position on the theory that capital punishment is regretably necessary as a deterrant. The theory is simple. Psychiatrists call it the pleasure-pain principle. Man desires pleasure and wants to avoid pain. Man is a creature of free will and has therefore the power to choose one course of conduct over another. Life is the most precious of man's possessions. Therefore the most powerful threat society can hold before him is that it will punish him with death. We must kill murderers so that others are deterred from murder.

If logic and an understanding of human nature were sufficient, this argument was answered long ago. According to Thucydides in 427 B. C. when the Athenian Assembly was debating the fate of Mytilene whose citizens were guilty of treason - a crime older and more serious than murder, Diodotus spoke, in part, as follows:

"To many offenses less than theirs states have affixed the punishment of death; nevertheless, excited by hope, men still risk their lives. No one when venturing on a perilous enterprise ever yet passed a sentence of failure on himself. ..... All are by nature prone to err both in public and in private life, and no law will prevent them. Men have gone through the whole catalogue of penalties in the hope that, by increasing their severity, they may suffer less at the hands of evil-doers. In early ages the punishments, even the worst offences, would naturally be milder, but as time went on and mankind continued to transgress, they seldom stopped short of death. And still there are transgressors. Some greater terror then has yet to be discovered; certainly death deters nobody. For poverty inspires necessity with daring; and wealth engenders avarice in pride and insolence; and the various conditions of human life, as they severally fall under the sway of some mighty and fatal power, through the agency of the passions lure men to destruction. Desire and hope are never wanting, the one leading, the other following, the one devising the enterprise, the other suggesting that fortune will be kind; and they do immense harm, for, being unseen, they far outweigh the dangers which are seen. .....

We ought not therefore to act hastily out of a mistaken reliance on the security which the penalty

of death affords. ".....Do not hope to find a safeguard in the severity of your laws, but only in the vigilance of your administration."

If it were true that executions acted as a deterrant to others, certainly those who had been exposed to its grim reality would be the most strongly influenced. Today there are few witnesses to executions, but in 18th century England when hangings were a public spectacle, aBritish prison chaplain reported that of the 167 condemned men to whom he had ministered, 164 had been witness to at least one public hanging.

Clinton T. Duffy, longtime warden of San Quentin, recounts two pertinent stories. One Alfred Wells, while confined at San Quentin, did all the delicate work of connecting the rods, pipes and tubes for the newly installed gas chamber. On request he would tell the other inmates all about it, and always ended the discussion by saying, "That's the closest I ever want to come to the gas chamber". Not many years after his release, Wells killed his brother, his sister-in-law, and a woman friend. He did it not in a fit of anger but planned the murders precisely and coldly carried them out. Not once during that bloody May afternoon did he give a thought to the gas chamber about which he knew so much.

And then there was Arthur Eggers. Eggers was, for many years, a Deputy Sheriff. He had delivered many condemned men to the penitentiary. That did not stop him from shooting his wife one night when he found her in a compromising situation and cutting off her hands and head. Just before his execution Warden Duffy asked him if he had not thought of the gas chamber. He replied, "Why, hell, Warden, the gas chamber does only one thing - it kills people. And I'll bet it never prevented a murder. I used to believe in capital punishment because I figured if a guy killed a cop, for example, he ought to be executed to keep other guys from killing cops. But it doesn't work that way. Gas chamber or no gas chamber, guys will always be killing cops. People will always bekilling people. You can't control anger or passion or greed or jealousy, or fright, and that's what causes most murders. Only crackpots and the state kill in cold blood. Everybody else has a reason".

Closer to home is the case of Charlie Justice, sentenced to 20 years in the Ohio Penitentiary for a cutting, was assigned the housekeeping duties in the death house. Charlie decided the electric chair was poorly designed. A small nervous man could squirm around in it, resulting in an imperfect contact by the electrodes which caused burning of the flesh and a consequent unpleasant odor for the witnesses. This discrpancy he corrected by designing a set of clamps to hold the condemned man steady. For his exemplary service Justice was given extra good time and released in 1910. Seven months later Charlie returned. The charge was 1st degree murder. On October 27, 1911 he was executed in the chair he had made more efficient. A ghoulish wit is reported to have cracked, "That's poetic justice".

Regardless, however, of how many murderers were not deterred by the prospect of death at the hands of the state the theory persists that an unknown number of others would have committed murder had we not held before them this grim prospect. As J. Edgar Hoover puts it,

"The death penalty is a warning, just like a lighthouse throwing its beams 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".

What are the facts? When the American Law Institute was preparing a model penal code it wanted to know, so it asked Thorsten Sellin, a world renown sociologist at Yale, to prepare a report. Sellin had prepared similar reports for the English Royal Commission on Capital Punishment and the Canadian Joint Committee of the Senate and House of Commons on Capital Punishment. In his report Sellin sought to exhaustively analyze the deterrent effect of Capital Punishment.

He started with the assumption that if the death penalty wxercises a deterrent effect on prospective murderers the following propositions would be true. (A) Murders should be less frequent in states that have a death penalty than in those that have abolished it, other factors being equal. (Parenthetically Sellin limited

his comparisons to states that were as alike as possible in all other respects - character, population, social and economic conditions, etc. - in order not to introduce factors known to influence murder rates in a serious manner when present in only one of the 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 effect 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.

Sellin's study, which covered a 35 year span, demonstrated that not one of those propositions was, in fact, the case. He concludes: "Anyone 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".

Sellin's statistics showed that homicide death rates vary enormously from state to state. In 1955, for instance, Vermont showed a rate of .5 per hundred thousand population, New Hampshire and Wisconsin had rates of 1.1, while the rate in Georgia and Alabama was 11.4 and 12.6 respectively. By placing together similar contiguous states such as Maine, New Hampshire and Vermont; Massachusetts, Connecticut and Rhode Island; Michigan, Indiana and Ohio; Minnesota, Iowa and Wisconsin; in each group of which some states have the death penalty and others do not, it is readily apparent that each group presents fundamentally similar rates and basic trends.

It is also statistically clear 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 factors other than the death penalty. For example, in the years covered, 1920 through 1955, Ohio which had the death penalty and conducted from two to fifteen executions per year, had an average annual homicide rate per one hundred thousand population of 6.05; Indiana, also a capital punishment state, but

with considerably fewer executions, had a rate of 4.82 and Michigan which did not have capital punishment had a rate of 4.77 per hundred thousand.

Sellin also studied the effect of the abolition and reintroduction of the death penalty on homicide death rates. Arizona had no capital punishment between December 8, 1916, and December 5, 1918. The Governor reported that forty-one murderers were convicted during the two years prior to the abolition of the death penalty, forty-six during the abolition period and forty-five during the following two years. Colorado abolished the death penalty between 1897 and 1901. The annual average number of convictions for murder was 16 during the six year period prior to abolition, 18 during the abolition period and 19 during the five years following reintroduction. Iowa abolished the death penalty in 1872 and restoried it in 1878. The annual average number of convictions for murders during the seven years prior to abolition was 2.6, during abolition 8.8, and during the next seven years 13.1. Statistics from other states bear out this same conclusion that the abolition or reintroduction of the death penalty has no discernible effect on the homicide rate. Studies of many foreign countries showed the same result.

An interesting study was made in Philadelphia. On the assumptions that if the death penalty is a deterrent its greatest effect should be shown through executions which are well publicized and that this effect should be most noticeable in the community where the offense occurred, where the trial aroused wide publicity, and where the offender lived and had relatives, friends and acquaintances, a study was made of periods before and after executions. Five executions were marked on a calendar and periods before and after analyzed. It was found that if the five 120 day periods, that is 60 days before the execution and 60 days after, were combined there were a total of 105 days free from homicides during the 60 day periods before the executions and 74 in the periods after the executions. There were a total of 91 homicides in the before execution 60 day periods and 113 in the after 60 day periods. Of these 204 homicides, 19 resulted in sentences for murder in the first degree. Nine of those occurred during the period preceding the executions and ten in the corresponding periods following the executions. During the

10 days just before the executions there were 2 and during the 10 days immediately following there were 3 such first degree murders in Philadelphia. The assumption, then, that well publicized executions were a deterrant was false.

Whenever the question of the abolition of capital punishment is discussed a great deal of opposition is voiced by police officials, at least those from jurisdictions having the death penalty. 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. To test this argument Sellin mailed a letter to the police departments in 593 cities of more than 10,000 population in 6 non-death-penalty states and in the 11 death penalty states most comparable to the 6. The replies were broken down into different size cities and revealed the following. 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. The rate of fatal attacks on police officers in Milwaukee, Wisconsin, an abolitionist state was .8 compared to 2.6 in Cincinnati, Ohio, and 1.4 in Buffalo, New York, both capital punishment states.

Sellin's letter also asked the police departments to indicate whether or not they believed that the existence of the threat of possible execution gave the police protection which was lacking in abolition states. 36% of the responding cities in capital punishment states and 32% of the cities in 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, - 90%. By contrast, in the abolition states 20 out of 27, - 74%, 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.

One would assume that were there evidence which could be gleaned from the facts demonstrating or at least suggesting that the penalty of death had some deterrant effect, the Federal Bureau of Investigation with its records, staff and facilities would have such

evidence. They don't and they don't for a very simple reason. There is no such evidence. All J. Edgar Hoover can lamely answer to Sellin's statistics is that "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 groups are completely inconclusive". In desperation he falls back on the ad hominem argument: "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".

If we really believed that executions furnished a terrifying example to prospective murderers, we ought to spread this example as widely as possible. Indeed we might well have executions carried out on national television. But as Albert Camus says, "society does not believe its own words. If it did, we would be shown the heads. Executions would be given the same promotional campaign ordinarily reserved for government loans or a new brand of aperitif". But, continues Camus, "such publicity, beyond the fact that it arouses sadistic instincts of which the repercussions are incalculable and which end, one day or another, by satisfying themselves with yet another murder, also risks provoking the disgust and revolt of public opinion itself . . . The very man who enjoys his morning coffee while reading that justice has been done would certainly choke on it at the slightest of such details". We must either kill publicly, or admit we do not feel authorized to kill. If society justifies the death penalty as a necessary example, then itmust justify itself by providing the publicity necessary to make an example.

Most people believe that if a man is convicted by the Courts his guilt must be certain. I have heard many times how a guilty man got off in the Lyons case but have yet to hear a disinterested doubt that Laskey was guilty.

It is true we have tried hard to construct a system or criminal law which will separate the guilty from the innocent. In deed we like to believe our system would rather acquit ten guilty men than convict

one innocent. In the end, however, we find we are dealing not with geometric formulae which can be proven Q.E.D., but with fallible human beings.

The Court charges the jury that unless the state has proven the defendant guilty beyond a reasonable doubt, he must be acquitted. "You must have an abiding conviction to a moral certainty of the truth of the charge", says the judge. But what does that mean? We know we have a dead body. We know someone killled him. This is the man the grand jury says did it. This is the man the police and the state's attorney are convinced did it. So many things seem to point to the defendant's guilt. We don't have a choice between the defendant and someone else. It must either be the defendant or no one, and we know it must have been someone. So it must be the defendant.

Jurors do not see the crime committed. They must make their decision on the basis of the evidence placed before them in the court room. They may not take notes. They may not ask questions. They may not conduct any independant investigation. Perhaps there is no better system but nonetheless it is a system with limitations.

Evidence is direct or circumstantial. Direct evidence is eye witness testimony as to events. It should be perfect; I always know what I saw. But do I? Myriads of tests have been run where an event is unexpectedly acted out before a group and the individuals then asked to write down what happened. Invariably the reports are entirely contradictory. Some say the man was blond; others that he was dark; some that he wore a coat; others that he did not; some that the negro was the aggressor; others that it was the white man. Yet this is the kind of eye witness testimony on which we decide that the state shall execute a man.

Warden Lewis Lawes writes that when he was warden of Sing Sing, he received calls from the police about twice a month wanting to know if a certain inmate was still safely lodged in prison. Why? Because the man in question had been identified from his picture as the perpetrator of a recent crime. Had the ex-felon not been safely behind bars would a jury have believed his denial after hearing the positive identification of

a solid citizen? Courtroom experience will prove that the most sincere and honest citizen can be wrong. Yet this is the evidence on which a jury must arrive at its verdict.

You witness a criminal act and catch a fleeting glimpse of the culprit. The following day the police bring you a mug shot and ask if that was the man. "I think so, but I'm not sure", you say. The picture is then partially implanted in your mind. It begins to merge with your recollected image of the culprit. A day later the police bring the defendant to your house in a car. Though in your mind you have a lingering doubt, you respond, "Yes, that's the man". Later you pick him out of four men in the police line-up and again you see him at the preliminary hearing in police court, so that finally when you testify at the trial, the image of the criminal at the scene and the defendant on trial are completely merged. In all honesty you testify without equivocation, "Yes, that is definitely the man". What was originally a doubtful identification becomes before the jury a clear and positive one.

Most of us would say that most people are honest most of the time. Yet none would be so brash as to state that all are honest all the time. There are such an infinite variety of reasons to perjure oneself - self-interest, anger, fear, jealousy, love - the whole spectrum of human emotions. Nothing can prevent them operating in a murder trial as they do in every other aspect of life.

Each of us likes to think he can tell a liar when he hears one, but none of us would claim that he is always certain. There are some very convincing liars in the world and some very unconvincing honest men. Just as some who almost always tell the truth may lie, so some who almost always lie may tell the truth. Courts of law have not a litmus test to separate one from the other.

Many murder trials must turn on circumstantial evidence - evidence of facts from which by the common sense of men we infer other facts to be true. The jury is charged that where different inferences may be drawn from the same facts they must take the inference consistent with the defendant's innocence rather than his

guilt. But do they do that? No one knows. From our own experience we know we do not always see all the inferences which may be drawn from a certain set of facts. When the scientist infers a conclusion from an experiment, he would not dream of pronouncing it true until he had subjected it to exhaustive testing. No such testing of inferences is possible in a criminal trial.

The layman proceeds under an illusion that appelate review protects a man from wrongful conviction. Few are aware of the fact that appelate courts cannot simply review the record and decide they would have reached a different conclusion. Neither can they receive any new evidence not presented at the trial. Appelate courts under the law can only determine whether the trial was conducted in a lawful manner - was improper evidence admitted; was the court's charge to the jury legally correct; were the defendant's constitutional rights protected - these the appelate court reviews. Questions of fact and questions of the credibility of the witnesses are considered the province of the jury and must be accepted without question on review.

But the response is made, these weaknesses of the judicial system apply to all cases not just murder cases. It is just as wicked to put an innocent man in prison for life as to wrongfully execute him. We should improve the administration of the law. Abolishing capital punishment will not do that.

No doubt we must work unceasingly to improve the administration of the law, but in the end it is a human institution. Perfection is not attainable. When we find that a man has been wrongly imprisoned, he can be freed and some attempt made to compensate him. When he has been put to death, we can onlylook embarrassed and mutter something about just one of those unfortunate things.

In 1932 Professor Edwin M. Borchard of the Yale Law School brought out a book entitled "Convicting the Innocent". In it he detailed the history of sixty-five cases selected from hundreds from all over the country in which the innocence of the defendant was clearly established after his conviction. In many cases the defendant had served long years in prison, and in

one case the defendant's hanging had already begun but was delayed by a mistake in the death warrant.

In these sixty-five cases, twenty-nine were due to erroneous identifications. Borchard says: "Juries seem disposed more readily to credit the veracity and reliability of the victims of an outrage than any amount of contrary evidence by or on behalf of the accused, whether by way of alibi, character witnesses, or other testimony. . . Into the identification enter other motives, not necessarily stimulated originally by the accused personally - desire to requite a crime, to exact vengeance upon the person believed guilty, to find a scapegoat, to support, consciously or unconsciously, an identification already made by another. Thus doubts are resolved against the accused".

In some of the cases no crime had actually been committed. In some the erroneous convictions were based on circumstantial evidence and in others on perjured testimony.

"In a very considerable number", says Borchard, "the zealousness of the police or private detectives, or the gross negligence of the police in overlooking or even suppressing evidence of innocence, or the prosecution's overzealousness was the operative factor".

In other cases, it is the environment in which the police and prosecutors live, subject to an undiscriminating public clamor to stamp out and make short shrift of suspects.

If one feels that mistakes of justice are long ago or far away, he would do well to study the case of Edythe Klump. In Hamilton County, in June, 1959, Mrs. Klump was convicted for the malicious, deliberate and premeditated murder of one Louise Bergen. Her conviction was based largely on her own testimony that she had met Mrs. Bergen at Swifton Shopping Center, having left home at five in the evening, and then driven together to Caldwell Circle. Mrs. Bergen had been shot there, according to Mrs. Klump, in a tussle over a pistol. According to her testimony she had put the body in the baggage compartment of her automobile and returned to downtown Cincinnati in time to reach her sewing class at Woodward High School at 7 P.M. The next morning,

after dressing her children and three other children whom she cared for, she had purchased a can of gasoline, driven to Cowan Lake and there burned the body. It was the theory of the prosecution's case that the killing had occurred at Caldwell Circle and the jury was driven there to view the scene of the crime. Mrs. Klump's conviction of murder in the first degree and her death sentence were affirmed by the Appellate Courts of Ohio.

Discrepancies which were left unanswered at the trial were (1) how could Mrs. Klump single handedly handle Mrs. Bergen's dead body which weighed 140 pounds; (2) a trip from downtown to Swifton Shopping Center to Caldwell Circle and back to town takes 87 minutes. This left just 3 minutes to kill Mrs. Bergen and stuff her body into the car trunk. How was that possible? (3) The pathologist's report indicated that Mrs. Bergen had probably been alive when her incineration was begun. Could she have survived in the trunk of a car for eighteen hours? (4) Except for a 1 hour lunch period laborers had been working in Cowan Park all day on the day in question within 30 yards of where the body was supposed to have been burned. The pathologist's report indicated that at least two hours were required to burn a body to the state in which Mrs. Bergen's body was found. How could this be accomplished with workmen less than 100 feet away? (5) Mrs. Bergen's shoes had been found near the scene of the burning at 9:30 in the morning on the day her body was allegedly incinerated. How could her shoes have gotten there when according to the story told by Mrs. Klump at the trial, she did not take the body to Lake Cowan until sometime later in the morning?

After her conviction and sentence Mrs. Klump called the jail chaplain and told him she had lied on the stand; that the story had been invented by Bergen who assured her of his undying love and told her this was the only way they could both go free. Bergen at that point left Ohio with another woman. Mrs. Klump's second version of the affair never got before a court of law. The case had to be appealed on the record.

When all appeals had failed, Governor DiSalle, as was his duty, reviewed the case. At the suggestion of one member of the Pardon and Parole Commission, who

though voting against clemency, expressed doubts as to the truth of the evidence, the Governor along with a doctor interviewed Mrs. Klump under the influence of sodium amytal. What came out added details to the version told the jail chaplain after the trial and cleared up all the discrepancies. Amazingly after this interview evidence which had been lost or forgotten in the prosecutor's office lent further corroboration to the changed version.

That Mrs. Klump was a low character and a liar is unquestioned but on the facts now known it is clear that she was not guilty of murder in the first degree.

So year in and year out through cupidity, stupidity, haste, ignorance and just plain human inadequacy errors are made. How many innocent men have been executed in this country no one will ever know. With few exceptions, families, friends, lawyers and newspaper men rapidly lose interest in a case when, as we lawyers say, it has become moot - that is when the defendant is dead.

Today, since executions have become few in number, the odds are getting small, but whatever they may be, as a civilized country we have no business playing them.

The words of Thomas Jefferson are apt:

"I shall ask for the abolition of the punishment of death until I have the infallibility of human judgment demonstrated to me".

A great deal more could well be written. The death penalty burdens and corrupts the machinery of justice. It places on governors a burden no human should have to bear. It kills not the ganglord but the poor, the ignorant and the insane. It does violence to our religious teachings. It cheapens all human life.

Long ago we abandoned the rack, the screw and the red hot pincers. Surely, the time has come for the gibbet, the gas and the chair to follow them into oblivion.

Gilbert Bettman