

Criminal Code

in parliament or over discretion exercised by a government of Canada or any of the ministers of that government in their decisions.

I argued the only case ever argued, Mr. Speaker, on a question of mandamus against a minister of the crown in 1940 in order to compel a minister of the crown to carry out the law. The citation is Stewart and Swain and it is the only case on the point in the Commonwealth except for one in India. I went all the way, Mr. Speaker, in that case. You as a lawyer know that the time to win is the last time, and I lost in the Supreme Court of Canada on a division of the court. When I make the statement as to the power of a Supreme Court Justice or the Supreme Court over parliament, I make it advisedly from the constitutional standpoint.

The Lord Chancellor of England, Lord Gardiner, examined very carefully the question whether or not dividing murder into capital or non-capital murder made any difference. We know who commits murder—the insane, the emotionally disturbed, those filled with narcotics or alcohol.

There are two other classes. Those who want to be in the news are one. I have talked to them. "Am I in the papers", they ask. They have a strange complex which politicians understand possibly better than others; but frequently in the mind of the person who commits homicide is an abiding desire to have a status of his own.

Mr. Nielsen: To be in the noose.

Mr. Diefenbaker: Yes, to be in the noose. The second class is the professional criminal. With regard to those who are insane or emotionally disturbed through alcohol or narcotics, I cannot see any deterrence in capital punishment. As far as the other two categories are concerned—professional criminals and those seeking recognition—I have never acted for them but I am told that they believe they can win. And they have some reason to believe this because only one out of 16 murderers ever goes to the gallows. That is the experience in the United States and Canada over a period of 40 years.

I said a moment ago that if capital punishment is a deterrent the deterrent should be public. I am not going to read the words of the authors to whom I referred earlier, but I do intend to read what has been said in the United Kingdom in regard to the deterrent effect of the death penalty in respect of those offences which are still capital offences. This

[Mr. Diefenbaker.]

is the conclusion arrived at by one speaker in the House of Lords debate:

In the period from January 1, 1952 to March 20, 1957, when the Homicide Act came into force—

Up to that time the penalty for both capital and non-capital murder was death.

—the annual average percentage of murders that would have been non-capital if the Act had been in force was 85.6 per cent; the corresponding percentage for the period from March 21, 1957, up to the end of last year is 86.5 per cent.

So I ask, Mr. Speaker, where is the deterrence? Murder was divided into capital and non-capital murder, yet the percentage remains almost the same. That was the view taken not only by those to whom I have already made reference but also by the Gowers Commission. The Lord Chancellor summed it up in this way:

I do not see in those figures support for the argument that the death penalty operates as a deterrent.

● (4:20 p.m.)

Statistics do not prove it. Experience does not prove it. Because we accept ourselves as being rational persons, all of us would feel frightened. Nobody commits murder if he possesses the mentality which you and I have at the moment.

The next argument is that we must protect police officials and custodial officials. I believe this. Does the death sentence protect them? Let us look at the record. Professor Sellin has been quoted several times and was recognized as an authority by the Royal Commission in the United Kingdom. The only place where he was not recognized was here in Canada by a committee of this parliament on the question of lotteries and the like. He made a survey of a large number of states in the United States to ascertain whether the existence of the death penalty made any difference in the number of criminals prepared to use lethal weapons against the police. He took all the cities in the six abolitionist states, and the number of attacks was 1.2 fatal attacks per 100,000 of the population. In the 11 death penalty states the rate was 1.3 per 100,000. So there is nothing in that.

In the British Parliament these statistics were placed on the record by Lord Ray. Since 1919 slightly fewer municipal policemen were killed in the abolitionist states than in those states which retained the death penalty. In the case of all the states there was a high rate from the early 20's to the mid-30's and a lower one thereafter. In a recorded total of 77 killings of state policemen in 24 states only