

DEATH PENALTY TESTIMONY

2013 Legislature, HB 370  
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My name is Lewis K. Smith and I am currently the Powell County Attorney located in Deer Lodge, Montana. Our office prosecutes crimes which occur in Powell County as well as the Montana State Prison. My Deputy and I have both participated in the capital punishment training provided by the Attorney General's Office. During my six plus years in office we have had two homicides inside the prison and two homicides which occurred outside within the community. Three of those are currently pending and I will not comment directly on them for that reason. I also have found that you cannot lump all people into various categories and be accurate. Different punishments work for different people and figuring out what does or does not motivate people can be very difficult and some people have nothing which will motivate them.

The prison cases present a special problem as some of the people who commit violent crimes in the prison are facing long sentences or life sentences. When dealing with these people we often hear "you can do what you want to me, and it doesn't matter, cause I'm never getting out". The death penalty provides the only punishment left that we can impose upon those offenders, if they have committed certain crimes. There is little disincentive in another life or lengthy prison sentence for someone who already will never see the outside under his current sentences. We deal with that problem regularly on offenses ranging from Aggravated Assault and Assault with a Weapon to Deliberate Homicide. I acknowledge that the death penalty is not for every offense or even for every homicide, however, in certain situations it is the only incentive to possibly keep some people from committing murder. Montana's system for review, requiring aggravating factors and consideration of mitigating factors, limits how often the death penalty will be used in Montana. As prosecutors we do not take that responsibility lightly and the protections are in place to keep us from succumbing to local pressure in seeking the death penalty. There are situations however, which demand that the death penalty be given serious consideration. Those include acts of terrorism, serial killers and situations where there simply is no other punishment that may deter further murders by that individual. Two years ago John Connor testified on this subject that following the 1991 riots, better training of staff at MSP reduced homicides to zero. However, in the last two years we have two more. Correctional Officers and staff, are still trained to the same standards as before. However, inmates cannot be kept completely segregated twenty-four hours a day. Sooner or later an inmate needs mental health counseling, medical treatment and he will be in contact with staff or someone simply makes a mistake and someone may have to pay with their life. The last two homicides happened in the High Side security area of the prison, but not in the Maximum Security unit. Shaun Morrison was being reintegrated back down through classification to try to mainstream him. He was doing well until someone stole his \$10 earbuds and he went into his cell to confront him and ended up cutting him, stomping his throat and choking him until he was dead. Shaun is a danger to anyone he comes in contact with because you do not know what will set him off. Weighing the life of a person who is doing their job and trying to be a good member of society, against that of a person who has no regard for human life, I believe the choice is clear.

The Montana Correctional Officers at the Montana State Prison and other prison facilities in the State face a very difficult job and are the people we ask to deal with the some of the worst among us on

a daily basis. The majority of the Correctional Officers my Deputy and I have dealt with wanted to know why Morrison, who was convicted at trial last fall and with whom they have to deal daily, was not getting the death penalty. They saw him as a person who was a continuing danger to themselves, their co-workers and other inmates as he could not control his behaviors and took pride in spitting on staff and assaulting other inmates. They see him as a person who exhibited no hint of remorse at taking the life of another inmate and threatens to do the same to other inmates and officers as well. We seriously considered the death penalty for Morrison, however, under the current system for the death penalty we determined that Morrison was not a proper case for the death penalty and we did not seek it. That in no way lessened the correctional officers and staffs' concern in having to deal with him. Even though we can cage people up, we cannot eliminate their access to others at some time.

Finally, it is not just people in prison who commit heinous crimes which endanger all of our safety in our communities and the prisons. Study the aggravating factors and the mitigating factors in the statutes on the death penalty and then ask yourself whether or not the persons who commit those types of crimes should not be considered to forfeit their lives for what they have done to others. Fixing the death penalty is not done by eliminating it, it is done by shortening the time frame. Look at the systems used in other states where the average time frame for carrying out the sentence is much shorter. The appeal side of the death penalty is where you can cut the cost of the death penalty.