

**SENATOR
SAM ERVIN
SAYS**



Although surveys and studies are somewhat inconclusive as to the degree to which capital punishment deters crime, common sense and experience convince me that capital punishment is an absolutely necessary element of any effective sentencing system in our courts.

The restoration of the death penalty will not suddenly bring an end to murder and other heinous criminal conduct. It is one of the important tools—along with better law enforcement, more efficient courts, and improved rehabilitation programs—which we must have to combat the unacceptable levels of violence which prevail in many of our communities.

I have cosponsored S. 1401, a bill which imposes the death penalty in certain cases and establishes standards and a procedure for its imposition which should overcome the constitutional objections to capital punishment set forth by the Supreme Court in the case of Furman V. Georgia, a case decided in 1972. S. 1401 as introduced by Senators McClellan and Hruska is presently under consideration by the Senate Subcommittee on Criminal Laws and Procedures, of which I am a member. The Subcommittee has already held hearings on this bill and other similar proposals which authorized capital punishment.

In my opinion, the Supreme Court made a serious constitutional error in Furman V. Georgia by holding that the imposition of the death penalty constitutes "cruel and unusual punishment" in violation of the 8th and 14th amendments. As Justice Powell suggests in his dissenting opinion, the Supreme Court's majority in this case overlooked "the clearest evidence that the Framers of the Constitution and the authors of the 14th amendment believed that those documents posed no barrier to the death penalty."

The only particle of judicial wisdom to be found in the Court's majority opinions is the refusal on the part of all but two Justices to declare capital punishment unconstitutional per se. Concurring in the majority opinion, Justice White wrote: "I do not at all intimate that the death penalty is unconstitutional per se or that there is no system of capital punishment that would comport with the eighth amendment."

Thus, even though the Supreme Court declared the death penalty statutes of Georgia and Texas to be unconstitutional it did leave some opportunity for Congress and State legislatures to authorize

the imposition of capital punishment as long as it is not "wantonly" or "freakishly imposed."

S. 1401 is a reasonable and carefully drafted proposal to include capital punishment in our system of Federal criminal justice. It certainly should be able to withstand any reasonable contention that it would authorize the imposition of the death penalty in a "wanton" or "freakish" way. It imposes the death penalty upon

conviction of certain crimes and sets forth understandable criteria which must be found to exist before capital punishment can be imposed. It also provides for review of death penalty sentences as an additional safeguard against arbitrary use of the penalty.

Government must use every resource and every constitutional power at its disposal to protect the public against brutality and the fear engen-

dered by uncontrolled crime. Congress and the state legislatures ought to restore capital punishment to its proper place in our system of criminal justice, and I think S. 1401 is appropriate legislation by which the Congress can discharge its responsibility.

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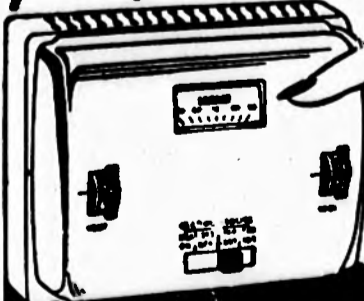
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