

Death penalty doubts affirmed

Inslee's death penalty moratorium "overwhelming relief" for former state justice who resigned to protest capital punish

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Former Supreme Court Justice Robert F. Utter talks about Gov. Jay Inslee's moratorium on state executions during an interview at his home in Olympia on Thursday, Feb. 13, 2014. Utter resigned his judicial post in 1995 as a protest against the state court's handling of capital punishment. TONY OVERMAN — Staff photographer





Gov. Jay Inslee's declaration of a moratorium on state executions for aggravated murders was a long-awaited moment for former Washington State Supreme Court Justice Robert F. Utter, one of Washington's longrespected death penalty opponents.

Utter resigned his judicial post in 1995 as a protest against the state court system's handling of capital crimes. The courts, he said, had failed to find a sentencing disparity in even a single case during his 23 years on the high court's bench – even though arguments in most of his two-dozen dissents found favor in the federal courts.

Asked for his initial reaction to Inslee's controversial decision last week, Utter struggled for words for almost a minute as tears welled in his eyes.

"It's overwhelming relief" Utter said at last. "And I'm feeling that all the past effort had not been wasted. I've seen the flaws in the death penalty and how it is administered."

In the end, Utter's dissents and resignation did not trigger changes in Washington's law that authorizes capital punishment for the worst aggravated murders, and three men have been executed since he left the court with another nine still on death row.

Utter, now 83, is in poor health and receiving hospice care at home, but he granted The Olympian an interview at his home that overlooks Budd Inlet.

He talked about Inslee's decision and his deep respect for Supreme Court colleagues he disagreed with. He also spoke of the dramatic experiences he and his wife, Betty, had working in Rwanda on a University of Washington project that dealt with the aftermath of the genocide that in 1994 cost 800,000 lives in a 100-day fury of ethnic murders by Hutus and Tutsis.

Ever hopeful that people can change as well as forgive, Utter said Rwanda no longer allows the death penalty as an option in sentencing. He and his wife said they saw examples of human beings who had moved beyond the need for retribution and found ways to live side by side despite the enormity of killings in their communities.

Question: What impact will Gov. Inslee's action have on the death penalty policy in this state?

Answer: It certainly advances the willingness of all people to examine in more detail whether the death penalty should be considered. ... The possibility of a mistake cannot be justified if the proper procedures have not been considered.

Q: Is that the case – that the procedures are not followed diligently by courts?

A: It's hard for me to talk about that, because I have such respect for my former colleagues. At no time (while Utter was on the court) were these discussions with each other disrespectful or intemperate. We just did not agree that the statutory language had been followed.

Q: What do you hope happens as a result of Inslee's moratorium?

A: It is an enormous first step toward more effective flexibility in sentencing for the courts and the justice system. One of the tragedies of having the death penalty ... is that it leaves the public with a feeling that they are safe. ... Society deserves to be protected from random acts of violence. The question is, how can you do that? The fact that capital punishment is used as inconsistently as it has been used should give all those concerned with public safety reason to pause as to whether it is, in fact, a way to protect the community.

Q: Where did your judicial opposition come from?

A: In my own mind, doubting that any human being is wise enough to say whether another should live or die was always an underlying question. The thing that tipped my scales on whether I should continue to participate in the death penalty process was the reading of a book, "Hitler's Justice" which considered the actions of judges during the Nazi regime. ... In Hitler's entire regime, there were only eight judges who resigned in protest against the ghastly atrocities that were committed.

Q: Explain more about why you left the court in 1995 and whether you think it was worth it.

A: I felt compelled to go beyond the letter of the law itself and say, if I followed that, was that something I could continue to live with? The problem I saw was an imperative in the death penalty statute that the court consider proportionality. ... However, despite the statutes requiring proportionality, the review by the court failed to find even one death sentence disproportionate in my 23 years of service at the appellate level. ... By contrast, in only one instance was my viewpoint rejected by the federal courts reviewing the issue.

Let me say, since I left the court there has been an open-minded inquiry into how this statutory standard should be applied. I don't know where it is now or where it is going, but it is fair to say this is an issue the court seems to be responding to in a very open-minded way. ... I have no regrets about resigning.

Q: After you left the court did you fight against the death penalty in some other way?

A: I was involved with the University of Washington in an examination of the genocide in Rwanda for three years. My wife Betty and I went back to Rwanda about every other year in cooperation with the project in the Information School at the UW.

We were interviewing the judges who sat on the grisly cases that occurred there and approached them with the inquiry ... how would you describe what you did to your grandchildren? What would you change if you could? And what would you leave if you could?

These judges had incredibly difficult cases to sit on – just incredible. It showed in my mind a careful examination of the underlying facts. They didn't overturn all of the death penalty cases, but they examined the cases very carefully.

Rwanda is fascinating from a number of standpoints. The facts of what occurred there are so beyond belief you really do ask – is there any redeeming quality in the human race? But we are able to see a consistent pattern and ability in the people — who are both victims and perpetrators — to begin to understand the viewpoint of the other side and forgive.

One of the things we did when we went back to Rwanda is hold neighborhood meetings. They were basically sponsored by the Quaker Church, going over with different age groups what were you doing during the genocide, what have you learned, what would you do differently? This one marvelous woman in her 50s said, “I would learn not to be persuaded so easily”

Q: Why do you think we have the death penalty or want it? Is it purely that people want retribution, an eye for an eye?

A: Given a choice between a simple answer and a complex answer the public would usually choose the simple answer. The phrase I like: “ And they're always wrong” It's not simple. Life isn't simple.

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