

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by REPRESENTATIVE ROBERT H. MILLER at
Chairperson

1:30 a.m./p.m. on March 6, 1986 in room 526S of the Capitol.

All members were present except:

Representatives Peterson, Brady & Charlton
Representative Grotowiel-E

Committee staff present:

Lynda Hutfles, Secretary

Conferees appearing before the committee:

Dennis Shell, Fraternal Order of Police
Roy Bailiff, Leavenworth
Representative Jenkins
Ron Miles, State Board of Indigents Defense
Representative Graeber
John Blythe, Kansas Farm Bureau
William McKeal, Leavenworth
Fred Allenbrand, Kansas Sheriff's Association
Bill Lucero, Kansans to Keep Kansas Free of the Death Penalty
Donna Schneweis, Amnesty International
Darlene Stearns, Consultation of Cooperating Churches
Theodus Lockhart, Leavenworth
Bob Runnels, Kansas Catholic Conference
Ann Heberger, Kansas League of Women Voters
Bernard Dunn

The meeting was called to order by Chairman Miller at 2:00 p.m.

Representative Goosen made a motion, seconded by Representative Long, to approve the minutes of the March 5 meeting. The motion carried.

Representative Barr made a motion, seconded by Representative Long, to introduce a bill at the request of the Governmental Organization Committee which would repeal statutes dealing with agent orange. The motion carried.

The Chairman announced there would be no committee meetings next week. Bills previously heard will be discussed the week after next.

HB2980 - Death Penalty

Time was divided into two - forty-five minute blocks.

Dennis Shell, Fraternal Order of Police, gave testimony in support of the bill which will make the killing of a law enforcement or corrections officer in the line of duty punishable by death. He told the committee this legislation is long overdue. See attachment A.

Roy Bailiff, Leavenworth County, gave testimony in support of the bill. He also stated that a large number of troopers and their families support the death penalty.

Representative Jenkins gave testimony in support of the bill and told the committee it was the duty of the legislature to protect the law enforcement officers and the corrections officers who protect us. See attachment B.

Ron Miles, State Board of Indigents Defense, gave testimony in support of the bill. See attachment C. He distributed a suggested amendment (See attachment D) concerning defendants ability to choose his own attorney.

Representative Graeber & Jenkins told the committee they had no objection to this amendment as long as it does not change the intent of the bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS,
room 526S, Statehouse, at 1:30 a.m./p.m. on March 6, 1986

Representative Graeber gave testimony in support of the bill and told the committee he viewed this bill as a shield for the life of those peace officers that are sworn to protect us.

John Blythe, Kansas Farm Bureau, gave testimony in support of the bill.

William McKeal, Chief of Police, Leavenworth, gave testimony in support of the bill. He stated that in the past police officers were killed during domestic disputes; they are now seeing a rapid increase while making arrests for traffic offenses. This bill may help to deter these people.

Fred Allenbrand gave testimony on behalf of the Kansas Sheriff's Association and Oakley Rowe of the Kansas Chief's of Police, strongly supporting HB2980.

Bill Lucero, Kansans to Keep Kansas Free of the Death Penalty, gave testimony in opposition to the bill. See attachment E. Mr. Lucero distributed a rank order and murder rate sheet.

Donna Schneweis, Amnesty International, gave testimony in opposition to the death penalty because it is a violation of basic human rights. See attachment F.

Darlene Stearns, Consultation of Cooperating Churches in Kansas, gave testimony in opposition to the death penalty. They emphasized one important argument against imposition of the death penalty, the very real possibility of error. See attachment G.

Theodus Lockhart, Leavenworth, opposed the bill and stated that to take life solves no problem for whatever reason. Killing is not societies way of solving a problem. See attachment H.

Bob Runnels, Kansas Catholic Conference, gave testimony in opposition to efforts to institute the death penalty in our state. The church stands against the use of lethal means to solve social problems. See attachment I.

Ann Heberger, Kansas League of Women Voters, opposed HB2980. They believe the death penalty would not deter others from committing murder and could not be administrated fairly. Court expenses and wear and tear on our courts and prisons are considerably more expensive when including a system of capital punishment. See attachment J.

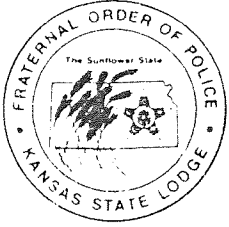
Bernard Dunn, private citizen who had worked for the Department of Corrections for twelve years, gave testimony in opposition to the bill. With passage of this bill we are, as a society, putting death as a deterrant to social problems. Society thinks of the death penalty as a quick solution to a social problem. He suggested raising battery of a law enforcement officer from a misdemeanor to a felony. This would be a more practical approach to the problem. He also suggested having a type of maximum security prison for this type of crime.

There was discussion on the statutes concerning self defense and the conferees were asked if they objected to killing someone in self defense.

A statement was distributed by the City Of Topeka Police Department in support of the bill. See attachment K.

Hearings were concluded on HB2980.

The meeting was adjourned.



A

Fraternal Order of Police

Kansas State Lodge

House Bill 2980

I would like to thank the members of this committee for allowing me this opportunity to express the sentiments of law enforcement on House Bill 2980.

My name is Dennis Shell, I am the president of the Kansas Fraternal Order of Police. I am a sergeant on the Kansas City Kansas Police Department, and have been a police officer for fourteen years. I appear before you as a representative of over 1500 sworn law enforcement officers throughout Kansas.

We the police officers of Kansas want you to know that we support the passage of House Bill 2980, which will make the killing of a law enforcement or corrections officer in the line of duty punishable by death. We feel that this legislation is long overdue and urge you to pass this Bill.

There are many reasons we feel you should support this bill. But rather than restate all of those arguments we will give you only one fact. The killing of a police officer is not just a crime against the officer but is a crime against the laws and people of the state of Kansas.

This bill has been thoroughly thoughtout and is well written. Please pass House Bill 2980 and send it on to the Governor.

Dennis E. Shell
President Kansas
Fraternal Order of Police
4516 N. 93rd Street
Kansas City, Kansas 66109

ATTACHMENT A

H. FLSA
3/6/86

TO: HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
FROM: REP. MARTHA JENKINS
RE: HOUSE BILL 2980, CAPITAL PUNISHMENT
DATE: THURSDAY, 6 MARCH 1986

MR. CHAIRMAN, MEMBERS OF THIS COMMITTEE, HB 2980 WOULD REINSTATE CAPITAL PUNISHMENT IN KANSAS FOR THE MURDERS OF LAW ENFORCEMENT AND CORRECTIONAL OFFICERS.

THIS BILL IN MANY RESPECTS IS VERY SIMILAR TO THE CAPITAL PUNISHMENT MEASURE PASSED OUT OF THIS COMMITTEE LAST YEAR. IT REQUIRES TWO SEPARATE TRIALS, ONE TO DETERMINE WHETHER THE PERSON IS GUILTY AND A SECOND TRIAL TO DETERMINE WHETHER THE SENTENCE SHOULD BE LIFE IN PRISON OR CAPITAL PUNISHMENT. THE BILL SETS FORTH A LIST OF AGGRAVATING AND MITIGATING CIRCUMSTANCES FOR THE SENTENCING JURY TO FOLLOW, IN DECIDING WHETHER TO IMPOSE LIFE IN PRISON OR THE DEATH SENTENCE. THE BILL WOULD PROHIBIT CAPITAL PUNISHMENT FOR ANYONE WHO WAS 18 YEARS OLD OR LESS WHEN THE CRIME WAS COMMITTED AND WOULD REQUIRE AUTOMATIC REVIEW BY THE STATE SUPREME COURT OF ANY DEATH PENALTY VERDICT. THIS BILL, LIKE LAST YEAR'S, CALLS FOR DEATH BY LETHAL INJECTION. TRULY THE ONLY DIFFERENCE BETWEEN THIS BILL AND LAST YEAR'S DEATH PENALTY LEGISLATION IS THAT THE CLASS OF VICTIMS HAS BEEN NARROWED TO INCLUDE ONLY LAW ENFORCEMENT OFFICERS AND CORRECTIONAL OFFICERS.

QUESTIONS HAVE BEEN RAISED AS TO WHY THE PENALTY FOR MURDERING AN OFFICER OR PRISON GUARD SHOULD BE MORE SEVERE THAN FOR KILLING ANYONE ELSE. I DO NOT CONTEND THAT THE LIVES OF OFFICERS AND GUARDS ARE WORTH MORE THAN THE LIVES OF THE AVERAGE CITIZEN. I DO CONTEND, HOWEVER, THAT OFFICERS AND

GUARDS, BECAUSE OF THEIR LINE OF WORK, HAVE GREATER OPPORTUNITY TO LOSE THEIR LIVES AT THE HANDS OF MURDERERS. LAW ENFORCEMENT OFFICERS AND PRISON GUARDS PLACE THEMSELVES AT RISK FOR OUR PROTECTION. BOTH OF THESE GROUPS ARE CONSTANTLY HANDLING DESPERATE PEOPLE USING DESPERATE MEANS TO SECURE THEIR OWN ENDS. A PERSON FLEEING CAPTURE FROM A HIGHWAY PATROL OFFICER OR SEEKING REVENGE ON A PRISON GUARD WILL TAKE WHATEVER ACTION NECESSARY WITHOUT REGARD TO THE CONSEQUENCES. MURDERERS GIVE NO THOUGHT TO ANY ONE ELSE BUT THEMSELVES AND THESE ARE THE PEOPLE WE CANNOT TOLERATE IN OUR SOCIETY.

SINCE AN ARMISTICE ON THE DEATH PENALTY HAS BEEN DECLARED IN OUR STATE, THE KILLING OF GUARDS HAS INCREASED. FIVE KANSAS STATE PENITENTIARY STAFF MEMBERS HAVE LOST THEIR LIVES SINCE 1905. THREE OF THESE AS RECENTLY AS 1978. ONE CORRECTIONAL OFFICER WAS BEATEN TO DEATH TRYING TO STOP AN INMATE FROM RAPING A NURSE. A FOOD SERVICE WORKER WAS STABBED TO DEATH BY TWO INMATES CAUGHT STEALING FOOD FROM THE KITCHEN. AND AS RECENTLY AS 1981, LT. ROBERT HURD LOST HIS LIFE, STABBED TO DEATH BY AN INMATE WHO BECAME ANGRY AFTER RECEIVING A DISCIPLINARY REPORT FROM LT. HURD. THESE INMATES ARE NOT WILLING TO SUFFER THE CONSEQUENCES OF STEALING FOOD OR RECEIVING A POOR DISCIPLINARY REPORT. NO, THEY WOULD RATHER KILL THE MEN WHO HAVE CAUGHT THEM THAN ANSWER FOR PETTY THEFT.

LET US NOT FORGET KELLY MURPHY, THE BONNER SPRINGS OFFICER WHO WAS MURDERED LAST MONTH AS SHE SAT IN HER PATROL CAR. HER KILLER HELD NO REGARD FOR HER LIFE. DAVID TATE SHOT AND KILLED A MISSOURI STATE TROOPER LAST SUMMER FOR NO

REASON AND THEREFORE HE HAS FORFEITED HIS RIGHT TO LIVE IN OUR SOCIETY.

IN 1971, J. EDGAR HOOVER TOLD A CONGRESSIONAL SUBCOMMITTEE THAT NINETEEN OF THE KILLERS RESPONSIBLE FOR THE MURDER OF POLICEMEN DURING THE SIXTIES HAD BEEN PREVIOUSLY CONVICTED OF MURDER.

ACCORDING TO THE UNIFORM CRIME REPORTS DURING THE PERIOD 1968-75, 49 POLICEMEN WERE SLAIN IN THE UNITED STATES. NO SUCH MURDERS OCCURRED DURING 1966-67, THE LAST TWO YEARS THE DEATH PENALTY WAS ACTUALLY USED IN THIS COUNTRY.

THERE ARE THOSE WHO ARGUE THAT CAPITAL PUNISHMENT IS NO DETERRENT TO MURDER. NO ONE HAS EVER EXPECTED THAT THE DEATH PENALTY WOULD DETER EVERY POTENTIAL OFFENDER. CAPITAL PUNISHMENT DOES NOT DETER PRE-MEDITATED MURDER BECAUSE THOSE WHO PLAN AND SCHEME DON'T PLAN ON GETTING CAUGHT! BUT CAPITAL PUNISHMENT MAY STOP THE RASH ACTION OF A TWO-BIT BURGLER CAUGHT IN THE ACT WHO KNOWS THE DIFFERENCE BETWEEN TWO YEARS AND DEATH. CAPITAL PUNISHMENT MAY DETER AN INMATE WITH A LIFE SENTENCE TO WHOM NOTHING MORE CAN BE DONE UNDER PRESENT LAW. IN AT LEAST ONE IMPORTANT RESPECT, CAPITAL PUNISHMENT IS UNQUESTIONABLY AN EFFECTIVE DETERRENT. IT SIMPLY CANNOT BE CONTESTED THAT A KILLER, ONCE EXECUTED, IS FOREVER DETERRED FROM KILLING AGAIN.

BECAUSE WE CHERISH LIFE, WE ARE COMMITTED TO PROTECT LIFE. AND AS A COMMITMENT TO OUR DUTY TO PROTECT HUMAN LIFE WE

DESIGNATE OFFICERS OF OUR SOCIETY TO USE SUCH FORCE AS IS NECESSARY TO DEFEND THE WEAK, THE UNARMED AND THE INNOCENT AGAINST THOSE WHO WOULD HARM THEM. IT IS NOW OUR TURN TO PROTECT THOSE OFFICERS WHO PROTECT US. IT IS OUR DUTY TO PROTECT THOSE GUARDS WHO PROTECT US. WE AS LEGISLATORS HAVE A RESPONSIBILITY TO OUR LAW OFFICERS AND OUR PRISON GUARDS. THE DEATH PENALTY IS NOT AN ACT OF VENGEANCE BUT RATHER A REASONABLE PROTECTION FOR OUR LAW ENFORCEMENT AND CORRECTIONAL OFFICERS.

B
C

HOUSE BILL NO. 2980

TESTIMONY OF MR. RON MILES, DIRECTOR OF THE
STATE BOARD OF INDIGENTS DEFENSE
SERVICES

Thank you, Mr. Chairman and members of the committee. My name is Ron Miles. I serve as the Director of the State Board of Indigents Defense Services.

On behalf of the board, I am offering an amendment to House Bill 2980 which will in no way detract from the purpose and intentions of the legislation but will, in fact, make the bill more workable.

The bill currently allows the defendant an opportunity to choose his or her own attorney in capital cases. On paper this seems like a reasonable method of ensuring that defendants are not denied adequate and effective representation, as guaranteed by the Sixth Amendment to the U.S. Constitution.

The fact of the matter, however, is that the language in this bill will not guarantee effective representation (it may encourage ineffective representation), it will not preclude the defendant from seeking post-conviction remedies, and finally, it will be more expensive than our current system.

The board, since the passage of the Indigents Defense Services Act of 1982, has developed a cost-effective system for providing defense services. The board has implemented public defender offices in some areas and may implement others where both quality and cost are factors of concern.

The board and I believe that the current system provides the best method for ensuring effective representation in capital cases. By continuing with the current system, the state can avoid, except in those areas of the state still served by appointed attorneys, the *\$30,000 price tag attached to defense services at the trial level, which has been experienced in those states having the death penalty.

I have spoken with Representatives Graeber and Jenkins about these amendments and am of the understanding that they have no objection as long as the intent of the bill remains unchanged. Thank you.

*

Ohio, California, Florida, Kentucky, Alabama, Illinois and Georgia all report trial costs of \$8,000-\$80,000 per case and another \$5,000-\$50,000 for the appellate attorneys services.

H. FUSA
3/6/86

State Board of Indigents' Defense Services

House Bill 2980
Death Penalty Bill

Recommended Changes:

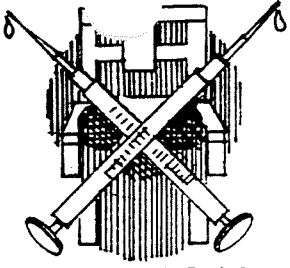
- Omit all of Sections 25 and 26
(especially new language in lines 599-604,
615-636, 660-661 and 677-703)
- Omit new language in Section 28(c) beginning
at Line 815 through Line 820

These sections refer to the defendant's ability to choose his or her own attorney. It is our feeling that this will cause problems for the state.

- This is a costly system that can be avoided through current statutes (e.g. public defender system).
- This language does not satisfy the constitutional requirements, i.e. does not ensure adequate counsel.

ATTACHMENT D

H. FISA
3/6/86



Coalition to Keep Kansas Free of the Death Penalty

229 South 8th Street
Kansas City, Kansas 66101
(913) 621-1504

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Cremer and Robin concluded -again I quote- "The greatest burden of responsibility for preventing assaults on police must fall on the police themselves...Paramount in solving the assault on police problem is the great need for special training of police officers... to anticipate and handle potential assaults". Thus if we want to talk protection of police lets go to Ways and Means and provide funding for training. Aren't we interested in saving lives as opposed to the thinly disguised "getting even" motive.

Do any of you remember me citing William Bowers and Glenn Pierce's study in last year's hearings? Do you recall that they demonstrated that executing murderers resulted in higher homicide rates instead of lower? That the end effect of the death penalty was not deterrence but actually encouragement for other crazies to go out in their own warped self-sense of glory? If this is so, then why do we want to risk getting more cops killed by enacting this legislation?

Any person who tells you that this proposed legislation will protect police officers is peddling a myth. This bill is not just a facade but a cruel sham or hoax as well.

You can call it coincidence if you want but I see some real irony in the fact that immediately after this bill received notice in the local media, 2 police officers were shot in Topeka. We say criminal lives are cheap, that they aren't worth keeping alive and the next thing that happens is that criminals are returning the compliment.

Bowers and Pierce entitled their study "What is the effect of executions: deterrence or brutalization?" Their results, of course, confirmed the latter. Why don't we hear proponents talk about this research or the other 100 plus articles appearing in the literature over the past 10 years which continuously demonstrate that no deterrence occurs.

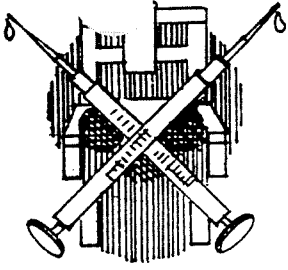
O.K. I said I'd stick to new topics. How about the latest FBI crime index figures for 1984? Kansas ranked 35th in the nation with a homicide rate of 3.7 per 100,000 inhabitants, just over Nebraska's 3.4. Compare those rates to Colorado's 5.8, Missouri's 7.1, or Oklahoma's 7.8 and remember each of them has the death penalty.

I remember hearing that "maybe we can't deter murder but at least we can prevent the killer from killing twice." Well Michael Radelet of U. of Florida and Hugo Bedau of Tufts U. just published a study in November showing we've done better than that. So far in this century we've sentenced 343 persons and executed 25 persons who never murdered anybody in the first place. And remember, when you want to talk about anger, need for revenge or any other emotional, knee jerk response to murder, nothing gets people stirred up more than killing a police officer. How much pressure is going to be put on the local D.A. and judge to get tough and bring in a capital conviction in such a case? Are we so sure we won't hang -excuse me- mercifully inject the wrong person?

One final point, while I'm on this subject: I've talked a great deal about the arbitrariness of the application of executions. A study came out this year about why so many Philadelphians are sentenced to die while murderers in Pittsburg only get life - all because of the difference in availability of defense. This is referred to as the "Pennsylvania Lottery". I find it interesting that Representatives Goosen, Long, Roe, Sallee and Vancrum voted against a Kansas lottery earlier this session. If each of you Representatives (that I named) are opposed to gambling money in a lottery why not join us in opposing the gambling of lives. It's a fixed game in the human numbers racket - the loser will always be poor, ignorant, a minority, crazy or some of each. You will never execute the rich,

ATTACHMENT E

H. FLSA
3/4/86



Coalition to Keep Kansas Free of the Death Penalty

229 South 8th Street
Kansas City, Kansas 66101
(913) 621-1504

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the intelligent or the elite.

I've probably gone on too long, but then so has this ludicrous proposal. Please examine the facts and give this bill a lethal injection. Let it die in committee.

RANK ORDER AND MURDER RATES PER 100,000 INHABITANTS
 OF THE 50 STATES ACCORDING TO THE FBI CRIME INDEX REPORTS

* - Abolition states

Rank	1984	Rate	Rate	Rate
1.	Texas	13.1		
2.	Louisiana	12.9		
3.	*Alaska	11.6		
4.	Florida	11.5		
5.	Nevada	10.8		
6.	California	10.6		
7.	New York	10.1		
8.	Mississippi	9.7		
9.	*Michigan	9.7		
10.	Alabama	9.4		
11.	Georgia	9.4		
12.	So. Carolina	9.2		
13.	New Mexico	9.1		
14.	Illinois	9.0		
15.	No. Carolina	8.7		
16.	Tennessee	8.4		
17.	Maryland	8.1		
18.	Oklahoma	7.8		
19.	Arizona	7.8		
20.	Virginia	7.7		
21.	Arkansas	7.5		
22.	Missouri	7.1		
23.	Kentucky	6.6		
24.	Colorado	5.8		
25.	Indiana	5.5		
26.	New Jersey	5.3		
27.	Ohio	5.1		
28.	*Oregon	4.8		
29.	Washington	4.6		
30.	Pennsylvania	4.5		
31.	Montana	4.4		
32.	*W. Virginia	4.4		
33.	Delaware	4.1		
34.	Connecticut	3.9		
35.	*Kansas	3.7		
36.	Massachusetts	3.6		
37.	*Rhode Island	3.4		
38.	Idaho	3.4		
39.	Nebraska	3.4		
40.	Vermont	3.4		
41.	*Hawaii	3.3		
42.	Wyoming	3.3		
43.	Utah	2.8		
44.	*Wisconsin	2.5		
45.	*Iowa	2.0		
46.	So. Dakota	1.8		
47.	*Minnesota	1.8		
48.	*Maine	1.7		
49.	*No. Dakota	1.2		
50.	New Hampshire	1.0		

Amnesty International

316 South 7th Street

Salina, Kansas 67401

913-827-8506

March 6, 1986

To: House Federal and State Affairs Committee
From: Donna Schneweis, CSJ, RN--AI State Death Penalty Coordinator
Re: HB 2980

Mr. Chair and members of the Committee, I am grateful for the opportunity to come before you today as a representative of Amnesty International USA. AIUSA is this country's section of the worldwide human rights movement, Amnesty International.

AI works impartially worldwide to free prisoners of conscience, that is, men, women, and children imprisoned because of their ethnic origin or because of the nonviolent expression of their religious or political beliefs. We work to guarantee fair trials for all political prisoners and also to abolish torture and the death penalty.

The United Nations Universal Declaration of Human Rights is the foundation of our work. We act to end violations of rights enumerated in this and other human rights documents.

Amnesty International opposes the death penalty because it is a violation of basic human rights. Article 3 of the Universal Declaration states "Everyone has the right to life, liberty and security of person." Article 5 guarantees "No one shall be subjected to torture or to cruel, inhuman, degrading treatment or punishment".

Our organization is cognizant of the very real problem of violent crime. We do not dispute a society's right to protection and punishment. We do oppose punishments that violate basic human rights. When the state violates the right to life in an attempt to punish a violation of this right by an individual, the state does not rectify a wrong, but rather commits another.

The world condemns, and correctly so, the use of forced drug therapy in the Soviet Union as a method of punishment. The world condemns, and correctly so, the use of various forms of 'hanging' torture such as the 'pau de arara' (the parrot's perch). The world condemns, and correctly so, the use of electric shock in countries all around the world.

There is no essential difference between the injection given to force violent convulsions and the injection given to cause death. There is no essential difference between the parrot's perch and hanging to kill. There is no essential difference between the electrode applied to cause excruciating pain and the electrode applied to cause death. A human rights violation is a human rights violation.

Amnesty International is a worldwide human rights movement which works impartially for the release of prisoners of conscience: men and women detained anywhere for their beliefs, color, ethnic origin, sex, religion or language, provided they have neither used nor advocated violence. Amnesty International opposes torture and the death penalty in all cases without reservation and advocates fair and prompt trials for all political prisoners. Amnesty International is independent of all governments, political factions, ideologies, economic interests and religious creeds. It has consultative status with the United Nations (ECOSOC), UNESCO and the Council of Europe, has cooperative relations with the Inter-American Commission on Human Rights of the Organization of American States, and has observer status with the Organization of African Unity (Bureau for the Placement and Education of African Refugees). Amnesty International was the recipient of the 1977 Nobel Prize for Peace.

ATTACHMENT F

H. FISA
3/6/86

3/6/86

When we execute someone in this country, we are every bit as guilty of disregarding human rights as the Ayatollah in Iran, as Colonel Khadaffi in Libya, as the Soviet Union, and as the Botha government in South Africa. We become hypocrites when we demand these countries respect human rights while we ignore the right to life and execute people.

The United States was founded on a basis of respect for inalienable human rights. These are fundamental, basic human rights each person has simply by reason of their birth. These rights are not dependent upon moral rectitude. Every person has an inalienable right to life. Under NO circumstance should the state violate that right or the right to freedom from cruel, inhuman punishment. No one should be sentenced to die.

We urge you to vote against HB 2980.



CONSULTATION OF COOPERATING CHURCHES IN KANSAS

4125 Gage Center Drive, Room 209, Topeka, Kansas 66604

(913) 272-9531

DOROTHY G. BERRY
Executive Coordinator

6 March 1986

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

Mr. Chairman and Members of the Committee:

I am Darlene Stearns, Legislative Co-ordinator for the Consultation of Co-operating Churches in Kansas, a state-wide, ecumenical, Christian church organization.

The Consultation of Churches, and before that, the Kansas Council of Churches has been a member of the Coalition to Keep Kansas Free of the Death Penalty since its inception. We subscribe to the aims and principles of the Coalition and agree with the statements given by the other opponents here today.

We would emphasize one important argument against imposition of the death penalty, the very real possibility of error. Enough documentation exists making it clear error does occur in our criminal justice system to the extent that we have executed innocent people.

It is tragic enough to err in sentencing a person to life imprisonment and discover many years later he is innocent. It is horrifying to discover we have sentenced a person to death, executed him and discover he was indeed innocent.

Execution is irreversible. Until such time we can devise a perfect, infallible criminal justice system we urge you to keep Kansas free of the death penalty.

Darlene Greer Stearns

ATTACHMENT G

H. FJSA
3/6/86

When vindication comes too late

By DON GRAFF
Newspaper Enterprise Association

Thomas V. Gladish, Richard Wayne Greer, Ronald B. Keine and Clarence Smith Jr. were convicted of murder, kidnapping, sodomy and rape in New Mexico in 1974.

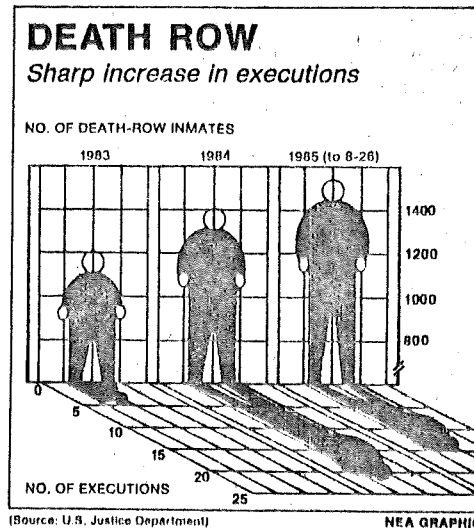
They were sentenced to death.

Subsequently, the murder weapon and an auto used in the crime were traced to another individual, who confessed. The four condemned men were exonerated. Their convictions had been based on perjured identification under police pressure and faulty lie detector tests.

Released after 18 months on death row, the four owed their freedom not to any built-in, fail-safe mechanism in the criminal justice system but to a newspaper's initiative. Because they happened to be from Michigan, the Detroit News dug into the case, turning up the information that led to the reversal.

Then there was the case of Anastarcio Vargas. Back in 1926 in Texas, he was convicted of murder, sentenced first to life imprisonment and then, upon appeal and retrial, to death. At literally the last possible moment a look-alike confessed to the crime. The innocent Vargas was freed. But not before he had spent four years in prison, been served his last meal and had his head shaved for execution.

Horror stories both. But about ultimately lucky people. The miscarriages of justice that would have sent them to their deaths were exposed and rectified in time. They lived. Twenty-five others whose cases are also cited in a current study of capital punishment in



the United States were not so fortunate. Their innocence was not established until after they had been hung, gassed or shot.

The study's authors are Professors Hugo Adam Bedau of Tufts University and Michael L. Radelet of the University of Florida, who presented it at a recent meeting of the American Society of Criminology. It is now being given wider distribution by the American Civil Liberties Union.

From the more than 7,000 executions for capital offenses in this country between 1900 and 1985, Bedau and Radelet identify 343 instances in which convicted defendants were later proved innocent. In 32 cases, no crime had been committed. In most of these, supposed murder victims turned up alive after the trials. In a quarter of the cases, as with the New Mexico example, subsequent identifi-

cation of the true culprits cleared convicted defendants.

Some, like Anastarcio Vargas, first came within days or hours of execution. Many more spent large parts of their lives in prison.

And then there were the 25 for whom vindication came too late.

"Few blunders can be made by government officials," Bedau and Radelet observe, "that compare with the horror of executing an innocent convict."

Capital punishment, they point out, repeating one of the principle arguments of its opponents, is "a system of punishment that cannot be infallible and that also permits of no remedy where it fails."

But there is an even more fundamental reason for finding it a "useless and hurtful institution," according to Henry Schwarzschild, director of the ACLU's capital punishment project that released the Bedau-Radelet study.

"The death penalty should be abolished also," he says, "because executing the guilty teaches that the killing of human beings is a socially acceptable answer to our problems."

Bedau and Radelet count on the average 38 wrongful convictions for capital offenses per decade. The 1970s saw 49. There have been 15 so far in the 1980s. In every year of this century there have been on death rows in the United States one or more persons who were eventually found to be innocent of the crimes for which they were convicted.

This suggests, according to Bedau and Radelet, that "there is every reason to believe that at this moment, one or more of the over 1,600 men and women currently under sentence of death are innocent."

Alternatives to Consider

It is difficult, if not impossible, to predict behavior or to judge when someone is no longer dangerous to him/herself and to the community. But we do have some facts upon which to base meaningful, rational alternatives to the death penalty.

There are no easy or guaranteed solutions to the problems of violent crime. Many of the sources of brutal criminal behavior are rooted in our social system. But there are some alternatives that legislators and citizens struggling with the issue of capital punishment can consider. None are without costs, problems or risks. But they each offer the hope of something more effective and less violent than the burning, hanging or gassing of human beings out of fear or a wish for vengeance.

Life Imprisonment

Persons convicted of the most serious capital offenses could be sentenced to life imprisonment in a humane environment, with the hope of parole after a certain number of years. In the case of the most dangerous psychopath, parole would at no time be considered.

Most countries that have abolished the death penalty have substituted some form of life imprisonment. In Canada, capital punishment was abolished in 1976; first-degree murder is now punishable by a 25-year prison term without parole; second-degree murder, a 10-25-year prison term.

No one knows what the effect would be if every homicide conviction (or even most) resulted in a life sentence served. But some of the moral issues raised by the death penalty must also be faced when thinking about the alternative of life imprisonment. To lock a person in a cage for a lifetime may be even more "cruel and unusual punishment" than death itself. Yet it provides for something that death does not: an opportunity for the natural maturation process to occur and for society to re-examine its responses to behavior.

In the case of Gary Gilmore and some other prisoners condemned to die, the thought of life imprisonment was so terrible that they preferred to be put to death.

Hospitalization and Medical Treatment

Those persons convicted of especially brutal capital crimes—sex-related murders and those showing severe mental/emotional disorder—should be committed to secure, small medical facilities for treatment. Sometimes the crime they have committed may incite the community to cry out for the death penalty. But such persons are obviously ill and in need of treatment.

Commitment and treatment would be decided by the sentencing judge in consultation with medical authorities. Medical personnel would also be given a role in helping to decide when and if the individual can be released back into society.

Twenty-seven states have legislation that specifically allows for the commitment of sex psychopaths to a state mental hospital or special treatment facility. Prosecutors, however, rarely use these laws; many seem to feel that their careers are advanced only by sending people to prison.

Though the emphasis would be on treatment, this approach is certainly a form of incarceration.

Restitution and Compensation for the Victim

"Murderers and prisoners I have talked with frequently express a deep frustration at being denied the possibility of making effective atonement," the anthropologist Colin Turnbull has noted. Opportunities to make restitution need to be expanded to include some capital offenders. In many respects, it is the surviving relatives who are the real victims. While it is impossible to "pay back" the family of a person who has been killed, restitution can help to alleviate financial suffering and permit the offender to take some responsibility for his/her action. This kind of option could be offered through in-prison or community work, depending on the nature of the criminal behavior.

At least twelve states have set up funds to provide monetary compensation for loss of earnings and medical expenses to victims of murder, rape, or aggravated assault. But none

of the current programs is adequate; there are limited funds available and much red tape. They are poorly advertised, as well. Federal legislation to assist with compensation programs has yet to be implemented. Concern for the victim is often one of the reasons given for support of the death penalty. If death penalty supporters (and abolitionists) were to lobby for passage of victims' compensation programs instead, they would be working toward an alternative that could offer vital help to the victims of crime or their survivors.

As it is now, families of murder victims often feel abused, shunned, and forgotten. They need help and support in dealing with their loss and deep feelings of anger and despair. Some families of homicide victims have formed their own self-help organizations. The larger community has a responsibility to them that goes beyond simply responding to the acts of the offender with calls for revenge. The fourteen-year-old daughter of Doris Mote, an Episcopal minister, was killed by Eugene Gall. "I could give you a whole list of things I'd like to do to Eugene Gall," the mother said later. "But the fact is that nothing I can do to him is going to give me the only thing I want, which is to have my daughter back."

Preventing Crime

One of the major drawbacks of the death penalty is that it diverts attention from the underlying causes of violent crime. Other alternatives should be explored in order to prevent further crimes. These include gun control, medical services in the community for the emotionally disturbed, wide-scale penal and parole reforms, and programs to reduce unemployment, especially among the young.

Strict handgun control is one specific means of reducing the level of violent crime. Every 50 minutes, it is estimated, someone in this country is killed with a handgun. Yet no country in the world is as permissive with handguns as is the U.S. Nearly anyone can buy a gun, over the counter or by mail, legally.

Handgun victims and their survivors have formed organizations to lobby for strict gun control, including the banning of cheap "Saturday night specials" that are often used in criminal acts.

A recent Harris poll showed that 67% of respondents are in favor of some gun regulation. However, effective federal legislation, and many bills at the state level, have been blocked by pro-gun lobbies. (It is important to note that guns bought by law-abiding citizens for self-protection often end up being used in the commission of a crime since up to half the guns used in murders or robberies are stolen.)

Action to stem the proliferation of handguns would have a significant impact on preventing future crimes, especially at a time of economic tensions, when social programs are being cut back and levels of frustration and hatred are rising. In the words of Mrs. Odile Stern, a gun control advocate whose daughter was shot to death, "Every time we hear of a tragedy involving a gun, we feel the pain and share the grief of the victim's family. Nothing can be done now about Michele's senseless killing, but there is so much that all of us can do to prevent other senseless killings."

Our Work for the Future

In Canada, Great Britain, and most countries in Western Europe, the death penalty has been abolished in favor of more rational, more humane and more effective methods. Greece, for example, has one of the lowest violent crime rates in the world (1.3 murders per 100,000 population compared with 8.8 in the U.S.) Though a capital punishment law is on the books, not a single person has been executed there in eight years. In 1979, Canada's homicide rate fell for the third straight year in a row since capital punishment was abolished.

Until we give up the illusion that putting people to death is a solution to the crime problem, we will never develop alternatives that will both protect us and enhance the value of human life in a civilized, just society.

"We appeal to our congregants and to our co-religionists and to all who cherish God's mercy and love to join in efforts to eliminate this practice (of capital punishment) which lies as a stain upon civilization and our religious conscience."

—Union of American Hebrew Congregations

"We believe that Jewish ideals and experience provide inspiration for a nonviolent commitment to life. . . The death penalty stands in defiance of our efforts to work for a better society through nonviolent means."

—The Jewish Peace Fellowship

"We maintain that abolition of the death penalty would promote values that are important to us as citizens and as Christians. First, abolition sends a message that we can break the cycle of violence, that we need not take life for life, that we can envisage more humane and more hopeful and effective responses to the growth of violent crime. . .

"Second, abolition of capital punishment is also a manifestation of our belief in the unique worth and dignity of each person. . .

"Third, abolition of the death penalty is further testimony to our conviction, a conviction which we share with the Judaic and Islamic traditions, that God is indeed the Lord of life."

— U.S. Conference of Catholic Bishops

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INSTEAD OF THE DEATH PENALTY



photo by Jackson Hill

Thirty-eight states now have laws in effect allowing the imposition of the ultimate punishment of death for certain, specified crimes of violence. As the rate of violent crime increases, support for capital punishment grows. Yet experience during the decades when executions occurred at the rate of 100 or more per year indicates that the death penalty is not a deterrent. Despite widespread publicity in Florida before and after the execution of John Spenkellink in May 1979, the state's reported murder rate increased more than 14% in the first six months of 1979. The death penalty creates an atmosphere of brutality that may even encourage violent behavior.

What are the alternatives for those convicted of heinous crimes? Do we have any choice, for the protection of society and ourselves, other than the death penalty? What about the victims?

Dangerous Offenders

First we must acknowledge the failure of our society to provide for the safety and well-being of all of our citizens. Our system of prisons is an inadequate response to the offenders' needs; it neglects the needs of the victims and provides no opportunities for prevention and safety in the community. Certainly prisons and capital punishment do not deter the repetition of anti-social behavior.

Some people feel that we need the death penalty to protect ourselves from those individuals identified as violence-prone, anti-social and beyond hope of rehabilitation. But penologists, prison wardens, and others in the criminal justice field agree that only a small percentage of the total number of people now imprisoned are what they define as "dangerous offenders," i.e., persons who have committed serious crimes and who have demonstrated violent behavior patterns. According to the National Council on Crime and Delinquency, "Only a small percentage of offenders in penal institutions meet these criteria. In any state no more than one hundred persons would have to be confined in a single maximum-security institution. . ."

Thousands of murders are committed in the U.S. each year. According to the FBI, most of these could be characterized as "crimes of passion," and occur between members of the same family, friends or acquaintances. Many of those originally charged with first-degree murder end up being convicted on a lesser charge. This depends, to a great degree, on their race, economic status and quality of their legal defense.

Only a small fraction of those who commit murder are put to death. During the period from 1951-60, nine out of ten persons convicted of first-degree murder were **not** executed. In the 1970s, with an average homicide rate of 20,000 per year, death sentences have averaged about 100 per year. Approximately half of those now sentenced to die are non-white, most of them are poor, undereducated and inadequately represented in the legal system.

Criminal behavior most Americans fear includes rape, murders and violent street or household crimes. These most serious crimes are highly publicized and create a great deal of fear. In the absence of similar publicity about alternatives for dealing with this kind of behavior, most people doubt whether a prison sentence provides them with enough protection. Though each type of violent behavior must be examined individually, is a murderer, for instance, who is released on parole likely to kill again?

As many studies have indicated, by far the great majority of persons imprisoned for murder never repeat the crime. In a ten-year study of 357 men convicted of homicide and later paroled in New York state, not one committed another murder. In fact, their parole records were generally better than almost every other category of offender. A study in California involving 342 men convicted of homicide had similar results.

Norval Morris and Gordon Hawkins of the University of Chicago School of Law point out that "aging cures all but the most exceptional proclivities to violent crime." Age is an important factor and people do change over time. As history has demonstrated, men and women convicted of violent crimes are often capable of leading fruitful lives in the community.

705 Fifth Avenue
Leavenworth, KS 66048

March 6, 1986

Chairperson and Members
Federal and State Affairs Committee

I am T. A. Lockhart, a citizen and taxpayer of Leavenworth, not representing any specific organization, but a member of two organizations historically opposed to a death penalty in whatever guise. The organizations - the National Association for the Advancement of Colored People and the National Association of Human Rights Workers. I serve on the state level of each.

I thank you for your indulgence to hear me on this controversial subject. To take a life solves no problem for whatever the reason. You can not kill to convince one that killing is not society's way of solving a problem.

I have a concern for those persons working in the law enforcement areas referred in this bill, whether in apprehension or detention - I do not read into the bill cover of ancillary personnel to the Law enforcement activity. However, I said I have concern, my concern goes back to my career of 17 years employment at the U. S. Penitentiary, Leavenworth, KS - 1947 to 1964. I selected the job because of my desire and my desire only. I knew full well what the potential dangers were. Dangers exist in any occupation that one secures. Recognizing the human factors during my training, my fears were lessened, as was my ego to flaunt my apparent superiority over those in my control and under my supervision. I took my training seriously. I accorded fairness, assignments on an equitable basis. I did not dread going to work nor leaving the job. I left to receive better wages for several reasons and to better promotion potential.

I am concerned about equitable employment program, the professional development of personnel, the pay as such, the training of law enforcement personnel, the physical plant, the social programs of incarceration, the end product of a human life in the criminal justice system and treatment of the alleged which can be effected far cheaper than what is proposed in this bill.

As a result, I ask that you do not pass this bill to the floor.

Thank You.

ATTACHMENT H

*H.F./SA
3/6/86*

#1

TESTIMONY - H.B. 2980

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
Thursday, March 6, 1986, 1:30 p.m.

KANSAS CATHOLIC CONFERENCE
Bob Runnels, Executive Director

Mr. Chairman, members of the House Federal and State Affairs Committee, my name is Bob Runnels, and I am Executive Director of the Kansas Catholic Conference. For a great number of years the Kansas Catholic Conference, the voice of the Catholic Church in Kansas in matters of public policy, has opposed efforts to institute the death penalty in our state. This position has always been one linked to the Church's respect for human life in its diversity of circumstances - born and unborn, rich and poor, young and old. All human beings, as we are told in Scripture, are made "... in the image and likeness of God", and redeemed by Jesus Christ who lived and died, "... that they may have life." Thus human life is to be protected and nurtured to the fullest extent possible.

On the issue of capital punishment, as with abortion, euthanasia, nuclear war and others, the Church today stands against the use of lethal means to solve social problems. We believe that a principled and consistent rejection of death-dealing as a policy instrument is required to uphold the dignity of human persons and the value of human life. Such a position does not ignore the reality of human sinfulness in the world; on the contrary, we recognize that, given human sinfulness and selective compassion, lethal means will appeal to some people as a solution to one or another social problem, be it those of unwanted pregnancies, burdensome hospital patients or remorseless killers.

Such solutions, in our view, are illusory and false. Our century has seen too many people killed in "improving" society for us to accept lethal means as anything but a failure of human compassion and imagination that solves nothing.

We ask that you report H.B. 2980 unfavorable for passage.

ATTACHMENT I
H. FISA
3/6/86

E

LWVK

LEAGUE OF WOMEN VOTERS OF KANSAS

3601 SW 29th, Suite 112-D Topeka, KS 66614 (913) 272-3062

March 6, 1986

STATEMENT TO THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS IN OPPOSITION TO HB 2980.

Mr. Chairman and Members of the Committee:

I am Ann Heberger speaking for the League of Women Voters of Kansas in opposition to HB 2980.

The League of Women Voters of Kansas completed a study of Sentencing Procedures in Kansas in December, 1982. Members were asked if they believed that the death penalty would deter others from committing murder; whether it is possible to administer fairly; and to give consideration to the costs of administering a criminal justice system that includes a death penalty.

In the matter of deterrence, League found that there are no statistics available that claim that a death penalty law or actual executions are a deterrent to others. Since the penalty has no affect, it is, in our opinion, a useless penalty. This in no way means we are not compassionate towards victims' families. We just don't believe that it accomplishes anything.

The League believes that no matter how carefully written, or limiting the kinds of victims the proposal intends to include, a death penalty statute will be arbitrary, capricious and continue to discriminate against the poor and minorities.

Last year in a similar statement we gave examples of disparity in sentencing in four Missouri cases. Only in one of the four cases was the death penalty received, even though all were horrible crimes. That particular case is still being argued as to whether the man be killed or not because his sanity is being questioned.

The Report of the Advisory Committee on Prison Overcrowding, January, 1984, says that the Committee found it alarming that Kansas incarcerated black people at a rate nine times that of whites (based on population). It appears to us that if more minorities are arrested, charged, convicted and imprisoned, then more minorities will receive the death penalty.

In the old days capital punishment was cheap. All that was needed was a rope and a tree -- that is no longer true today. Court expenses and wear and tear on our courts and prisons are considerably more expensive when including a system of capital punishment.

ATTACHMENT J
H. FJSA
3/6/86

Studies show that at least nine out of ten of those sentenced to death will not die, but will serve life sentences anyway. In each case, the state would not only support the person for life, but would pay for all of the extra costs of usually successful efforts to void execution.

A study done in New York shows the cost of death penalty trials and appeals at \$1.8 million dollars. The cost includes defense, prosecution, court and jury expenses and execution. It does not include the cost of death row facilities, manpower, transportation and security. When Kansas had the death penalty, juries recommended the penalty in only a small percentage of convictions for first degree murder. Since the first legal hanging in Kansas, in February, 1863, a total of 24 persons were executed under state law as of December, 1965.

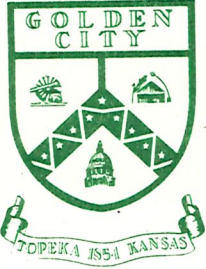
Again, the League believes that a criminal justice system with capital punishment cannot solve the disparity of sentencing, whether the victims are housewives, accountants, police officers or correctional officers. We also believe that it is too costly to the State for the purposes of revenge for a few, and an image of being tough on crime.

We urge you to oppose HB 2980 and the death penalty as an alternative to life in prison.

Thank you for the opportunity to speak before you today.

Ann Heberger

Ann Heberger
LWVK Lobbyist



CITY OF TOPEKA

Department of Police
204 W. 5th Street
Topeka, Kansas 66603
Phone 913-354-9551

March 6, 1986

POSITION PAPER ON HB 2980

Det./Sgt. Terry Stevens appears today on behalf of the Topeka Police Department in favor of HB 2980.

Law enforcement administrators and officers themselves continue to be extremely concerned with police officer safety in today's society. This concern has increased significantly in view of the recent incidences involving the death and injuries of police officers in Kansas. In viewing the statistics of officer injury and death over the past 125 years, it is apparent that these acts of violence have increased dramatically in the past 7 years. Overall, there have been approximately 50 officers slain in Kansas, with 11 of those deaths or 20% occurring in just the past 7 years.

Because of numerous rulings handed down by various courts across the nation, an atmosphere of doubt and hesitancy has been created for the law enforcement officer in the use of his weapon. In this atmosphere, officers are waiting to be fired upon before returning fire. This creates a dangerous situation for an officer especially since a split second may determine the difference between life and death.

Although we are not in the position to show that the number of assaults on police officers has increased, it appears the severity of assaults has increased dramatically. For such evidence we need only to look at the events in the past two years where officers near Colby were shot, two Topeka police officers were shot down when they approached a house on a domestic call, a Highway Patrol trooper was shot while making a traffic stop, and the senseless death of an Overland Park policewoman who was also involved in a traffic stop. More dramatically, in the past two months, a Bonner Springs policewoman was slain by a sniper while writing reports in her patrol car. On the same day a Salina police officer was gunned down while making a traffic related stop. This officer is alive only because as he lay wounded on the ground the assailant pointed his weapon at the officers head, pulled the trigger, and the hammer fell on a bad round.

ATTACHMENT K

H. FLSA
3/6/86

In addition, in just the past two weeks, two Topeka police officers have been shot and injured in separate incidences. In these incidences the assailants both fired on the officers without warning or apparent reason.

In the past, opponents of the death penalty have argued that many of the murder cases have involved "crimes of passion" and "heat of anger" situations. We submit that the killing of a law enforcement officer in the performance of his duty is done for only one reason. That being to avoid apprehension.

This committee currently has the opportunity to consider legislation that will aid in officer safety. This bill will not totally eliminate police officer killings however we believe it will have a dramatic effect in reducing the mounting numbers of indiscriminate shootings and deaths, in which a suspect, using an illogical thought process, believes he can escape by killing the police officer.

We would ask that you give favorable consideration for passage of HB 2980.