

Approved \_\_\_\_\_

3/4/87  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at  
Chairperson

11:00 a.m. ~~xxx~~ on February 27, 1987 in room 254-E of the Capitol.  
~~xxxx~~

All members were present. ~~except~~

Committee staff present:

Mary Galligan, Legislative Research  
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee:

Mr. Richard Ney, Wichita  
Mrs. Mahin Etzenhouser, Topeka  
Mr. Fred Petzold, Overland Park  
Mrs. Ann Heberger, League of Women Voters of Kansas, Overland Park  
Mr. Danny McMahon, Kansas Coalition Against the Death Penalty, Topeka  
Mr. Michael Woolf, Kansas Coalition Against the Death Penalty, Topeka  
Sr. Therese Bangert, Kansas Coalition Against the Death Penalty, Topeka  
Ms. Judy Davis, American Civil Liberties Union Kansas Affiliate,  
Manhattan  
Mr. James W. Clark, Executive Director, Kansas County & District  
Attorneys Association, Topeka

The Chairman welcomed all for the hearing on HB 2062, concerning capital punishment. All those appearing today will be opponents of the bill.

The first conferee was Mr. Richard Ney, who appeared in opposition to the bill, and as a representative for himself. (Attachment #1)

Mrs. Mahin Etzenhouser also appeared for herself. (Attachment #2)

Mr. Fred Petzold appeared for himself. (Attachment #3)

Mrs. Ann Heberger appeared for the Kansas League of Women Voters. (Attachment #4)

Mr. Daniel B. McMahon appeared as a member of the Kansas Coalitions Against the Death Penalty. (Attachment #5)

Mr. Michael Woolf spoke on behalf of the Kansas Coalition Against the Death Penalty. (Attachment #6) (Attachment #6A)

Sr. Therese Bangert, also a member of the Kansas Coalition Against the Death Penalty presented her statement. (Attachment #7)

Ms. Judy Davis, appeared to represent the American Civil Liberties Union Kansas Affailiate. (Attachment #8)

Mrs. Darlene Greer Stearns relinquished her time for others, but a copy of her statement is included for the Minutes and for the perusal of the Committee. She is Legislative Coordinator for the Legislative Concerns Consortium of the Consultation of Cooperating Churches in Kansas. (Attachment #9)

Mr. James W. Clark appeared in behalf of the Kansas County & District Attorneys Association in opposition to HB 2062, not in opposition to the concept of capital punishment, but to the specific bill as it is written. (Attachment #10) They are concerned about implementation.

The meeting was adjourned at noon.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

2/27/87  
Attachment #1

Kansas Senate  
State and Federal Affairs Committee  
Hearing on House Bill No. 2062  
Testimony of Richard Ney  
February 27, 1987

The question is not whether Kansas can afford a death penalty. Of course it can. Money can be taken from schools and social programs and allocated to the mechanism of capital punishment. Money can be taken from rehabilitation programs at the state prisons to create a death row. This will not make our streets any safer, but it can be done.

The real question is not whether the death penalty is expensive -- we know that it is -- the real question is whether the people of Kansas will get what they think they are paying for. For the fact is this, after millions upon millions of dollars are spent, the "best" that can be expected is that by the year 2000 the state will get to execute some poor, mental deficient whose crime was committed some 12 years before. Maybe.

Let us look at the statistics: There are 1,764 people now on death rows. In the last 12 years there have only been 66 executions, and a number of those individuals were volunteers, like Gary Gilmore. While 66 have been executed, during the same time 49 have had their sentences commuted by governors. Forty-one death row inmates have died of other causes, including suicide, murder and old age. And while 66 were executed, more than 1,300 won their way off death row by appeal.

States are finding that the appeal process in capital cases is protracted, taking often 10 to 12 years in the already overburdened court system. If revenge is the reason for the death penalty, as proponents say, it is indeed a dish being served very cold, if at all. Many states have full death rows and an idle execution chamber. Here are a sample of states with death penalties since the mid-1970s and their rate of "success":

- \* Illinois, 98 condemned, 0 executed.
- \* Oklahoma, 63 condemned, 0 executed.
- \* California, 190 condemned, 0 executed.
- \* Pennsylvania, 87 condemned, 0 executed.
- \* Ohio, 67 condemned, 0 executed.
- \* Missouri, 43 condemned, 0 executed.

Attachment #1  
FSA 2/27/87

Of course, getting defendants to death row is not as easy as the legislatures of many states imagined. In Kentucky more than 100 capital indictments are filed every year. Kentucky has had a death penalty for more than a decade. Of the more than 1,000 persons charged with capital crimes, only 29 are currently on Kentucky's death row.

The citizens of California passed the Brigg's Initiative, creating a voter-enacted death penalty. Despite supposed overwhelming popular support in California for capital punishment, only one jury in every 10 that has the opportunity to pass sentence in a capital case votes death. Why? Because it is easy to be "for" capital punishment in theory, but quite another thing to personally impose death on a 19-year-old boy with an IQ of 63 who was abused and abandoned as a child. They passed the death penalty for Ted Bundy and Charlie Manson, but they find those people are so seldom found.

These good people who can not vote to execute find in the end they did not get what they paid for. They were sold the death penalty as a cure-all to prevent the crime and violence that frustrated them. Instead they have bought more frustration, because the "final solution" is no solution.

Can Kansas afford a death penalty? Perhaps. Is it worth millions to execute a handful of murders some 10 to 12 years after their crime? Clearly the answer to that is no, it is not worth the money and humanity expended for it.

**My name is Mahin Etzenhouser. I am a single mother of 2 gifted teenagers. I am not a member of any political party or representing any group.**

**President Truman was once asked what we should do about juvenile delinquency, His reply was 'arrest their grandparents.'**

**"The mother is the first teacher of the child, for children, at the beginning of life, are fresh and tender as a young twig and can be trained in any fashion we desire. It is clear that the mother is the first teacher and that it is she who establishes the character and conduct of the child."**

**In the early 1960's while I was attending the University of Kansas I met a black single mother of three children. The two children that I met were beautiful, clean, well mannered and bright. The third, the oldest son whom I never met was serving time at the Leavenworth Penitentiary. Later I heard the mother say that she left an alcoholic and abusive husband when her three children were very young. She had no job or money or place to live, and she had no choice but to steal food at the grocery store to feed her three children. The oldest son obviously learned his criminal behavior from his desperate mother. Last time I met this family the mother, daughter and the youngest son were all attending the University of Kansas, and the youngest child was attending the K.U. School of Law and was planning to enter politics.**

**Children do learn by example and they learn what they do from their parents and the society around them.**

**"Mothers are the first educators of mankind, can the child be educated if the teacher be ignorant?"**

**My question is: Who is responsible for and what are the causes of crimes committed in this generation. Is it the parents, the poverty? Is it the escalating rate of divorce? (47% of the criminals in our prisons come from broken homes.) Is it moral laxity, over permissiveness, lack of commitment and education in parenting, our television programs or easy access to guns?**

**The first step in eradicating any problem is to know the causes of the problem, take a close look at all the possible solutions and then select the best possible solution.**

**Is the death penalty the best possible solution? Will it eradicate the problem? Have we thoroughly studied other solutions? Is it cost effective? Would these funds be better used to eradicate the problem from its roots and prevent bringing up a new generation of criminals? To provide parenting skills for vulnerable mothers? To provide pre-marital education so we may improve the quality of family life? to provide education in communication skill at all levels of society as well as the family? To establish tougher divorce laws and preserve the institution of marriage and provide citizenship education in preschool so that the children become responsible citizens when they grow up.**

**Every child has the potential of becoming the light in the lighthouse rather than the dark clouds obscuring the light of the sun.**

**I came to America twenty-seven years ago because America was a symbol of progress and I wanted to be a part of that progress. America is still one of the most advanced civilizations of the world. We can rule by reason, compassion and justice and not by fear and force.**

**"Fighting and employment of force, even for the right cause, will not bring about good results. Evil will continue. Hearts must be changed."**

**I am positive we can have Kansas free of crime and be a model for the rest of the nation. We have the means to accomplish that task, but we need a new approach.**

**My recommendation to the committee is to consider using the funds for the eradication of the root causes of crime. Unless the crime problem is battled at its roots we will be bringing up a new generation of criminals.**

**The Universal House of Justice in its 1985 message to the peoples of the world wrote:**

**"The decision making agencies involved would do well to consider giving first priority to the education of women and girls, since it is through educated mothers that the benefits of knowledge can be most effectively and rapidly diffused throughout society."**

**(All quotations are from the Baha'i writings.)**

2/27/87  
Attachment #3

**FRED J. PETZOLD**  
ATTORNEY AT LAW  
8801 GLENWOOD  
OVERLAND PARK, KANSAS 66212

(913) 383-9257

February 27, 1987

Edward F. Reilly, Jr., Chairman  
Senate Federal and State Affairs Committee  
State Capital Building  
Topeka, Kansas

To the Honorable Chairman Reilly and Committee Members:

I wish to register the following points in my opposition to the death penalty set forth in House Bill 2062:

1. Is the death penalty right for Kansas? Is the death penalty in accordance with the principals that you believe should be reflected in a mature people and their government?

It is a fact that only the Soviet Union, China, certain Arab states and a few of our own states resort to primitive capital punishment, while the rest of the civilized world has abandoned it.

Does it not seem clearly hopelessly contradictory to use as a state-sanctioned punishment the very result we want so much to prevent.

2. The sentence in a criminal case has a threefold purpose:

- a. Appropriate punishment to the offender.
- b. Deterance of others to committ like acts.
- c. Rehibition of offender and return as productive member of our society.

How does the death penalty measure up? Obviously, the destruction of the individual eliminates any opportunity for rehabilitation.

Furthermore, the death penalty has been shown by no reputable study to deter crime. It is striking that there is no death penalty in any of the six states with the lowest murder rates in the country. The murder rate in Kansas is lower than in any of its neighboring states that do have the death penalty.

Thus, the death penalty is not proper criminal sentence for Kansas - - it does not deter and it prevents rehabilitation.

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Edward F. Reilly, Jr., Chairman  
February 27, 1987  
Page 2

3. Capital punishment in Kansas will be much more expensive than the current system. Although the exact figures may not be known, only the blind would deny this established fact.

Is it wise from a cost stand-point alone to take more funds away from established, necessary and effective programs and spend them on a provision that is shown nationally to be unable to produce the intended results? The answer is clear.

4. Due to the great cost of prosecuting death penalty cases, the provision has not been applied uniformly in those states that have adopted it. How can this be? Illustration: In our state, the expenses of prosecuting a death case falls upon the counties. In the less affluent counties, cases that will be prosecuted as capital cases in the richer counties will sometimes be prosecuted as less serious crimes.

It should not depend on the financial resources of the individual counties as to whether the death penalty is sought. All citizens of our state should receive equal treatment under our laws. The economics of the death penalty makes this very difficult to achieve.

Also, it is very important to note that the death penalty has not been applied fairly in the states that have adopted it from a racial stand-point. The Kansas Council on Crime and Delinquency has cited the racially discriminatory application of the penalty as only one of its reasons for opposing the penalty. In fact, the constitutionality of the death penalty is currently under challenge in the United States Supreme Court on the grounds that it is applied on a racially discriminatory basis in our country.

Moreover, the death penalty has historically been applied discriminatorily on the basis of class. United States Supreme Court Justice Douglas once said: "One searches our chronicles in vain for the execution of any member of the affluent strata of our society."

5. I call upon you to look beyond opinion polls and to act above political expediency. The death penalty - the eye for an eye mentality - is not compatible with the best principles of our people and our government. Being a resident of our state most of my life, I have acquired the firm belief that human life is uniquely valuable and that no human life is beyond rehabilitation. Therefore, I believe that state-sanctioned killing is wrong.

Thank you for your consideration of this very important issue. Please vote against the death penalty in Kansas.

Sincerely,



Fred J. Petzold



2/27/87  
Attachment #4

# LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

3601 SW 29th, Suite 11-D Topeka, KS 66614 (913) 272-3062

February 27, 1987

STATEMENT TO THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE IN OPPOSITION TO HB 2062.

Mr. Chairman and Members of the Committee:

I am Ann Heberger speaking for the League of Women Voters of Kansas in opposition to death penalty legislation.

The LWVK opposes the death penalty for the following reasons:

- \* It is not a deterrent to others - If swift and effective punishment is the key to the deterrence of others committing certain crimes, capital punishment does not meet that criteria. For example, Missouri and Kentucky have had the death penalty for 10 years and neither state has executed anyone.
- \* An innocent person may be wrongfully convicted - According to research, at least 1 in 20 persons has been executed by mistake since 1900. Surely, that is convincing evidence enough that it certainly could happen in Kansas.
- \* It is discriminatory toward the poor and toward racial minorities - There is no record that we know of showing that a rich person has been executed. As to racial discrimination, a Georgia case is currently before the U.S. Supreme Court concerning this very issue.
- \* It is too costly to the state in terms of legal fees and court time - The League is very concerned that the opponents of the death penalty have been accused of distorting the truth about the cost. We believe that we have tried very hard to determine what the real cost to the taxpayers will be. When counting up expenses incurred by both the counties and the state over a long period of time, death penalty legislation is extremely costly. We also believe that by the time a maximum facility to hold capital offenders is built, that each cell could easily cost as much as \$100,000. We arrived at this figure by using the pricetag of more than \$75,000 per bed that the State spent for the mediam security facility at K.S.P. Maximum security obviously costs more.

All legislation has a fiscal note attached to it and rightly so. Not to take the real cost of death penalty legislation into consideration is, in our opinion, fiscally irresponsible.

Attachment 4  
FSA 2/27/87

Last Summer and Fall, we all listened to candidates in both parties discussing the quality of life in Kansas. The first week of the Session, the Legislature cut funding for prenatal care for poor women, cash grants for aid to dependent children, daycare for children of low income working parents, and for others who need supportive state services. The League believes that no matter how grim the economic situation is our tax dollars should be used to provide necessary services to those children and others in need to maintain some of that quality of life here and now, and not in some distant future.

If the state cannot afford to fund basic needs, the League doubts the wisdom of implementing costly death penalty legislation. A death penalty, in our opinion, is not a solution to crime, it is only an expensive illusion of being tough on criminals.

Thank you for the opportunity to speak before you today, and the League strongly urges you to please not pass death penalty legislation in our state.

KC Times 2/25/87  
Prison isn't  
told of stay  
of execution

The Associated Press

WALLA WALLA, Wash. — Prison officials didn't know for two months that an inmate's execution had been halted by the Washington Supreme Court and they learned of it only when they asked the inmate how he wanted to die, an official said Tuesday.

Prison officials discovered the error last week, when they began moving through procedural steps in advance of the Friday execution date that had been set for Benjamin James Harris III last year.

Washington allows condemned inmates to choose hanging or lethal injection.

"He declined to make a choice and indicated to us that 'perhaps you're not aware this is (still) on appeal,'" said Veltry Johnson, a spokesman for the Department of Corrections.

The high court issued its stay Dec. 15, said Reggie Schriver, the court clerk.

"We apparently miscommunicated and the people who were supposed to talk to one another about this didn't," Johnson said.

Although an execution cannot be carried out except with a death warrant signed by the governor, the mistakes in the Harris case were considered a big embarrassment for corrections officials, Johnson said.

Johnson said he was in Colorado when the mistake was uncovered but had learned since his return Monday that procedures had been changed to avoid similar situations in the future.

Six years on death row K.C. Star  
Jan. 4, 1987

## No end in sight for KC case

By Miriam Pepper

special projects

Neither Walter Blair, nor his legal case, will die yet.

He was the first Jackson County man sentenced to die in the gas chamber since Missouri reinstated the death penalty in 1977. Blair's case has consumed the time of more than 20 lawyers, more than a dozen judges and 94 potential jurors since his arrest in 1979.

And the list isn't closed.

"This case will go on and fester like an open wound," said Bernard Rhodes, a lawyer with the Gage & Tucker law firm appointed to handle Blair's federal appeals.

In less than two years, Rhodes estimates the case has cost his firm \$32,000. Nine other lawyers and one law student have spent time on it.

Blair was convicted late in 1980 of killing Katherine Jo Allen on Aug. 19, 1979, the day before she was to testify against a man accused of raping her. Prosecutors argued the accused rapist hired Blair.

When police arrested Blair he confessed in writing and on

videotape. He was without a lawyer. That was the last time.

His first two appointed attorneys quit after several months. The next two handled the trial, each collecting \$8,000. Then a public defender spent a solid year on Blair's case and that of another death penalty defendant. Another public defender spent a month on an appeal never filed.

Monday, another brief will be filed on his behalf in the 8th Circuit U.S. Court of Appeals and the state will add another in a month. The legal maneuvering has kept Blair out of the gas chamber since his sentencing early in 1981.

Blair is one of 43 prisoners on Missouri's death row. Blair's case has progressed in the appeals process further than most others, officials say.

His case is not complex. There are no broad constitutional questions, only challenges to specifics of the case.

One point of contention has to do with remarks made by a prosecutor at the trial's conclusion:

"Why should we as taxpayers have to house this man for 50 years? Why should we have to



Walter Blair

... convicted of killing a rape victim

feed him three meals a day for 50 years, clothe him for fifty years, furnish him recreation, medical care?"

Rhodes contends those comments appealed to the common misconception that it is cheaper to imprison a killer for life than to execute him.

The Division of Prisons is to be notified each time an appeal is filed in a capital punishment case and each time the court rules on such an appeal, he said.

In the future, corrections officials intend to notify the media of changes in plans for executions, Johnson said.

Friday, 2/27/87

2/27/87

Statement in Opposition to the Death Penalty

Attachment #5

Submitted by: Daniel B. McMahon  
410 SW Saline  
Topeka, Ks. 66606  
(913) 357-0771

I am one of four Topeka persons who are fasting this week as a statment against the death penalty. But our fast is also in affirmation of life rather than for taking of life. Bill Lucero, a fellow supporter and member of the National and Kansas Coalitions Against the Death Penalty, has compared the food that we have taken from ourselves this week, to the food that will be taken from those needy should the death penalty be reinstituted in Kansas. The additional costs for legal services and death row housing would certainly be drawn from other services to the public. And to what end?

One of the proponents yesterday argued we should be considering the cost to the victims and to the families of the victims...that we should concern ourselves with the cost to them, rather than the cost of executing capital offenders. That is what our fast is about, in a broader perspective. As an affirmation of life, we express our concern for the whole community, including the convicted murderer.

But the primary focus of the death penalty is the convicted murderer. He or she is the issue at hand. And just what does it cost, in other than dollars, in turmoil and the promotion of more violence, both active and passive.

I think we must ask ourselves what exactly ~~do~~ we want to achieve by considering the issue of the death penalty, and perhaps by choosing to execute murderers<sup>ers</sup> for their crime. One proponent has said that we want to prevent the convicted murderer from getting out and killing someone else.

Attachment #5

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Another argued that the threat of death alone would be a deterrent to many. But history of both countries and individuals, parents and children, and their relationships, show us that acts of violence or threats of violence fail in the objective to create peace. But rather, these acts and threats of violence are known to encourage the very same behavior.

Again I ask: What do we wish to achieve? To protect ourselves, as potential victims of violent crime? To allay our fears?

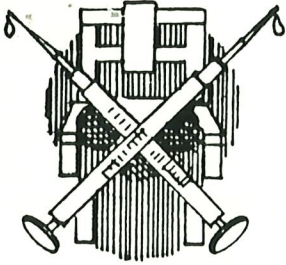
I suggest that neither having the death penalty, or not having the death penalty will stop crime, or killing, in our community or society. But rather perpetuate more crime, more fears, and more suffering. So perhaps we must look to some other solution. A solution that includes caring for all of us, criminal, victim, family, and others in fear.

Before you choose for or against capital punishment as some magical answer. Ask what you really wish to achieve. If you <sup>want</sup> a less violent society, then I suggest you must seek a less violent way of achieving that goal.

Each of us is responsible for our own personal choices and actions. But each of us also bears some responsibility for the actions of those whom we place in authority, or allow to serve in authority over us. I am responsible to some degree for what you do, and that is why to a great degree,

I am here today. I personally have no wish to kill anyone for their crimes. And I ask you also to avoid this task. I ask you to seek another solution to achieve a more peaceful path.

Thankyou for your consideration.



# Kansas Coalition Against the Death Penalty

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

TESTIMONY TO THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE ON  
HB2062

I WOULD LIKE TO THANK THE CHAIRMAN AND THE COMMITTEE FOR ALLOWING ME TO TESTIFY TODAY. MY NAME IS MICHAEL WOOLF AND I AM SPEAKING ON BEHALF OF THE KANSAS COALITION AGAINST THE DEATH PENALTY.

ON FEBRUARY 4TH AND 5TH, JOHNATHAN GRADESS FROM THE NEW YORK STATE DEFENDERS ASSOCIATION WAS HERE AND SPOKE TO MANY OF THE SENATORS ON THE COST FACTOR OF THE DEATH PENALTY. I REGRET THAT CIRCUMSTANCES DIDN'T ALLOW HIM TO SPEAK BEFORE THIS COMMITTEE, SO AT THIS TIME I WOULD LIKE TO BRIEF THE COMMITTEE ON THE INFORMATION THAT HE PROVIDED CONCERNING COST.

ALL OF THE FIGURES WHICH I SAW WHILE IN KANSAS, INCLUDING THOSE OF THE BOARD OF INDIGENT DEFENSE SERVICES AND PROF. DAVID GOTTLIEB, ARE SOFT AND, I THINK, EXCEEDINGLY OPTIMISTIC.

ONE OF THE REASONS FOR THIS IS THAT IN GOTTLIEB'S TESTIMONY TO THE HOUSE COMMITTEE HE QUOTED FIGURES CONCERNING DEFENDER ESTIMATES AT \$3,000 FOR EXPERTS AND \$2,000 FOR INVESTIGATORS. THESE ESTIMATES EXCLUDE A LOT, AND I WOULD SAY ARE SHY BY ABOUT \$20,000 to \$25,000 PER CASE. THESE ARE NOT NEW YORK FIGURES BUT ARE FIGURES GENERATED FROM LAWYERS IN PLACES LIKE ALABAMA.

ANOTHER PROBLEM WITH CURRENT FIGURES IS EVIDENT IN PROSECUTION COST ESTIMATES. CURRENTLY MANY COUNTIES HAVE A PROSECUTION TO DEFENSE EXPENDITURE RATIO OF 7 TO 1. YET ESTIMATES THUS FAR HAVE FIGURED THE RATIO AT 1 TO 1. THIS IS AN UNREALISTIC PROJECTION FOR TRIAL LEVEL EXPENDITURES.

ON THE QUESTION OF APPELLATE COST, THE ESTIMATE OF \$135,000 PER YEAR IS EMBARRASSINGLY LOW. THAT WILL BE CLOSER TO THE COST OF ONE CASE RATHER THAN THE TOTAL COST OF APPELLATE SERVICES. THE APPELLATE JUDICIARY COSTS, THE COSTS OF THE STATE'S ATTORNEY OR OTHERS WHO WILL RESPOND HAVE NOT BEEN CALCULATED.

THE PROJECTION HAS BEEN MADE THAT 4 LAWYERS SHOULD BE HIRED TO HANDLE APPROXIMATELY 16 APPEALS PER YEAR. AVAILABLE NATIONAL CASELOAD WEIGHTING FIGURES INDICATE THAT 1 LAWYER AT BEST CAN HANDLE 2 DEATH PENALTY APPEALS PER YEAR. THIS WOULD IMMEDIATELY DOUBLE THE FIGURES.

WHAT I SEE AS THE LARGEST BLACK HOLE IN THE KANSAS COST RESEARCH HAS TO DO WITH THE ABSENCE OF FIGURES FOR STATE POST-CONVICTION OR FEDERAL HABEAS CORPUS RELIEF. NOBODY HAD THEM.

Attachment # 6  
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DURING THE TEN YEARS OR MORE WHILE THESE CASES ARE PENDING, YOU WILL INCUR HIGH SECURITY COSTS WHICH HAVE NOT BEEN PROJECTED. THERE HAS BEEN TALK OF "REFURBISHING" MAXIMUM SECURITY CELLS. THIS WILL TRANSLATE, WITHIN 24 MONTHS TO A DESIRE FOR A DEATH ROW. 24 MONTHS FROM NOW THE \$7 MILLION YOU PROJECT TO BUILD IT TODAY WILL BE \$11MILLION.

AS PROF. GOTTLIEB WAS QUOTED TO SAY, "YOU CAN PAY FOR A DEATH ROW NOW OR YOU CAN PAY A LOT MORE FOR IT LATER."

NOW I WOULD LIKE TO ADDRESS SOME OF THE TESTIMONY THAT WAS GIVEN HERE YESTERDAY. THE MOST DRAMATIC DIFFERENCE BETWEEN CAPITAL SYSTEMS AND NON-CAPITAL SYSTEMS IS THE APPELLATE REVIEW, YET YESTERDAY THE ATTORNEY GENERAL DENIED THIS. WHILE IT IS TRUE THAT ON THE BOOKS A DEFENDANT HAS THE RIGHT TO THE SAME APPEAL PROCESS WHETHER HE OR SHE IS FACING THE DEATH PENALTY OR NOT, THE REALITY IS THAT IN NON-CAPITAL CASES THE APPEAL PROCESS STOPS AFTER THE SECOND LEVEL OF REVIEW. BUT IN CAPITAL CASES THE APPEAL PROCESS WILL GO THROUGH ALL ELEVEN LEVELS OF REVIEW.

IN RESPONSE TO SENATOR STRICK'S QUESTION ABOUT COSTS IN OTHER STATES, YES, WE DO NEED TO LOOK AT THE FIGURES COMING FROM OTHER STATES. THESE ARE NOT, AS THE ATTORNEY GENERAL STATED, ESTIMATES BASED ON FIRST TIME COSTS, THESE ARE THE ACTUAL FIGURES THAT THESE STATES ARE BUDGETING FOR CAPITAL CASES. FOR EXAMPLE, NEW JERSEY'S PUBLIC DEFENDERS OFFICE HAS TO BUDGET \$102,000 FOR EACH DEATH PENALTY CASE IT RECIEVES.

FINALLY I WOULD LIKE TO COMMENT ON THE SITUATION IN DOUGLAS COUNTY. RECENTLY THAT COUNTY RAN OUT OF FUNDS FROM THE STATE BOARD OF INDIGENT DEFENSE SERVICES. THEY HAVE NO MORE MONEY TO PAY LAWYERS WHO REPRESENT INDIGENT DEFENDENTS AND THEY HAVE FOUR MONTHS LEFT IN THE FISCAL YEAR. IF WE ENACT A DEATH PENALTY THIS WILL BE HAPPENING NOT ONLY IN DOUGLAS COUNTY BUT ALSO IN WYANDOTTE COUNTY, IN LEAVENWORTH COUNTY, AND YES SENATOR MARTIN IN CRAWFORD COUNTY.

THANKYOU AGAIN MR. CHAIRMAN.



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	1985	Rate	Rate
1.	Texas	13.1	Texas	13.0	
2.	Louisiana	12.9	Florida	11.4	
3.	*Alaska	11.6	*Michigan	11.2	
4.	Florida	11.5	New Mexico	10.9	
5.	Nevada	10.8	Louisiana	10.9	
6.	California	10.6	Mississippi	10.6	
7.	New York	10.1	California	10.5	
8.	Mississippi	9.7	Georgia	10.4	
9.	*Michigan	9.7	Nevada	10.3	
10.	Alabama	9.4	Alabama	9.8	
11.	Georgia	9.4	*Alaska	9.8	
12.	So. Carolina	9.2	*New York	9.5	
13.	New Mexico	9.1	South Carolina	9.1	
14.	Illinois	9.0	Tennessee	9.0	
15.	No. Carolina	8.7	North Carolina	8.3	
16.	Tennessee	8.4	Missouri	8.1	
17.	Maryland	8.1	Illinois	8.0	
18.	Oklahoma	7.8	Arizona	8.0	
19.	Arizona	7.8	Arkansas	7.9	
20.	Virginia	7.7	Maryland	7.9	
21.	Arkansas	7.5	Oklahoma	7.7	
22.	Missouri	7.1	Virginia	7.1	
23.	Kentucky	6.6	Kentucky	6.9	
24.	Colorado	5.8	Colorado	5.8	
25.	Indiana	5.5	Montana	5.8	
26.	New Jersey	5.3	Indiana	5.8	
27.	Ohio	5.1	New Jersey	5.4	
28.	*Oregon	4.8	Washington	5.2	
29.	Washington	4.6	Ohio	5.2	
30.	Pennsylvania	4.5	*Kansas	4.9	
31.	Montana	4.4	Delaware	4.8	
32.	*W. Virginia	4.4	Oregon	4.7	
33.	Delaware	4.1	Pennsylvania	4.6	
34.	Connecticut	3.9	Wyoming	4.3	
35.	*Kansas	3.7	*Hawaii	4.1	
36.	Massachusetts	3.6	Connecticut	3.8	
37.	*Rhode Island	3.4	*West Virginia	3.8	
38.	Idaho	3.4	*Rhode Island	3.6	
39.	Nebraska	3.4	*Massachusetts	3.5	
40.	Vermont	3.4	Utah	3.0	
41.	*Hawaii	3.3	Nebraska	2.9	
42.	Wyoming	3.3	*Wisconsin	2.8	
43.	Utah	2.8	*Maine	2.4	
44.	*Wisconsin	2.5	Vermont	2.3	
45.	*Iowa	2.0	Idaho	2.2	
46.	So. Dakota	1.8	New Hampshire	2.1	
47.	*Minnesota	1.8	*Minnesota	2.1	
48.	*Maine	1.7	*Iowa	1.9	
49.	*No. Dakota	1.2	South Dakota	1.8	
50.	New Hampshire	1.0	*North Dakota	1.0	

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Testimony - Sister Therese Bangert  
Kansas Coalition Against the Death Penalty  
Federal State Affairs Committee  
February 27, 1987

Words, Words, Words . . .

I am struck  
in this my first year  
of legislative work  
how many words  
are constantly being  
pushed at You  
for your understanding  
digestion  
opinions  
vote.

And I have been part  
of a team  
that has brought you  
in these past weeks  
many words, too,  
words about cost  
words about the innocent being executed  
words about victims  
words of proof (from my perspective  
that capital punishment is not a deterrent.

So this morning I'd like  
to share with You  
the simple Word of a story:

The Elephant and the Rat

An elephant was enjoying a leisurely dip in a  
jungle pool when a rat came up to the pool and  
insisted that the elephant get out.

"I won't," said the elephant. "I'm enjoying myself and  
I refuse to be disturbed."

"I insist you get out this minute," said  
the rat.

"Why?" said the elephant.

"I shall tell you that only after you are out of the  
pool," said the rat.

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"Then I won't get out," said the elephant.

But he eventually gave in. He lumbered out of the pool, stood in front of the rat and said, "Now then, why did you want me to get out of the pool?"

"To check if you were wearing my swimming trunks," said the rat.

(from The Song of the Bird by Anthony de Mello)

And like My Master  
who on occasion 2,000 years ago  
explained His parables  
so I want to offer  
an explanation of this story:

For me the elephant represents  
violence in our State  
and in our country -  
Violence  
on our streets  
in our homes  
to Mother Nature through pollution  
in the destruction of the family farm  
in the nuclear arms race . . .  
and as expressed in the reality  
of Kansans who are homeless  
and hungry.

Violence is a  
HUGE, LUMBERING reality -  
the elephant!

The rat - ugly, dirty, repulsive  
is the violence  
of murder - as defined in HB 2062  
and the anguish and pain  
of the loved ones of those murdered.

The rat fools himself  
into thinking  
that his size  
equals the elephant's!

Open your eyes and ears.  
The rat is only a tiny part  
of a violence problem.

(Can the elephant really wear  
the rat's trunks?  
Can HB 2062 really  
bring PEACE to the loved ones of victims?  
Can it insure our safety at home  
and on the street?  
Can this bill  
truly make Kansas  
a better place to live?

I invite You  
to open your eyes and ears.

Testimony of Judy Davis, representing the American Civil Liberties Union Kansas Affiliate, Senate Federal and State Affairs Committee, February 27, 1987

Our criminal justice system is complex and fraught with the capacity for caprice and error. This is inevitably true because the system is run by human beings, human beings who exercise discretion and judgment at every stage of the process from arrest to final appeal.

When the stakes are not so high, when the question is not one of life or death, we find that discretion and its accompanying possibility for less-than-perfect justice, tolerable, largely because the door is left open to our discovering and reversing our errors. But death is irrevocable.

It is the irrevocability of death that prompts us to demand greater certainty when we undertake to kill than when we seek to fine or incarcerate in the name of justice. But that required certainty will always elude us, because no capital punishment measure, no matter how scrupulously drawn and implemented, can eliminate human fallibility. None can ever, therefore, remove the possibility of caprice, of accident, or of horrible mistake.

The uncertainty inherent in any death penalty measure places the responsibility on you to justify our risking the destruction, at the hands of the State, of a wholly innocent human being. If it could be shown that the State extinguished human beings in pursuance of a compelling public need, namely, societal self-protection, and that such a need could not be met by less drastic means, it might justify our risking the occasional mistaken killing of an innocent. But there is no evidence that the death penalty has any general deterrent effect. On the contrary, in recent years the two states with the highest numbers of executions and the largest death row populations also had the nation's highest murder rates.

Moreover, there has not been concerted, creative effort to find alternative ways of protecting society. It is clear that we have not seriously considered alternatives to death.

Absent deterrent benefit, the lone remaining justification for the death penalty is retribution. But to advance retribution as the sole justification for the punishment of death is to conclude that certain of our fellow human beings, because of acts we believe them to have committed, ought to be destroyed "just because they deserve it," and because destroying them makes us feel better. And to accept that view is to be caught in a hideous contradiction: when we kill another "just because he or she deserves it," we mock the principle on which we condemn murder, we lower ourselves to the murderer's level.

If you are not comfortable in a representative role and feel compelled to rely on opinion polls for your decision in this matter, then you are morally obliged to see to it that those constituents you poll are truly informed: tell them of the documented cases of wrongful capital convictions; explain to them the complexities of our criminal justice system and the inevitability of mistakes; share with them what you know of the absence of evidence that capital punishment is a general deterrent; let them consider the evidence of this penalty's disproportionate imposition against Black people, against the poor; finally, acknowledge to them the State's ability to afford them the protection they deserve without extinguishing human life.

If, after fulfilling your responsibility to inform your constituents, they wish to see the resumption of state killing, then you will know one of two things: either they did not understand the information you gave them, or, they understood it and wish to see the State kill certain people -- even though some of those people may be innocent -- for the sole purpose of revenge. And if they acknowledge their desire for collective vengeance, then you will have to grapple with this question: Can any civilized society -- particularly one whose constitution expressly forbids the imposition of cruel and unusual punishments -- tolerate the destruction of human life, in all our names, because some of us simply want to get even?



# Tough cases deplete Douglas County's fiscal 1987 funds for indigent defense

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By STEVE SWARTZ  
Capital-Journal state staff writer

LAWRENCE — With more than four months to go in the fiscal year, Douglas County is out of money to pay attorneys who represent indigent clients.

For various reasons, the \$58,000 the county received from the State Board of Indigents' Defense Services for the 1987 fiscal year ending June 30 is gone. How to deal with the problem was discussed by the Douglas County Bar Association at a meeting here Monday.

Halley Kampschroeder, president of the local bar association, said Tuesday that within the next few days all members of the Douglas County organization would be surveyed for their opinions on how to resolve the problem. The results of the survey will be forwarded to Douglas County Administrative Judge James Paddock, Kampschroeder said.

"What's happened so far is a

higher than normal amount of cases that are complex," said Ron Miles, director of the State Board of Indigents' Defense Services.

Miles said three or four serious cases during the last three months of the calendar year in Douglas County placed a severe strain on the indigent defense budget.

"Our average claim (submitted by attorneys defending indigents) is only \$260," said Miles.

However, attorneys in the most serious cases can receive up to \$5,000 for their services, he said.

Attorneys defending indigents have in the past been paid \$30 an hour, up to caps of \$250 and \$400 for less serious felonies and up to \$1,000 and \$5,000 caps for the most serious cases, Miles said. People charged with misdemeanors are not entitled to legal services through Indigents' Defense Services.

In recent months the state board has begun cutting all vouchers by 12 percent in order to live within its \$3.3 million budget, said Miles, who noted the board has also been affect-

ed by the across-the-board 3.8 percent state budget cuts.

Miles said 87 percent of all indigent cases do not go to trial and are capped at \$250 or \$400 levels.

Although Douglas County is the state's only county that is out of money to pay for legal services to indigents, Johnson and Leavenworth counties are also in danger of running out of funds before the end of the fiscal year.

Miles said Johnson County had spent 80 percent of its year's allocation through January and Leavenworth County had already used 70 percent of its allocation.

The state board has a rule that all qualified attorneys should be considered to defend indigents. However, the board leaves it up to the administrative judge to decide how assignments are handed out, Miles said. In Douglas County this year a pool of 23 attorneys have volunteered to handle indigent cases.

Statewide last year about 1,000 attorneys represented indigent clients in 5,054 cases, Miles said.

*"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 that 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.



## 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 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.

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# Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR • JAMES W. CLARK

Testimony in Opposition to

HB 2062

The Kansas County & District Attorneys Association appears in opposition to HB 2062, as written. We would emphasize that our opposition is not to the concept of capital punishment, but to the specific bill, for the following reasons:

1. **The requirement for two separate juries.** This procedure (Section 7) guarantees that a capital murder trial will take longer and cost more, not only because of additional jury and witness fees, but in the requirement of duplicating the presentation of evidence. This waste of time and expense is compounded by the fact that jury sentencing is not even required, and is contrary to a trend among the states to eliminate jury sentencing altogether (in non-capital cases).
2. **Inquiry into a juror's beliefs.** This prohibition (Section 5, at line 108) precludes a determination of whether a person will serve as a fair and impartial juror. If the latest polls are accurate, some 25% of Kansas citizens strongly oppose the death penalty. This means that there is a likelihood of at least 3 of the 12 jury members will have strong beliefs against the death penalty, which means they might be required to go against their oath as jurors to uphold their moral beliefs, or that they might deny these beliefs in their effort to uphold their oath as a juror. The practical result is that the jury will be hung (unable to meet a decision), which is compounded by language at Section 8, beginning at line 186, which requires the court to order life imprisonment in such cases.
3. **The right to counsel is not an absolute or unlimited right, yet Section 28 seeks to make it so.** We know of no instance in any other state or in any other situation where a defendant, regardless of financial condition, has an absolute right to counsel of their choice, but this section creates one. If a defendant requests the revisor of statutes to be his attorney, there seems to be no basis for denying his choice under this bill. This leads to two

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problems with the case itself: involuntary servitude on the part of counsel of choice, or claims of inadequacy of counsel after condition, because the counsel of choice was not an expert in criminal law. It also aggravates the already existing situation where the state is supplying full-time, well-paid defense attorneys to oppose the prosecution, which in most counties, is a low-paid, part-time position.

4. No prosecutor discretion in invoking the death penalty. The bills does not allow the bringing of a first-degree murder charge, without the possibility of invoking the death penalty (along with the separate juries, and special counsel discussed above). This omission eliminates the possibility of guilty pleas without trial, and in those cases where the evidence establishes first-degree murder, but the circumstances obviously do not call for the ultimate penalty, the prosecutor is forced to reduce the charge to second-degree murder.

#### SUGGESTED AMENDMENTS

1. Insure prosecutor discretion, by either adding a specific provision to the bill, or creating a separate crime of capital murder similar to the definition of murder in the first-degree in the present bill, and leaving the present statutory definitions of murder intact.
2. Raise the parole eligibility date to 30 years for those convicted but sentenced to life imprisonment. It is a gross disparity to allow a person convicted for first-degree murder to receive either the death penalty or to be parole eligible in 15 years.
3. Establish a state agency to handle state appeals in death penalty cases. Currently, Kansas is one of two states in which the local prosecutor also handles the appeals. While this creates a financial burden on counties now, it would be compounded by the numerous appeals that occur in death cases. More importantly, there needs to be some state representative that keeps abreast of the ever-changing law in this area, and part-time prosecutors are unable to do this.
4. Eliminate the proportionality requirement in Section 10, beginning at line 274. There is no constitutional requirement, and most other states either do not have it or have eliminated it. A case is unique, and it is highly speculative that they can be compared to other facts, decided by other juries, and reviewed by other judges.