

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRSThe meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson11:00 a.m. ~~at~~ March 3, 1987 in room 254-E of the Capitol.All members were present ~~except~~

Committee staff present:

Mary Galligan, Legislative Research
June Windscheffel, Committee Secretary

Conferees appearing before the committee:

Mr. Bill Lucero, State Coordinator of the Kansas Coalition
Against the Death Penalty, Topeka
Mr. K. C. Groves, National Association for the Advancement of
Colored People, Kansas State Conference of Branches, Bonner Springs
Professor David J. Gottlieb, Professor of Law, University of Kansas
Mr. Donald W. Anderson, President, Kansas Council on Crime and
Delinquency, Winfield
The Reverend Donald E. Roberts, Topeka Religious Leaders Against the
Death Penalty, Topeka
Mr. Bernie Dunn, Topeka
Ms. Jeannie Chaves-Martinez, Kansas Association of Hispanic Organizations
Mr. T. A. Lockhart, Citizen and Taxpayer, Leavenworth
Ms. Donna Schneweis, Amnesty International, Salina

The Chairman welcomed all to the meeting concerning HB 2062,
capital punishment, and for the purpose of hearing opponents
of the bill.

The first conferee was Mr. Bill Lucero, State Coordinator of the
Kansas Coalition against the Death Penalty. His statement was
handed out to the Committee. (Attachment #1)

Mr. K. C. Groves, of the NAACP, was the next conferee. A
copy of his testimony was provided the Committee. (Attachment #2)

The next conferee was Professor David J. Gottlieb, and a copy of
his statement is attached. (Attachment #3) Also attached is a
copy of his statement to the House Committee on January 21, 1987.
(Attachment #4)

Mr. Donald Anderson, of Winfield, appeared to represent the Kansas
Council on Crime and Delinquency. His testimony is attached.
(Attachment #5)

Topeka Religious Leaders against the Death Penalty, were represented
by The Reverend Donald E. Roberts. His statement is attached.
(Attachment #6)

Mr. Bernard Dunn also appeared with his personal observations
concerning the death penalty. An outline of his remarks will be
included as part of these Minutes. (Attachment #7)

Ms. Jeannie Chavez-Martinez was the next conferee. She represented
the Kansas Association of Hispanic Organizations. Her statement
(Attachment #8) and statistics from the Legal Defense Fund, of
New York, New York (Attachment #9) are included here.

The next conferee was Mr. T. A. Lockhart, and a copy of his
statement is attached. (Attachment #10)

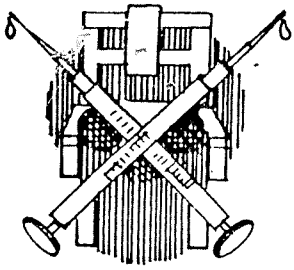
CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 11:00 a.m./~~pm~~_{xxx} on March 3, 1987

Donna Schneweis, State Death Penalty Coordinator, for Amnesty International, appeared briefly before the Committee. Her complete statement is attached. (Attachment #11)

The Chairman apologized that the hour for adjournment was upon the Committee and that it could not hear Sr. Schneweis' complete statement from her, nor the statement before the Committee from Mr. Bob Runnels, of the Kansas Catholic Conference, (Attachment #12). He asked the Committee to read these statements in their entirety.

The meeting was adjourned at noon.



Kansas Coalition Against the Death Penalty

1176 Warren • Topeka, Kansas 66604 • (913) 232-1176

3/3/87

Attachment #1

Statement to the Senate, Federal and State Affairs Committee
March 3, 1987

Mr. Chairman,

I am Bill Lucero, State Coordinator of the Kansas Coalition Against the Death Penalty. I was not originally scheduled to testify today as I have provided this Committee with information every previous opportunity that this bill has ever come up in the past 9 years. During those years (which coincides with the longevity of the Coalition) it has been the purpose of the Coalition to provide only factual data and well thought out opinions which were emphatically indicated "opinions".

In the two days allotted for proponent testimony I have been increasingly disturbed by the numerous allegations^{made by proponents} that opponents have attempted to present biased and distorted information. The words "sandbagging" and "smokescreen" have been used as to suggest that the Coalition is attempting to purposefully deceive this Committee, the Legislature and the Kansas public. We've been accused of initiating cost as a new strategy in an opportunistic effort to divert attention and mislead the public.

Mr. Chairman and members of the Committee: we suggest that you check the minutes of past hearings. You will find references to cost by Coalition representative in each of the past hearings over the last 7 years. I furthermore submit to you that all information presented to you in the past and during these present hearings is factual and is brought to you in an up front, no hidden agenda manner. There is no attempt to present any false or misleading information. If a mistake is made then we will certainly own up to it. The proponents may have their reasons to make these allegations but I submit to you it is appearing as a last ditch effort to rescue a doomed and obsolete measure which should be defeated.

FSA 3/3/87

Attachment #1

wibw Editorial



Editorial Reply
March 10, 1985
Bill Lucero
Unitarian Universalist Service Committee of Kansas

Last week Jerry Holley requested that the legislature enact a death penalty on the basis of popular support for the measure. Such an argument raises fundamental questions as to the purpose of representative government. Contrary to Mr. Holley's opinion, the Unitarian Universalist Service Committee contends that we elect legislators to thoroughly study issues and vote based on supportive evidence of facts and how such laws would affect the population. And as the legislature studies the issue of death sentencing, they become aware that such statutes have never been substantiated to deter murder rates, but instead the rate of homicide increases following state executions.

It's no fluke that last year's FBI Crime Index showed Kansas had a much lower murder rate than the bordering states of Missouri, Oklahoma and Colorado. Despite the application of death sentencing in all of those states, their homicide rates have exceeded ours every year since the Furman decision struck down capital punishment in Kansas in 1972.

Why does this occur? Criminologists suggest it's caused by a brutalization effect - violence begetting further violence perpetrated in disturbed individuals looking for any opportunity to call attention to their misery. This finding is further verified after reviewing murder rates of the leading states and noting that three of the perennial leaders - Texas, Florida and Louisiana are executing people as rapidly as they can process them.

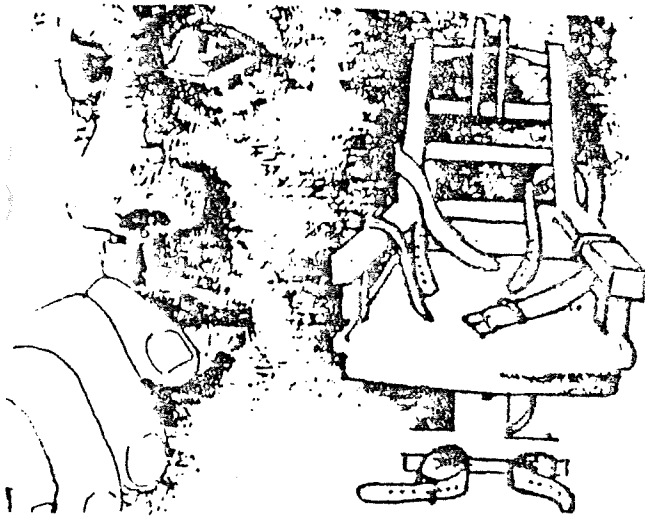
[So much for deterrent theory. And as if legislators aren't confronted with enough budgetary headaches, when faced with the cost of executing prisoners, they are being asked to spend 1.1 million dollars above the amount required to incarcerate them at Lansing penitentiary for 30 years.

Of course all those costly legal maneuvers and appeals and stays appear preposterous until we stop and reflect that substantial evidence exists that over 100 persons sentenced to be executed during this century were innocent of the crime they were accused. Once a person's life is taken, it can't be given back. The high price of state sanctioned vengeance becomes less appealing when facts are separated from emotions. We agree with Mr. Holley that the decision to enact the ultimate sentence of death shouldn't rest solely in the Governor's hands. Instead the entire 165 members of the legislature should veto this futile and senseless proposal.

WIBW invites responsible groups and individuals to reply to our editorials.

Additional copies are available on written request. Write WIRW-TV Radio-FM Box 119 Topeka Kansas 6660

EIGHT REASONS



TO KEEP KANSAS FREE OF THE DEATH PENALTY

1. DETERRENCE

There is no logical reason for a death penalty. Almost 3/4's of all murders involve family members or acquaintances. Since these occur spontaneously, without planning, there is no way the threat of the death penalty can prevent these "crimes of passion." On the other hand, premeditated murders are committed by individuals who do not expect to get caught, so the threat of the death penalty will not prevent this kind of murder either.

If the death penalty were a deterrent, death penalty states would have lower murder rates than non-death penalty states. Just the opposite is true! In 1974, death penalty states had an average murder rate of 9.3, while states without had an average of only 5.8. There is no death penalty in states with the six lowest murder rates. MISSOURI, A DEATH PENALTY STATE, HAS A MURDER RATE MORE THAN TWICE THE RATE IN KANSAS.

The death penalty deters no more than imprisonment. Studies show:

- (A) Death penalty use in a state does not decrease, and may even increase the subsequent murder rate there.
- (B) States after abolishing the death penalty do not show an increased murder rate.
- (C) States with reinstated death penalty do not show a decreased murder rate.
- (D) There are as many or more murders of police and prison staff in states with the death penalty as those without.

2. UNFAIRNESS

The death penalty is applied unfairly and unjustly to minorities and poor. Of the 3,859 people put to death in the U.S. since 1930, over 54% were black—in a nation with an 11% black population. The percentage of non-whites on death row now is even higher. Of the 455 men executed for rape in the nation, 90% were black. "Money talks" in our criminal justice system. The wealthy can afford expert legal counsel. Justice Douglas said: "One searches our chronicles in vain for the execution of any member of the affluent strata of our society."

3. EXECUTION OF THE INNOCENT

In New Jersey, in 1918, George Brandon was sentenced to die and executed for a murder. The real murderer later confessed. Brandon's lawyer was disbarred for mishandling the defense.

Fran Smith in Connecticut, in 1949, was killed by a state that discovered its error only minutes after the execution.

Death is an absolute punishment. It is final. There are no more appeals. No reversals. It is an irrevocable punishment carried out by a criminal justice system which is far from perfect. It can never be perfect, as long as it is run by human beings. Human beings make mistakes.

4. OTHER NATIONS

Most of the developed nations of the western world have abolished the death penalty. England abolished it in 1965. Canada abolished it in 1976. It survives in only a few Latin American nations, and only 3 of 33 Mexican jurisdictions.

5. RETRIBUTION

The death penalty in no way erases a crime or softens its effect on the personal, social and economic needs of the victim's family. More victims of crime are created as the condemned person's family joins the victim's family in the loss suffered. This kind of retribution has been overwhelmingly condemned by religious bodies in the U.S.

6. RESTRAINT AND REFORM

Despite the popular image of the murderer as one addicted to killing, statistics indicate that murder is a once-in-a-lifetime crime. Murderers are among the best behaved of prison inmates. A nine-state study of 1,293 first-degree murderers who were paroled showed that only 9 subsequently committed new felonies. Only 1 of these felonies was murder.

7. FINANCIAL EXPENSE

When a life is at stake, the legal costs of an execution are exorbitant because of lawyers' and judges' time, special appeals, clemency proceedings, and super maximum confinement—without work. Time Magazine reported that Arkansas saved \$1.5 million by commuting 15 death sentences in 1971.

8. ALTERNATIVES

(A) Life imprisonment, with parole eligibility after 15 years, for first degree murder is a punishment which has potential for character redevelopment and restoration to the community. From 1970-1975 Kansas paroled 114 persons convicted of homicide. 90% succeeded the first year of release. Of the other 10%, 4% technically violated parole. 3% absconded and 4% were convicted of new offenses (only 2 persons committed any type of murder).

Under a Kansas death penalty, 1935-1973, the homicide rate was slightly higher than after it was abolished.

In 1978, Kansas reported 131 murders, a drop of 14.4% from 1977. During the first six months of 1979, 53 murders were reported, down 28.4% from the first half of 1978. **KANSAS DOES NOT HAVE A DEATH PENALTY.**

(B) Preoccupation with efforts to secure vengeance through a death penalty has helped make the victim of crime a forgotten person. Pay greater attention to victims of crime by implementation and sufficient funding of the 1978 Kansas Crime Victim Reparations Act.

(C) Improved opportunity in prison for meaningful work, and for cultural, religious, personal growth and study activities, contribute to the character redevelopment of long-term inmates. Less than half of Kansas prisoners have opportunity to work. Maximum prison pay is 90 cents a day.

(D) Education of the public about the death penalty and its spirit of retribution, discriminatory application, and lack of deterrent effect will result in an informed people who will reject the death penalty as morally unacceptable.

THE COALITION TO KEEP KANSAS FREE OF THE DEATH PENALTY

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

MEMBER ORGANIZATIONS

American Civil Liberties Union of Kansas
American Civil Liberties Union of Western Missouri
Catholic Worker Community of Wichita
Church Women United
Consortium on Legislative Concerns, Consultation of Cooperating Churches
Episcopal Church, Diocese of Kansas
Inter-Faith Offender Concerns Committee
Kansas Citizens for Justice
Kansas Council on Crime and Delinquency
Kansas Young Democrats
Mental Health Association of Douglas County
National Association of Social Workers, Kansas Peace and Justice Committee
Priests Council, Archdiocese of Kansas City in Kansas
Shalom Catholic Worker House
Social Action Committee, Temple Beth Shalom, Topeka
St. Lawrence Catholic Campus Center Council
Stanwood Monthly Meeting of The Society of Friends
Synods of Mid-America, Advisory Council on Church & Society
Unitarian Universalist Service Committee
University Friends Meeting, Wichita
Village Presbyterian Church, Prairie Village

*AS I LIVE, SAYS THE LORD GOD,
I SWEAR I TAKE NO PLEASURE
IN THE DEATH OF THE WICKED MAN,
BUT RATHER IN THE WICKED MAN'S
CONVERSION,
THAT HE MAY LIVE. (Ezekiel 33:11)*

FOR FURTHER INFORMATION CONTACT

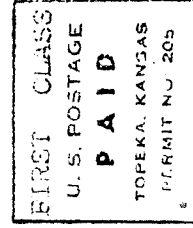
COALITION TO KEEP KANSAS FREE OF THE DEATH PENALTY

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

- I am enclosing a contribution to CKKFD and I wish to receive its "Suggestions for Action" listing.
 I want to participate in CKKFD more actively. Please contact me.
 I need _____ additional copies of EIGHT REASONS TO KEEP KANSAS FREE OF DEATH PENALTY

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COMMITTEE

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TOPEKA, KS 66604

THE CONSULTATION OF COOPERATING
CHURCHES IN KANSAS, C.

4125 Gage Center Dr., Box 209
Topeka, Kansas 66604



3/3/87
Attachment #2

National Association for the Advancement of Colored People Kansas State Conference of Branches

101 North Neconi Ave. • Bonner Springs, Ks. 66012 (913-422-2052)

OFFICERS

President

Louisa A. Fletcher
Bonner Springs, Ks.

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Salina, Ks.

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Rev. Robert Moore
Bonner Springs, Ks.

College Coordinator

Thelma Simmons
Shawnee Mission, Ks.

Youth Advisor

Barbara Lastra
Shawnee Mission, Ks.

Lobbyist

Theodus Lockhart
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COMMITTEE Chpers.

Church Work

Rev. R. E. Alexander

Education

Meldon Wesley

Finance

James Butler

Freedom Fund

Rev. William Clark
Rep. Norman Justice

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Life Membership

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Dr. C. Roquemore

Publicity

Roberta Thuston

Veterans

Daniel Nobles

Youth Work

Barbara Lastra
Thelma Simmons

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

Mr. Chairman and Members of the Committee;

I am K. C. Groves, P.A. Chairman and third Vice President of the Kansas State Conference of Branches, of the N.A.A.C.P.

Our office works for the enactment of legislation to improve the Educational, Political, and Economic status of all surpressed People.

We are opposed to the death penalty, and To the Crime And Punishment bill 2062, commonly known as the "Death Penalty Bill". We believe this bifurcated system will not for long, be in concert with LAW.

One of the most pointed facts about the use of the death penalty in America is racial discrimination. Two Thousand people lawfully executed in this country since 1930 were black, not to mention — the thousands of victims of lynch mobs. This conspicuous pattern of discrimination caused the Supreme Court in 1972, to declare all death penalty laws in the United States unconstitutional (Furman vs. Georgia). Currently, 14 years later , thousands of people have been sentenced to death under new post Furman death penalty laws.

Minorities continue to bear the brunt of capital punishment: they constitute half of the prisoners on death row, and 50% of thoes executed, This figure is going up. There is now a second type of discrimination in the use of the death penalty: discrimination by race of the victim. 98 % of thoes executed since Furman were convicted of killing white people; in the same period, half of the homicide victims in the U.S. were black. Detailed studies have shown that this disparity is not by chance but by racial discrimination. When these matters again appear befor the courts it will be legal necessity that they again render current death penalties unconstitutional.

A Crime and Punishment Bill would make Black people the recipient of the grossist outrage from government.

K. C. Groves
At Chair
Attachment #2
FSA 3/3/87

LEGAL REDRESS

Atty. Gregory Coggs,
2629 N. 51st
Kansas City, Ks. 66104
Tel. (913) 287-3878

Atty. Henry W. Green, Jr.
818 N. 7th St.
Leavenworth, Ks. 66104
Tel. (913) 651-2419

DEATH ROW

RACE

The inescapable fact is that the death penalty has been applied arbitrarily at best and discriminatorily at worst throughout this country's history. This fact, plainly recognized by the U.S. Supreme Court in its decision in Furman v. Georgia, 408 U.S. 238 becomes obvious upon an examination of the statistics.

1. Since 1930, 3860 people have been executed in the U.S. Of these, 2,066, or 54 per cent, were black. During these years blacks were about one-eleventh of the population.
2. Of prisoners on death row at the end of 1968 52% were black.
3. Of 455 men executed for rape in the country since 1930, 405 or nearly 90% have been black. (Rape would not be punishable by death under the New Jersey statute but these statistics give evidence of the racial discrimination in the application of the death penalty.)
4. A study of all capital cases in New Jersey between 1930 and 1961 revealed that just under 1/2 of all blacks convicted of capital crimes were sentenced to die. In the same period, less than 1/3 of all whites convicted of the same crimes received death sentences.)
5. A study of homicide cases in North Carolina over a ten-year period revealed 37% of blacks convicted of killing whites were sentenced to death. No whites received death sentences for killing blacks.
6. Racial discrimination continues after sentencing. A study of commutations in Pennsylvania between 1914 and 1958 revealed that whites were nearly twice as likely as blacks to have their death sentences commuted. A similar study in New Jersey found almost precisely the same pattern. In Ohio, over a ten-year period, 78 % of blacks sentenced to death were executed, while only 51% of whites were.

Seemingly, only a mandatory death penalty might begin to address the problem of discrimination. Even under a mandatory system, discretion and therefore discrimination remains at the level of arrest and prosecution. And the U.S. Supreme Court has clearly ruled mandatory death penalties unconstitutional.

Some have argued (and convinced the U.S. Supreme Court) that the post-Furman "guided discretion" statutes (like New Jersey's) will eliminate discrimination by reducing the jury's discretion - or by "guiding" it. The record of actual application of these new statutes is sobering and does not support that argument. Of those on death rows as of January 1977 all convicted under "guided-discretion" statutes, 47.45% are non-white. The racial record is essentially the same - non-whites are sentenced to die in numbers that are four times greater than their numbers in the general population - under both the old, arbitrary, standardless discretion statutes and the new supposedly non-arbitrary "guided" discretion statutes.

(over)

It is little wonder that Dr. Marc Riedel, Project Director at the Center for Studies in Criminology and Criminal Law of the University of Pennsylvania, concluded in a recent study of death-sentencing patterns: "There is no evidence to suggest that post-Furman statutes have been successful in reducing the discretion which leads to a disproportionate number of non-white offenders being sentenced to death." Furthermore, the racial breakdown on death row does not tell the final chapter of the story. The commutation process which is the final stage in selecting those condemned inmates who will actually die lies ahead; and all available evidence indicates that non-whites fare disproportionately worse than whites in the commutation process.

POVERTY

The condemned also come disproportionately from backgrounds of poverty. Defendants with friends or money are better able to envoke available remedies than are the poor and friendless. The result is that, as Warden Clinton Duffy (former Warden of San Quentin Prison and a correctional officer for over 30 years) has put it, "capital punishment is a privilege of the poor."

Former Attorney General Ramsey Clark's statement that "It is the poor, the sick, the ignorant, the powerless and the hated who are executed," continues to be true. In a study submitted to the Supreme Court by the State of Texas itself in the recent death-penalty cases, the Texas Judicial Council found that, "once convicted of capital murder, the defendants represented by court-appointed attorneys received the death sentence in 79% of the cases (31 out of 39) while defendants represented by retained counsel received the death sentence in 55% of the cases (11 out of 20)."

An examination of sentencing decisions by California juries in first-degree murder cases over an eight-year period found that 42 per cent of blue collar workers convicted of murder received death sentences, while the comparable figure for white collar workers was 5 per cent. Death sentences were given to 67 per cent of those with "low job stability", and to only 39 per cent of those with stable job histories. The study concluded, after taking account of other factors such as previous criminal record, that low socio-economic status made it far more likely that a defendant would be sentenced to death.

An important element of any effort to educate the public on the death penalty issue is the inescapable pattern of racial and economic discrimination in the application of the death penalty. We must realize that as a society employing the death penalty, we are inflicting the cruelty, barbarity and irrevocability of the death penalty against defendants chosen by their race and economic status.

Prepared by: American Civil Liberties Union (ACLU)
45 Academy Street, Newark, New Jersey 07102

copies: 3

Available from: FOR
Box 271, Nyack, N.Y.

3/3/87
Attachment #3

COSTS OF THE DEATH PENALTY
Testimony by Professor David J. Gottlieb

University of Kansas School of Law

Senate Committee on Federal and State Affairs

March 3, 1987

Approximately six weeks ago, I appeared before the House Committee on Federal and State Affairs to testify on the costs of the death penalty. After contacting agencies in other states, published reports, and the evidence I was able to gather from agencies in this state, I concluded that the institution of capital punishment would cost us millions of dollars a year beyond current costs. Although I believed my estimates were extremely conservative, I knew that proponents of the death penalty would accuse me of putting up a smoke screen. As a result, at the close of my testimony, I urged the Legislature not to rely on my figures, but instead to get its own estimate of what the costs were going to be.

As you know, that job has now been done. The Legislative Research Office has come up with an estimate of the costs of the death penalty bill passed by the House. Those estimates support what we had suggested before: that a capital punishment system will cost us millions of dollars more than we are currently spending. The Research Department's estimates are that the death penalty should cost approximately 11½ million dollars per year above current costs. The office found no savings produced by a capital punishment system. I concur with the estimates of the Legislative Research Office. While no one can know the exact cost of capital punishment, those figures should provide a solid

Attachment #3
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estimate from which you can work. I would, however, like to point out that there are two additional cost items that will occur down the road that are not listed in the Research Department's figures.

First, there will be additional appeals costs not reflected in the \$11.5 million figure. In death penalty cases, the appeal process tends to be much longer than in regular cases. Even after the defendant has appealed to the Kansas Supreme Court, there is usually a state habeas corpus petition, (in our state a motion under K.S.A. 60-1507), an appeal of that petition, a federal habeas corpus petition, and appeals of that petition. Much of the cost of these appeals will be borne by the State. The Legislative Research Department, on page 7 of its memo of February 11, estimated that these additional appeals could cost between \$1.7 and \$3 million per year. Those costs will not appear for a few years and, as a result, they were not included within the \$11 million estimate.

Second, the estimates do not include the cost of building a death row. The Department of Corrections has decided to wait and see what the death row population is going to be before submitting plans to construct a death row. It is almost certain, however, that within a couple of years, the Department will ask the Legislature for money to build a death row. That death row will cost us from \$75,000 to \$100,000 per bed to build. In other words, if the Department ends up requesting an 100 bed facility, the cost will run from \$7.5 to \$10 million. With the exception

of those two items, I fully support the Legislative Research Department's estimates.

In light of the work done by the Legislative Research Department, I am amazed at the argument of some of the supporters of the death penalty that this issue is a smoke screen manufactured by death penalty opponents. It's not a smoke screen. The costs are there. They are borne out by the experience of the states that have reinstated the death penalty, and by every published study on the issue. If evidence from other states showed that capital punishment were not expensive, you would have seen it by now. And this is not an issue that has been manufactured by death penalty opponents. The figures before you are from the non-partisan Legislative Research Department, not from death-penalty opponents.

I understand that yesterday you had the opportunity to hear from Professor Tonkovich of my law school. I received a copy of his testimony yesterday afternoon. Professor Tonkovich has estimated a cost to the state of approximately one million dollars a year. First of all, I want to point out that even Professor Tonkovich seems to concede that a capital punishment system is more expensive than our current system, and he estimates a per case cost at up to \$100,000. However, the more important message I want to leave with you is that I believe that Professor Tonkovich's figures are seriously inadequate. I have several reasons for my view.

First, the main area of disagreement between Professor Tonkovich and the Legislative Research Department is over the

number of cases that will be filed as death penalty cases. Professor Tonkovich believes it will be 10 to 15; the Legislative Research Service estimates several times that number. There are a number of reasons for the different estimate but a principal cause is that the Research Department's estimate is based upon the bill actually in front of you, while Professor Tonkovich's estimate is based upon the bill he wants you to adopt.

Professor Tonkovich believes that if prosecutors are given the discretion to decide which first degree murders should be capital, they will not seek the death penalty for most prosecutions. He has no particular basis for this assumption, but assume it he does. Whatever the validity of his assumption, the Bill in front of you does not give prosecutors discretion to decide which first degree murder cases to charge as capital offenses. If a prosecutor charges a case as first degree murder, and it is not a felony murder, than it is to be brought as a capital case.

In contrast, the estimate of the Legislative Research Department was based upon current practice and the bill actually passed. The Department received billing information from the Aid to Indigent Defense Fund showing that forty murder cases were billed by appointed counsel, and forty class A felony cases (murder or aggravated kidnapping) were billed by public defenders. In addition, the Department was aware that some 160 cases were filed as class A felonies (murder or aggravated kidnapping) last year. The Research Department used those figures, among others, to estimate its number of filings. I

can't guarantee that the Research Department's estimate is perfect, but its method of trying to come up with a number was reasonable. Even if Professor Tonkovich is right about the number of filings that will occur under the bill that he wants, and I don't believe he is, it was unfair of him to criticize the Legislative Research Department for analyzing your bill rather than his. Finally, on this issue, I believe that if you contact the district attorney's office in Wichita, you will find that their office tried as many first degree murder cases last year in Wichita as Professor Tonkovich has estimated the entire state will see as a result of the death penalty.

By artificially reducing the number of cases, based upon his, rather than the legislature's, bill, Professor Tonkovich arrives at a figure of two million dollars a year for costs. He then assumes that the costs are still inflated, and proceeds to cut them in half, arriving at a figure of one million dollars. He does so by essentially denying that death penalty trials, in the guilt stage, involve much greater preparation, expert witness fees, investigators or trial time. He also says that with respect to non-sentence issues, death penalty appeals are not unduly longer than normal appeals. Professor Tonkovich does not base this judgment on personal experience or on any published studies. His assertion is an unbridled and unsupported statement of opinion.

Richard Ney has told you, from his trial experience, how much more effort death penalty trials entail. I too have personal experience in death penalty representation; I currently

represent a death-sentenced inmate in Oklahoma in post-conviction proceedings. These are not ordinary cases. When I was in practice, ^{in N.Y.} it was unusual for me to raise more than five issues in an appellate case. I expect to raise between 20 and 30 in this case. The studies cited by the Legislative Research Department all support the view that these cases consume enormous resources. Every bit of evidence of personal experience I have supports that view. But if you don't believe me, if you don't believe Mr. Ney, if you don't believe all the published evidence, and if you don't believe your own Legislative Research Department, than I urge you to call prosecutors and defense attorneys in states like Illinois, Ohio, Maryland and New Jersey to find out the costs of a capital trial.

Moreover, Professor Tonkovich ignores certain costs. He believes that Kansas, unlike virtually all states that have reinstituted capital punishment, will not need to build a death row. He makes no effort to anticipate costs for post-conviction remedies.

Finally, what is most suprising, Professor Tonkovich has made no effort to compare his projected costs with those in other states. One assumes that if the cost figures cited by the Legislative Research Service were excessive, other states would be available as evidence that capital punishment is not costly. I invite you, indeed I urge you, to contact courts and attorneys in states that have reinstituted capital punishment and see just who is exaggerating.

The issue of cost is important, because it means that those

people who support capital punishment have the obligation to demonstrate that the benefits of a capital punishment system are worth the cost. They can't succeed in making that showing, because capital punishment simply doesn't make us any safer from murder than we are today.

The supporters of capital punishment cannot demonstrate that it is a deterrent. If it were, people in Florida and Texas, where most executions occur, would be living in the safest states. In fact, Florida and Texas have had the highest murder rates in the country. If capital punishment were such a deterrent, citizens in Missouri and Oklahoma would be safer than citizens in Kansas. They aren't; their murder rates are higher than ours.

Capital punishment is also terribly ineffective as retribution. The fact is that the overwhelming majority of people charged with the death penalty do not receive it. For example, the Department of Corrections estimates that approximately four criminal defendants a year will receive the death penalty at trial; if the reversal rate in other states is a guide, we can expect that two or three of those will be reversed on appeal. Thus, if we do have the death penalty, we should expect one or two people a year to face an execution that won't occur until after a good ten years of litigation.

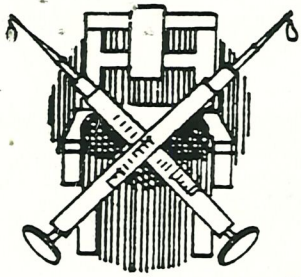
What are we telling the family members of the victims in the murder cases in this state where the death penalty is not imposed? That the murders of their relatives aren't quite as cruel as the ones where the death penalty is imposed? Moreover,

even when the death penalty is imposed, it comes after a wait of five to ten years. The family of the victim, which needs to bring some closure to its grief, gets only year after year of reminder of the crime.

There is one other reason why cost is important. You've heard about how the people of this state favor capital punishment, and that you should support it for that reason. However, the people of this state have always supported it on the assumption that it was without cost. People have supported the idea of capital punishment. You are voting on the reality of capital punishment. That reality is that the state will spend upwards of 50 million dollars before anyone is executed, and that the first execution will not take place for from seven to ten years. I submit that if people were given a poll on the reality of capital punishment, they would not support it. I have a reason for my belief. A recent poll conducted by Georgia State University found that a majority of citizens in Georgia now favor a system of life imprisonment with a mandatory 25 year minimum sentence over capital punishment. They have lived with capital punishment, and they now know it doesn't work.

This is the third time I've testified on criminal justice bills before the legislature. The first time I was here to support an expansion of the definition of rape, so that more people could be prosecuted. The second time I was here to urge the legislature to help implement guidelines for the state's parole system. I believe in the necessity of fair and certain punishment for those individuals who commit crime. Capital

punishment cannot, and will not help us achieve those goals. It will not make us safer, yet it will require an enormous investment of time and money. I urge you not to start us down a wasteful and self-defeating path.



Kansas Coalition Against the Death Penalty

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

3/3/87
Attachment #4

THE COST OF THE DEATH PENALTY

Testimony to the Committee on Federal and State Affairs
by Professor David J. Gottlieb, University of Kansas School of Law

January 21, 1987

In the past several years, numerous attempts have been made in the legislature to pass a death penalty bill. While there has been a great deal of testimony on the advisability of such a bill, there has been almost no attention at all to the question of how much capital punishment will cost the state. The legislature's inattention to this question has continued this year; as of yesterday, none of the supporters of capital punishment had bothered to assess the cost of this proposal. My testimony today is an attempt to predict some of the costs of capital punishment. I've based my projections upon the information I've been able to receive from various state agencies, from published reports in Maryland, New York, and California,¹ and from conversations with prosecutors and defense attorneys in several other states. While I will not be able to cite a precise dollar figure, I have no difficulty in concluding that the capital punishment bill will require the expenditure of millions of dollars per year beyond current costs. These costs will increase over time. In the five to ten years that will be required before a single execution occurs in Kansas, our State can expect to spend millions of dollars. As a rough estimate, the figure may easily exceed 50 million dollars before the first execution occurs.

At a time when the state has been forced to cut millions from education and welfare, it is ironic that so little attention has been given to the cost of this proposal. I submit that in the state's current condition, we cannot afford this bill. At the very least, it is irresponsible to consider passing this bill without a detailed study of its costs.

I. THE REASONS FOR THE HIGH COST OF CAPITAL CASES

While on the surface it might seem reasonable that it is less expensive to execute a person than to imprison him for life, that assumption is wrong. As Supreme Court Justice Thurgood Marshall explained in Furman v. Georgia, 408 U.S. 238, 357-58 (1972):

As for the argument that it is cheaper to execute a capital offender than to imprison him for life, even assuming that such an argument, if true, would support a capital sanction, is simply incorrect. A disproportionate amount of money spent on prisons is attributable to death row. Condemned men are not productive members of the prison community, although they could be, and executions are expensive. Appeals are often automatic, and courts admittedly spend more time with death cases.

At trial, the selection of jurors is likely to become a costly, time-consuming problem in a capital case, and defense counsel will reasonably exhaust every possible means to save his client from execution, no matter how long the trial takes.

Attachment #4
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During the period between conviction and execution, there are an inordinate number of collateral attacks on the conviction and attempts to obtain executive clemency, all of which exhaust the time, money and effort of the state....

When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life.

Every study that has been done since Justice Marshall's writing supports his assertion. Capital cases are very expensive. There are at least four reasons why this is so.

First, capital cases take far more time to litigate before a jury verdict of guilty can be obtained. Because the stakes are life and death, guilty pleas are a rarity. Virtually every case is taken to trial. For similar reasons, the defense contests every potential issue. Preparation for trial of a death penalty case is generally far more extensive, with two to five times as many pretrial motions filed. Jury selection takes longer, since the jury must be qualified not only to rule on the question of guilt but also to decide on the death penalty. The trial itself takes up to three times as long as an ordinary first degree murder case, with far more extensive use of experts and investigators.

Second, death penalty cases require a second, separate trial on penalty if the jury returns a guilty verdict. There is no equivalent to this procedure in a regular case. The jury must sit for days, in some cases weeks, to hear evidence concerning whether the defendant should live or die. A host of expert witnesses may be required for this determination. As a result of this second phase, the time taken for a death penalty trial is further expanded; while a trial lasting even a week is fairly atypical in Kansas, a typical death penalty case may last from three to eight weeks.

Third, if the jury imposes a death sentence, a long appeal process will begin. The process includes an appeal to the Kansas Supreme Court, a petition for certiorari to the United States Supreme Court, post-conviction applications in the Kansas state courts, appeals of those applications, post-conviction applications in the federal courts, appeals of those applications to the United States Court of Appeals for the Tenth Circuit, a final petition for certiorari to the Supreme Court of the United States, and a possible petition for clemency. The process typically takes longer than five years and can take up to ten years to accomplish. The cost may be ten times the ordinary appeal. Obviously, a defense attorney will be obliged to pursue every possible legal means to avoid execution; unlike the normal case, there is no place for an attorney to recommend to his client that he not take further appeals.

Fourth, during the time of these appeals, the defendant is typically housed in a death row. The death row costs money to build, and is more expensive to staff than an ordinary prison. The defendant is typically housed in a single cell and is unable to contribute to the prison by working in industry.

All of these steps cost money. And it is critical that the legislature recognize that in virtually every case, these expenses must be borne by the taxpayers. The county attorney, judicial, and prison costs are, of course, paid by the taxpayers. As well, the defense costs in most cases must be paid by the State, since most criminal defendants in death penalty cases cannot afford counsel.

The Supreme Court of the United States, in a number of cases, has made clear

that capital defendants are entitled to a high level of due process in these cases. Thus, efforts of the state to cut costs would not only be unfair, they would result in convictions that would be overturned on appeal. I now turn to an analysis of the costs of the death penalty.

II. DEFENSE COSTS AT TRIAL

The only state agency to have made a detailed estimate of the cost of death penalty cases is the Board of Indigents Defense Services Office. The office estimated that the trial costs of defense services may reach \$31,000 per case, or more than 6 times the current maximum allowance. The estimate is based upon the view that the defense of a death penalty case will require 800 hours of attorney time, which, compensated at current rates, would require an average bill of \$26,000. The Board also estimates average expert services of \$3,000, and investigative services of \$2,000. If, as the Board predicts, there are 80 first degree murder cases filed per year in the state, the total bill for trial level defense services will total \$2,480,000 per year.²

While these figures may seem quite high, in fact, they are well below the actual figures spent in many other states. For example, in 1983 in New Jersey, the Public Defender's Office budgeted approximately \$100,000 for each capital case.³ In Ohio, the Public Defender's Office estimated that the actual cost of capital cases were \$60,000 per case (trial plus appeal).⁴

In particular, the costs for experts and investigation are far less than reported by some other states. Thus, the Kentucky Defender's Office has estimated that a typical capital case may involve from \$10,000 to \$15,000 in expert and investigative fees, over and above a normal case.⁵ The National College of Criminal Defense estimated the investigation costs alone in a capital case might amount to \$10,000 per case.⁶ A New York study put the figure even higher, at \$40,000.⁷ While there is no reason to believe that the figure billed in Kansas will equal the amount estimated in New York, it does underline the fact that the Board of Indigent Defense estimate is very conservative.

In sum, a conservative estimate of defense trial costs for capital litigation is approximately 2.5 million per year.

III. PROSECUTION COSTS

At present, no authority in this state has attempted to measure the impact of the capital punishment bill upon the prosecution. However, there is every reason to believe that the impact will be substantial. Just as the defense must file more pretrial motions, the prosecution must answer them. The prosecutor, as well as the defense attorney, must be present for the voir dire of the jury, for the expanded trial, and for the new sentencing proceeding. Capital cases will take four times as long for prosecutors if they take four times as long for defense attorneys. Moreover, if the defense presents experts and uses investigators, there is no doubt the prosecutor will utilize such resources as well. There is no question there will be a massive increase in prosecution costs; the only question is how great the increase will be.

At present, far more money is spent on prosecution in this state than is spent on defense. For example, in Douglas County, the amount of money budgeted the prosecutor's office is approximately seven times the amount budgeted for aid to

court appointed attorneys.⁸ That figure is consistent with other states, which have estimated the disparity between prosecution and defense resources as anywhere from 2 to 1 to as high as 8 or 10 to 1. The most conservative estimate so far was from a recent study in Maryland, which found that prosecution and defense costs were virtually identical.⁹ Taking the most conservative of these estimates, the Maryland figure, one might predict that the increase in prosecution costs might amount to some 2.5 million dollars per year.

Since prosecution expenses in this state are funded on a county-by-county basis, the increase in cost will be felt unevenly. Different localities may adopt different methods of dealing with the increased costs. Some will undoubtedly increase local property taxes. Others may absorb the increases by restricting the ability of the county attorney to prosecute other crimes. Some county attorneys may attempt to deal with the burden by bringing fewer first degree murder prosecutions. Whatever the means, the fact remains that capital litigation is enormously expensive for prosecutors as well as defense attorneys, and that a means of funding must be found.

IV. JUDICIAL COSTS

At present, no estimates have been given on increased judicial costs, but costs there will be. There are at least three kinds of judicial costs that can be expected at trial: jury costs, security costs, and the cost of the judges themselves. The first two of these costs are borne by the county, the third by the state.

If the experience of other states is a guide, and the estimate of the additional length of a jury trial by the Board of Indigents Defense service is accurate, there will be a substantial increase in juror costs for the state. If the typical capital trial is three weeks longer than an ordinary case, and if 80 such cases are tried per year, the additional jury costs will amount to \$168,000. If the voir dire panel is 150 rather than 100, and voir dire lasts two days instead of one, the additional cost will be \$160,000 per year. The total increase may thus be \$328,000. Since voir dire of juries may take weeks in some capital cases, the estimated increase here is quite conservative.

At present, I have been unable to come up with any figures on the increased security costs. However, there is no doubt that such costs will occur, and that they will burden the most those smaller counties that can least afford increased expenditures.

Finally, the increase in trial time will eventually require increased judicial resources. At present, it is difficult to estimate how these resources will be funded. If the judiciary chooses not to ask for new judges, the "cost" will be borne at the outset by all those litigants who do not have capital cases. These litigants can expect less time devoted to their cases and increased backlogs.

If, however, the Board of Indigent Defense estimate of increased trial time is right, and the capital punishment bill produces some 240 to 320 additional weeks of trial, the legislature will eventually be asked to supply the additional judges. At the current time, it costs approximately \$115,000 to staff a courtroom full-time. If five additional judges are sought, a prediction which is certainly not radical, the additional cost to the state will be \$575,000 per year; with six judges, the figure will rise to \$690,000.

Although many of the judicial costs will not be felt immediately, and some will not be felt by the state, it is quite probable that within a couple of years, the judicial costs of capital punishment will exceed one million dollars per year.

V. APPELLATE DEFENSE COSTS

The Board of Indigent Defense Fund has estimated appellate defense cost increases as \$135,000 per year for attorney fees, and \$120,000 per year for additional transcript fees. The basis for the Board's estimate is two-fold: first, it estimates that only 16 of the 80 cases per year filed as first degree murder will actually involve imposition of the death penalty, and it also estimates that one attorney will be able to handle four death penalty imposed appeals a year. The cost for four additional attorneys and one secretary is estimated at \$135,000.

In this particular instance, the Board's estimates are well below those from other states. The cost of each appeal has been estimated as an additional \$20,000 in Kentucky.¹⁰ Similar figures were reported in New Jersey and California, with a figure of up to \$50,000 mentioned in New Jersey.¹¹ Moreover, the estimated amount of time reported in other states was up to 6 months of attorney time for each appeal.¹² There is no documented basis for the Board's assumption that our state will be nearly twice as productive in producing appeals as other states with the death penalty. Thus, I would expect that the actual cost of death penalty appeals to be 50% greater than the Board's estimate. However, I will use their estimate for purposes of this paper.

VI. PROSECUTION APPELLATE COSTS

As with trial level costs, there is no reason to believe that the increase in prosecution cost for appeals will be any less than the increase for the defense. Thus, we can expect an immediate increase of at least \$135,000 in prosecution costs.

VII. POST-CONVICTION COSTS

After completion of state appeals, the litigant's course is not yet run. Instead, what follows is a series of collateral appeals. In Kansas, there will be at least seven separate lawsuits or appeals filed by each inmate: 1. A petition for writ of certiorari to the Supreme Court of the United States; 2. An application for post-conviction relief in Kansas under 60-1507; 3. An appeal of any denial of the petition to the Kansas Court of Appeals; 4. A petition for review to the Kansas Supreme Court; 5. An application for writ of habeas corpus in the federal district court; 6. An appeal of that application to the US Court of Appeals for the Tenth Circuit; and finally, 7. A petition for writ of certiorari to the Supreme Court of the United States.

There is little doubt that the State will be required to bear the costs of these appeals. The Supreme Court of the United States held, in the case of Bounds v. Smith, 430 U.S. 817 (1977) that the state must provide an inmate with access to the courts. Kansas has chosen to provide that access through attorney and student assistance by Legal Services for Prisoners, Inc. If the state continues to provide assistance through LSP, there is no question the state will be required to hire additional lawyers to assist inmates. Moreover, additional staff in the Attorney General's Office will eventually be required to answer these petitions.

At this point, it is extremely difficult to know exactly how many additional

lawyers will be required. The need for such lawyers may not appear for several years. Moreover, the number will depend, in large part, on how many capital cases survive review by the Kansas Supreme Court. However, if the State is successful in securing the death penalty in as few as ten cases per year, the cost will be substantial. The State of Florida, which just formed an inmate assistance unit to help with collateral petitions, will spend over one million dollars per year. At the very minimum, the State must expect that it will be required to spend approximately as much on post-appeal costs for the defense and the state as it will spend on appeals. Thus, the total cost, at a minimum, of appellate services in capital cases should be expected to rise to at least \$650,000 per year after several years.

VIII. CORRECTIONS COSTS

Last, but surely not least, the state will be required to spend millions on housing those convicted of capital crimes. If the state builds a new facility, the capital costs will be enormous. I have been told that the Department of Corrections would prefer a death row capable of housing 100 inmates. The cost of building a structure to house 100 inmates in maximum security confinement will almost surely be more than 7.5 million dollars. The medium security facility at Lansing cost approximately \$65,000 per bed. According to former Secretary of Corrections, Michael Barbara, the construction costs for maximum security confinement are greater than for a medium security facility, and could be expected to run from \$75,000 to \$100,000 per bed. At that rate, an 100 person death row would cost from \$7.5 million to \$10 million.¹²

The construction costs cited by former Secretary Barbara are consistent with figures from other states. Thus, the State of Alaska predicted capital expenses of over \$2 million to construct a 20 person death row facility, a cost of over \$100,000 per bed.¹³

In addition to the costs of construction, the Department of Corrections will be forced to incur additional staffing expenses. All the studies of which I am aware have concluded that it costs far more to house an inmate in death row confinement than in the prison's general population. The costs reflect the need to house each inmate in an individual cell, to separate the inmate from the general population, to provide separate recreation, and to increase security.¹⁴ According to representatives of the Florida Clearinghouse on Criminal Justice, during the eight to ten years involved in post-conviction review, an extra \$15,000 per inmate will probably be required.¹⁵ While the Department of Corrections has not yet given an estimate of the increased staff expenditures, it will surely be hundreds of thousands of dollars per year.

IX. CONCLUSION

While I am not able to present the committee with a precise dollar figure on the cost of capital punishment, I believe that several conclusions may be safely drawn. If the current bill passes, the cost to the counties and State will eventually exceed seven million dollars per year. (The cost is exclusive of the more than 7 million dollars that would be required to build a death row.) That cost will continue to increase year after year. The cost will be felt in the counties either by higher property taxes or by reduced manpower for criminal justice prosecutions. It will be felt in the state either by increased taxes or by a further reduction in services.

If you agree with my estimates, I suggest that they point to the almost inescapable conclusion that our state cannot, at this point, afford the death penalty. If you disagree, you owe it to yourself and your constituents to withhold your vote until you have full and accurate information from all agencies of the state. Such estimates can only be made if the affected state agencies have taken the time to compare their figures with those of other states. We have never had such estimates in the past; we have no such estimates now.

¹The published sources are Comment, The Cost of Taking a Life: Dollars and Sense of the Death Penalty, 18 U. Cal. (Davis) L. Rev. 1221 (1985) [hereinafter Comment]; N.Y. State Defender's Ass'n, Capital Losses: The Price of the Death Penalty for New York State (1982) [hereinafter Capital Losses]; Committee to Study the Death Penalty in Md., Final Report (Apr. 30, 1985).

²Board of Indigents Defense, Defense Costs for Death Penalty Cases in Kansas (1986).

³Comment, supra note 1, at 1261.

⁴Conversation with Randall Dana, Ohio Public Defender (Reported by Ronald Miles, Board of Indigent Defense Services).

⁵Conversation with Kevin McNally, Kentucky Department of Public Advocacy, 1/14/87.

⁶Capital Losses, supra note 1, at 13.

⁷Id. at 18.

⁸Conversation with Jerry Harper, former District Attorney, Douglas County. Mr. Harper estimated the District Attorney's budget when he served in the office as approximately \$400,000 per year. Last year, the Board of Indigent Defense Service budgeted \$58,158 for defense services for Douglas County. Mr. Harper estimated that court appointed cases accounted for three-quarters of the defense cases in Douglas County.

⁹Committee to Study the Death Penalty in Maryland, Final Report (Apr. 30, 1985).

¹⁰Conversation with Kevin McNally, Kentucky Department of Public Advocacy, 1/14/87.

¹¹Conversation with Tom Smith, Ass't Public Defender, Trenton, New Jersey.

¹²Conversation with Prof. Micheal Barbara, Washburn Law School, former Secretary of Corrections, 1/19/87.

¹³Fiscal Note to Senate Bill 119, "An Act Authorizing Capital Punishment," State of Alaska 1986 Legislative Session.

¹⁴See, e.g., Capital Losses, supra note 1, at 23.

¹⁵Id.



KANSAS COUNCIL ON CRIME AND DELINQUENCY

Senate Federal and State Affairs Committee, Sen. Ed Reilly, Chairman

THE DEATH PENALTY IS NOT A DETERRENT

ADVISOR: Karl Menninger

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In order for punishment to deter, it must be swift and certain. The use of the death penalty in Kansas will be slow, uncertain, and unpredictable. The rights of the accused leads to time-consuming appeals and some juries are more reluctant to convict in a death penalty state. In Illinois, after the death penalty was restored, more plea bargaining took place in order for prosecutors to stay within their budgets. In order for the death penalty to qualify as a deterrent, executions would have to widely reported in the media. After the first one in Kansas, executions would become routine, unnoticed, and buried in the back pages of the newspaper and omitted from T.V.

The death penalty in Kansas will not deter because those who commit murder do not do so after carefully weighing the consequences. Most persons who commit murder do so quickly in situations of great fear or other emotional stress or while under the influence of drugs, alcohol, or mental illness. These circumstances are acknowledged when defendants are found incompetent to stand trial or determined to be legally insane. Those who commit the most serious crimes are not punished with prison sentences or the death penalty because the nature of their crimes presupposes severe mental problems for which they need treatment.

The death penalty in Kansas will not deter the commission of premeditated murder because such persons do not believe that they will be apprehended, convicted, and executed.

The death penalty in Kansas will not deter the killing of police or correctional officers. Criminologists Sellin, Bailey and Wolfson, working independently, found that capital punishment did not decrease the number of such homicides. Peace officers and correctional personnel are not any safer in states that have the death penalty. A person who has committed murder has nothing to lose, in a state with capital punishment, if he kills the arresting officer.

The death penalty in Kansas will not deter persons from committing homicide because it has not done so in other states in this country. Texas, which has the highest murder rate and Florida, which has the second highest murder rate in the U. S. both have the death penalty. The murder rate in Kansas is less than half that of these two states. New Mexico experienced an increase in the murder rate when the death penalty was reinstated and Rhode Island noted a drop in its rate when the death penalty was dropped.

The death penalty in Kansas will not deter persons from committing murder because it has not done so in bordering states. Kansas has a lower homicide rate than any of the three bordering states of Colorado, Missouri, and Oklahoma, all of which have the death penalty. This has been the case ever since the death penalty was struck down in Kansas in 1973.

The death penalty in Kansas will not deter persons from committing murder who do so in order to commit suicide (by having the state kill them) or who want the notoriety, or who are masochistic. In such cases the death penalty will increase the number of homicides. For example, Gary Gilmore went to Utah, killed two persons and then called for his own death by firing squad. He was on the cover of Newsweek and wanted his execution televised.

The death penalty in Kansas will not deter persons from committing murder but may increase this type of crime. In California and New York there were slight increases in homicides after executions. Such executions by the state may stimulate violent crime because state executions are viewed as approving killing persons as an appropriate means of achieving vengeance. Violence begets violence.

The death penalty in Kansas will not deter serious crime but may lead to its increase because increased money and energy will be focused on the death penalty instead of seeking out and correcting the causes of crime through appropriate preventive measures. Being tough on crime by supporting the death penalty is a symbolic and political act that does not get to the heart of the problem of crime in the state of Kansas.

The death penalty in Kansas will not deter persons from committing murder or less serious offenses and will not give general protection to our citizens. There is no relationship between the death penalty and crimes such as burglary and robbery, which our citizens are more likely to experience.

Donald W. Anderson, President
Kansas Council on Crime and Delinquency/Kansas Citizens
for Justice

Federal and State Affairs Committee
Hearing for opponents on:
HB 2062 - Death Penalty for 1st degree murder
Tuesday, March 3, 1987

3/3/87
Attachment #6

TOPEKA RELIGIOUS LEADERS
AGAINST THE DEATH PENALTY

Donald E. Roberts

First of all, let me say that murder horrifies me. Any murder horrifies me. It does not need to fit certain legal definitions; nor be classified by any certain degree, Murder and other violent crimes flies against every bit of decency I have as a member of the human race, every "ism" that I believe as a christian, every objective I have as a minister of the Gospel of Jesus the Christ. I cannot really comprehend how anyone can ever bring themselves to strike down a precious God-given life.

It should not be too surprising then for you to understand that I don't want to kill people. I don't want anyone to kill people...especially not in my name, to express my vengeance. Despite my human emotions and reactions of fear, rage and horror to murder, my faith says never give up on any person even the "throw-aways of society.

The list of "throw-aways" is a long list, and we can probably readily agree on the names of some of those who have definitely earned for themselves little more than the right to be on such a list. Sirhan, Speck, Son of Sam, Bundy, Gacy, Manson, Leopold...is a grim list of people against whom we all feel a sense of rage. And at least today, I never want them walking free again. I don't want to suddenly encounter any of them, or others like them who seem similarly dangerous, outside the walls of the prisons where they now reside.

But there was Nathan Leopold! Who, as I have read, was a rich, spoiled, infamous thrill killer. He barely escaped execution. But Leopold changed dramatically over the number of years he spent in prison, and became an outstandingly altruistic individual. The change which seemed obvious to almost everyone who knew him was viewed as nothing short of a miracle. Although we talk a lot in our houses of worship about people's potential for change, that change seems incredible, often unbelievable, the first (or perhaps anytime) we really see it. Do we dare risk to believe that even in the above list, one or more may indeed have such a miraculous change? We'll never know as long as we put all our energies; spiritual, physical, economic, emotional, psychological, etc.; into execution and not life.

People sometimes say death is no worse punishment than a long prison term. But a person alive and in prison has possibilities - including of course, the possibility of changing, not to mention the possibility of being proved innocent of the crime by which he was convicted. The death penalty cannot be reconciled with the indeterminate

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possibilities that reside in every human being. The death penalty passes a final irreversible judgment upon the individual. It pronounces a human being as worthless and unfit to live. In this pronouncement, humans are less patient than God. God was patient with Cain, Moses, David and Paul. Each had a hand in the taking of a life of another human. Each received time and an opportunity to reflect and change. In each, God's grace is evident. The death penalty is difficult to reconcile this patience of God - known as Grace.

The death penalty reveals not only our impatience, but also our arrogance. It is an arrogance which assumes the right to determine that a human life has no future possibilities. It is an arrogance which assumes that the possibilities of divine grace is ours to control. The human situation, especially at times such as the commitment of violent crimes, is discouraging. We are tempted to a pessimism about the grace of God as well as human possibilities, to impatience, and to terminative and irreversible actions. But it is by faith that we understand the human situation in the light of the revelation of God, not God in the light of the human situation.

It is my belief, that there is an element of God in each of us. We are each created in His image, as moral agents, capable of knowing right from wrong...capable of repentance...of confession...of change. Like any human capacity, this "moral agency" may be underdeveloped, even nearly non-existent in some, but always capable of growth if nurtured by love and compassion, by time and space. To take the life of any person is to destroy this God created moral center in them. To admit that there are those who are beyond change, is to deny the ultimate power of redemption and hope. It is nothing short of a "thievery of the divine." Each of us has a fundamental moral obligation to respect and protect the inherent worth of all persons. We dare not treat people as less than human - as less than God created moral agents, even those whose actions would tempt us to label them as throw aways.

However, I do not believe we can simply dismiss a murderer with "go and sin no more." I believe Jesus would have confront the murderer as a moral agent, and demand that he give an account for his actions. But, it is also my belief that the death penalty is not an option. The complexities and ambiguities of violent criminal behavior, at its origins, lie beyond our present capacity to understand them. We are whether we like it or not, trapped by our own limitations of mind and heart. However, since we are human and moral, responsible for our actions to each other and to God, society does have a right to maintain the preciousness of life and "moral agency." Society has the right and the duty to prevent violent behavior including, in some cases, the right to impose terms of life-time imprisonment. Never should the devaluation of human life or the use of another's life as an instrument of survival be tolerated. (To vote for the death penalty on the basis of the deterrence argument is in fact seeking to use the life of a human as an instrument to personal ends; so that, "I might feel

safer," or "others might not commit the same act.")

Society has a right to hold individuals and groups accountable for wrongdoing. Presently, this is done by isolating the criminal from the community. By doing this, society makes it clear how wrong they find that behavior. By this isolation, we insist the person morally assess his actions. Punishment of this kind, (1) protects the community, and (2) demonstrates a respect for the individual's inherent worth as a moral agent with the possibility of change, and restoration as a productive individual, even though possibly remaining imprisoned.

The death penalty will do neither of these. It will not protect society. It promotes a "moral rightness" concerning the taking of life. The death penalty promotes the philosophy that taking a life is O.K., if it is felt "justifiable" or is an "expedient to some end."

The death penalty fosters a false notion that there are those who are "good" and can administer justice, and those who are "bad" and can be thrown away. The truth is there is bad and good in all of us. It is part of being morally created by God, but living in a fallen world. If we deny that "good-bad" tension in us, we too easily fail to see that same tension in our brother or sister, in whom, this tension has broken forth in an act of violence.

A belief in God's love as redemptive and restorative compels us to seek even for those who have taken a life the opportunity for a personal transaction of penitence, restoration, and a new beginning - even though imprisoned. The institutionalized killing of human life prevents, eclipses, robs the potential fulfillment of the commitment on our part to seek the redemption and reconciliation of the offender.

Punishment by the state, in a system of retributive justice, is justified if and only if it serves the function of holding people accountable, respects the moral agency of every human, and creates the possibility for change. Punishment that fails to serve this function is unjustified. The death penalty fails in all aspects. Holding people accountable for their crime, necessarily includes demanding they respond as only moral agents can: BY RE-EVALUATING THEIR BEHAVIOR.

Death is not a punishment to which reflective moral response is possible. A moral response to the certainty of death is possible, but waiting to be executed is not the wrong doer's punishment. The death penalty is the punishment. Death, obviously, terminates the possibility of moral change, and the societies right to seek that change.

Thus, I am opposed to the death penalty for the following reasons:

- 1) The death penalty teaches that which is in reality false assumptions of the human situation.

- 2) The death penalty is in direct opposition to faith in a hope that change is possible, that redemption is a fundamental gift from God. It cuts short the time in which this gift of God's grace can work.
- 3) The death penalty denies the right of society to hold persons accountable for their crimes. It robs society of their right demand re-evaluation and repentance for their behavior. It robs society fo the chance to truly establish justice, by restoring peace, peace in the heart of the offender and peace in the hearts of all the victims.
- 4) The death penalty is a direct confromtation with God and God's rightful ownership of Life. It is the old story of humans trying to steal what belongs to God; s~~o~~ that, they may act like Gods. It is "thievery of the divine."

Donald E. Roberts
Pastor of the Topeka, Ks.
Church of the Brethren

~~Attorney #7~~
~~5-3-88~~

Our Faith Compels Us
To Speak Against the Death Penalty

As leaders of communities of faith in Topeka, Kansas, we speak God's Word as given to us in the scriptures, and from our diverse religious traditions.

We speak against the use of our energies to seek vengeance or retribution, and call for the use of our spiritual efforts in promoting God's Grace, reconciliation and hope in the lives of all people.

WE BELIEVE the Death Penalty is not a part of God's original or intentional will.

WE BELIEVE retaliation in the Hebrew scripture (Old Testament) was not so much a requirement as a limitation on vengeance, and that Hebrew scripture teaches us retaliation is never God's highest intent.

WE BELIEVE the nature of the New Testament urges us to love those who would harm us, and pray for those who would persecute us, and teaches us of the possibility of redemption in all humans.

WE BELIEVE capital punishment is incompatible with the basic teaching of the New Testament - love, reconciliation and redemption.

WE WOULD SUPPORT efforts that would pay greater attention to the victims of crime, and a greater resolve of their needs.

WE WOULD SUPPORT efforts that seek to make room for restitution and compensation, leaving opportunity for redemption and healing.

WE WOULD SUPPORT efforts that would contribute to the character redevelopment of long term inmates.

WE WOULD SUPPORT efforts that would turn our preoccupation with questions of individual guilt and punishment to wider visions and education that would help us examine the causes and meaning of violence.

THEREFORE: We, as religious leaders of Topeka, Kansas speaking to Governor Hayden, the legislators and the people of the State of Kansas, urge the defeat of the Death Penalty Bill; so that, we can turn our spiritual energies to more positive approaches that would mediate God's Grace and would reconcile and bring hope to the tragic and deeply painful situations caused by murder and other violent crimes.

ADDRESS: _____

SIGNATURE _____

CHURCH AFFILIATION _____

PHONE NUMBER(S) _____

Our Faith Compels Us
To Speak Against the Death Penalty

Roman Catholic

Father George A. Matz
Father Carl M. Dekat
Sister Lucille Borengassen
Father L.D. Albertson
Sister Bernice Himmelberg
Sister Frances Russell SCL
Sister Therese Bangert
Father Richard Etzel
Father Michael Stubbs
Sister Bernelda Nanneman
Sister Marjorie Cushing
Sister Mary Corita Conlan
Sister Mary Kenneth Messina
Sister Joan Therese Cunningham
Reverend George Klasinski
Sister Rose Paul Tetyak
Sister Ann Lorraine SCL

Episcopal

Bishop Richard Grein
Chaplain Peter W. Oesterlin
Reverend James A. Hammond
Reverend Canon Allan Hancock

Presbyterian Church U.S.A.

Reverend S. Ann Richards
Reverend Barbara Prasse
Reverend William C. Gannaway
Reverend Donald Close
Reverend Arthur Donnelly
Donald Zimmerman
Vivian M. Marshall
John T. Haupt
Winifred B. Zimmerman
Reverend C. Michael Kuner

Disciples of Christ

Opal Mae Evans
Reverend Robert A. Langston
Reverend Lyle Predmore
Reverend Jan Blakley
Steven A. Martin
Reverend Tom Blakley
Reverend James M. Gideon

United Church of Christ

Adrian Kipp (Carbondale)
Reverend Christian A. Tirre
Reverend Janice Mannel
Reverend Ronald L. Eslinger
Reverend William E. Kraus, Jr.

Unitarian

Reverend Lesslie Anbari
William Lucero

United Methodist

Reverend Kent M. Melcher
Bishop Kenneth W. Hicks
Reverend Susan R. Mitchell
Reverend Jay B. Henderson
Reverend George Wine Chase
Reverend Eva K. Brown
Reverend Jim L. Fredrickson
Claire Casselman
Betty Nelson
Reverend John C. Gingerich (Lawrence)
Reverend Lawrence R. Fry
Reverend James E. Darby
Reverend Timothy Lord (Harveyville)
Reverend Larry Keller
Lynn Dyke
LaVetta Rolfs
Gary Munion
Connie Reynolds
Brook E. Reynolds, Jr.

Church of the Brethren

Reverend Francis Hendricks, Jr.
Reverend Elvin D. Frantz
Pastor Don Roberts
Leland Strahm
Catharine Strahm
Reverend John Tomlonson (McPherson)
Reverend Lorene A. Moore (Independence)
Reverend David Bell (Norton)

Mennonite

Reverend Raymond H. Reimer
Reverend Jean L. Hendricks (Lawrence)
Dorothy Nickel Friesen (Manhattan)
Reverend Eldon Epp (Salina)
Reverend Rozella Epp
Brian Strahm

Baptist

Tommy Goode
Reverend Gary Deeter
Reverend Billy Johnson

Pentecostal

Reverend M.P. Jackson, Sr.

Jewish (Union of American Hebrew Congregations.
Conference of American Rabbis)
Rabbi Lawrence P. Karol

Other

Dorothy Berry
Melvin Wakes
Daniel Nagengast
Mahin Etzenhouser
William D. Trussell, Ph.D.
Reverend Don Miller

The Above 89 names were gathered by seeking out religious
leaders in Topeka during the last two weeks of January.

Bernard J. Dunn
Attorney and Counselor at Law
3240 S.W. COLLEGE AVE., SUITE B
TOPEKA, KANSAS 66611

May 7, 1987

Senator Ed Reilly
Chairman, Senate Federal and State Affairs Committee
State Capitol Building
Topeka, Kansas 66612

Attention: Mrs. Windscheffel

Re: Death Penalty Hearing, ^{March 3} ~~April 3~~, 1987: Testimony

Dear Senator Reilly,

You requested a brief overview of my testimony from ^{March} ~~April~~ 3.

I described for the committee my background in corrections and my previous support of the death penalty. I explained my attempt to justify the death penalty partly on the grounds of humane treatment, that being, that it was more humane than locking a person up for the rest of their life if they were dangerous. I then explained by way of a brief story how I had been invited to speak at a training program at the Menninger Foundation and in preparation had done a great deal of study on the justification for the death penalty, considering legal, ethical, religious, social and economic issues.

It was during this study that it became clear to me that there were justifications for and against the death penalty and that a larger and superior issue began to be clear. That larger issue is that as a legislator and as a society we should look at what the death penalty does to the society as opposed to what it does to the criminal offender. I indicated that it was apparent, in my opinion, that the society was, in its frustration over certain social issues, attempting to use death as a solution rather than intelligent research and analysis of the cause. I suggested and argued to the committee that this had a de-civilizing effect on the community.

I therefore urged the committee to choose solutions which upheld the standard of justice and punished the offender which would involve the victim in the planning for the imposition of justice so that the victim had the feeling of an active role and participation in the various goals which the criminal justice system seeks to wit: the upholding of the standard of justice; the infliction of pain by way of restitution for the damage caused by the offender; incarceration and separation from the community because of the dangerousness of the offender and the protection of the community in the interest of public safety; behavioral modification to change the criminal behavior to acceptable behavior; rehabilitation to attempt to recover whatever is salvageable in the offender in

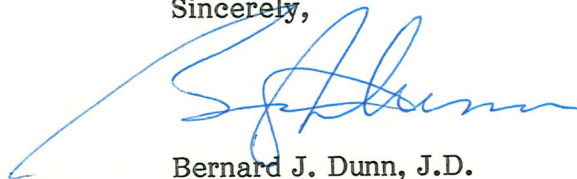
May 7, 1987
Senator Ed Reilly
Death Penalty Testimony
Page - 2 -

the interest of a healthy society; to make possible the occurrence of forgiveness both public and private as well as punishment in the interest of healing the fabric of the society which is damaged by crime and the fear of crime; the upholding of a standard of justice by which the society makes the public statement that such conduct is not acceptable; and the establishment of an example by way of a deterrent to others to notify them that if they commit such offenses they will suffer the consequences. Further, by way of a second purpose, I indicated that there should be additional research on such offenders rather than their execution and that laws which inhibit the study of human subjects, particularly those who kill others, should be eliminated or made less restrictive to allow research to go forward and that any affirmative research should be supported and funded by the community to help identify the cause and possible solutions for the criminal rather than killing the offenders and leaving the cause unstudied.

I closed by indicating that I appreciated the tremendous work and study that the committee had put into this but that in the final analysis there would always be reasons for and against and that they would ultimately be deciding to solve a social program either by killing someone or by the application of intelligence and sophisticated problem solving techniques. In light of this I indicated that it was my opinion that the choice to kill someone to solve a problem had a de-civilizing effect on us, the society, irrespective of whether or not it did anything to the offender. I indicated my approach was not to be soft on the criminal nor to reduce individual responsibility for criminal behavior but to preserve the civilization as a society.

I trust these comments are a sufficient capsulization of my testimony for the purpose of writing your minutes.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bernard J. Dunn". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Bernard J. Dunn, J.D.

BJD/mt

cc: Senator Ed Reilly
File

3/3/87
Attachment #8



KANSAS ASSOCIATION OF HISPANIC ORGANIZATIONS

March 3, 1987

Testimony in Opposition of Death Penalty

Good morning. I wish to thank you Mr. Chairman, honorable members of the committee, for your time. My name is Jeannie Chavez-Martinez. I am president of the Kansas Association of Hispanic Organizations. I am here to offer testimony in opposition to SB 2062. It is apparent after yesterday that my testimony must address certain statements made by the opposition.

I will focus on the constitutionality issue; the concept referred to as "discretion" and finally the claim that race is systematically influencing the death sentence, thus imposing a disproportionate number of death sentences on minorities.

I will attempt to observe the five minute time request unlike the opposition; however, I request the same consideration allowing me to finish my testimony as was granted the proponents of capital punishment.

I begin by addressing the constitutionality question. The opposition stated that the Supreme Court had never declared capital punishment as unconstitutional. He was correct. However, what he failed to qualify was that the Supreme Court did declare that capital punishment as applied was unconstitutional on the basis of discrimination. There is a third consideration the Supreme Court looks at and it was this pattern of discrimination that led the Supreme Court to declare in 1972 in the landmark case

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Ferman v Georgia that all death penalty laws then in effect in America were unconstitutional. As applied - this is the issue of constitutionality. The application of the death penalty is unconstitutional. It is further contended that "in the opinion" and I emphasize "in the opinion" of the proponents that the death penalty's "discretionary provisions" have eliminated this problem. I offer you testimony that in spite of discretionary measures capital punishment is still permeated by racial discrimination. In addition, it has become apparent that there is a second type of racial discrimination in the use of the death penalty: discrimination by race of the victim. Ninety-five percent of those executed since the reinstatement of the death penalty were convicted of killing white people yet half of the victims were black! The disparity is based on race; no matter what other factors are taken into account. Killers of whites are several times more likely to be sentenced to death than killers of blacks!

It must be understood that the "discretion" of the "prosecutor" is, according to Judge Cardozo, who by the way was out of law school, subject to bias; that in each of us "a stream of tendency..call it a philosophy" gives direction to our thoughts; and that this thought is what formulates a discretionary decision, traditional beliefs, acquired convictions - these forces determine where choice will fall.

Speaking to the ALR reference, I would like to point out that the American Law Review publishes points of law traceable to cases all over this country. The articles are ingrained in the practice of law and judicial decisions: or they reflect trends or cutting

edge viewpoints on issues.

I would further state that to "assume" - I'm sure we all know the potential consequences of that mistake - to assume that because a person is a law student their expertise on the subject matter is not credible is not only a mistake, it is an insult. I knew I'd chosen Washburn Law School over Kansas University for a good reason.

What's more, the statement infers that only graduates from law school can be considered authorities on this subject, in which case most of the testimony you've listened to with such enthusiasm is useless. The ALR does not randomly pick names out of a hat. They publish opinions that are on point, relevant to the issue and exceptionally well-written.

The statistics presented and supported by the proponents show that there is an equivalent number of blacks and white on death row - (40-50 % range). This is considered representative? Blacks do not make up half of the population of this country. It never fails to amaze me how on issues concerning fair representation in Congress, in administrative positions, fairness is measured as relative to the size of the population. But on death row - more is fair!

The proponents would say blacks commit more "heinous" crimes. Define heinous then prove the elements of that crime based on the circumstances and facts as presented - that are subject to "discretion" and persuasive argument; and to a jury with their socialized prejudices.

My God, even the Supreme Court judges can't agree on issues,

there is more often than not a dissent depending on their interpretation of the facts!

Kansas proponents refute that there is a potential for discriminating practices based on past figures. I contend that twenty years ago "legalized murder" statistics did not reflect the victims of mob lynchings whose deaths went unpunished. I further contend that today we have an increasingly diverse population in the state and that with the change comes the "fear" common to change. Black, Hispanic and other minority population growth and potential political power is a crucial factor not to be overlooked.

Neighboring states with similar population trends who have the death penalty also are experiencing the same discrimination patterns expressed earlier.

I have enclosed for your benefit the figures. I will not insult you or bore you by reading them one by one. You are quite capable of reviewing and comparing.

What I will say is that the factual statistics before you are put together by people every bit as qualified as the proponents,.. and that those figures all demonstrate that race - especially race of the victim, is a main determinant of who lives and who dies.

Thank you for your time.



CONTACT: TANYA COKE
212/219-1900

3/3/87
Attachment #9
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
99 Hudson Street, New York, N.Y. 10013 • (212) 219-1900

CONTACT: FREIDA EISENBERG
212/736-5050

RACE AND THE DEATH PENALTY

The Pattern of Uneven Justice

A battery of studies unequivocally link executions with the race of defendants and the race of victims:

- o Ninety two percent of those executed in this country since 1976 had killed whites (57 of 62), while almost half of all homicide victims were black.
- o 3,921 people have been executed since 1930: 54 percent have been black or members of other minority groups. For the crime of rape, 455 have been executed, 405 have been black.
- o In Georgia alone, of the 376 defendants executed since 1930, 304 have been black.
- o In a 1983 study of Georgia sentencing, capital defendants who kill white victims are 11 times more likely to receive the death sentence than are those who kill black victims. Among those indicted for killing whites, black defendants receive death sentences three times as often as white defendants.
- o In a 1973 study of 1,265 cases from the states of Florida, Georgia, Louisiana, South Carolina and Tennessee in which the race of the defendant and the sentence are known, nearly seven times as many blacks were sentenced to death as were whites. Of 882 blacks convicted of rape, 110 were sentenced to die. Among 442 whites convicted of the same crime, only 9 received a death sentence.
- o In Florida, between 1972 and 1977, black offenders who killed whites were four times more likely to be sentenced to death than those who murdered blacks. Blacks who killed whites were five times more likely to receive the death penalty than whites who killed whites. If all offenders were sentenced at the same rate as blacks who killed whites, 887 persons would have been sentenced to die.

- MORE -

Attachment #9
FSA 3/3/87

Contributions are deductible for U.S. income tax purposes

The NAACP LEGAL DEFENSE & EDUCATIONAL FUND is not part of the National Association for the Advancement of Colored People although it was founded by it and shares its commitment to equal rights. LDF has had for over 25 years a separate Board, program, staff, office and budget.

- o In South Carolina, over a four-year period, prosecutors in murder trials involving white victims and black killers sought the death sentence in 38 percent of the cases. When the killer was white and the victim was black, the figure drops to 13 percent.
- o A study of sentencing patterns in Texas in the 1970's showed that, where a black or Chicano killed a white, 65 percent of the defendants were tried for murder while only 25 percent of whites who killed blacks or Chicanos faced the death penalty.

#

* Baldus' unadjusted findings are summarized in Table 1:

TABLE 1

Georgia Death Sentencing Rates by Defendant/Victim Racial Combination

All White-Victim Cases 11% (108/973)		All Black-Victim Cases 1% (20/1502)	
Black Defendant /	22%	Black Defendant /	1%
White Victim /	(50/228)	Black Victim /	(18/1438)
White Defendant /	8%	White Defendant /	3%
White Victim /	(58/745)	Black Victim /	(2/64)

This type of discrimination is not restricted to Georgia. Other researchers have found it elsewhere in the south, and throughout the country. In 1980, Dr.'s William Bowers and Glenn Pierce found discrimination by race of defendant and by race of victim in capital sentencing in Florida, Georgia, Texas and Ohio, from 1973 through 1977. More recently, a large-scale study by Professor Samuel Gross and Robert Mauro looked at all reported homicides from 1976 through 1980 in eight states: Georgia, Florida, Illinois, Oklahoma, North Carolina, Mississippi, Virginia and Arkansas. In each state Gross and Mauro found the same strong pattern of discrimination by race of victim that Baldus found in Georgia -- killers of whites were much more likely to receive death sentences than killers of blacks. And in each state, as in Georgia, this disparity could not be explained by the legitimate considerations that the researchers examined: the commission of another felony in the course of the homicide, the killing of two or more victims, the relationship of the victim to the killer, the use of a gun, etc.**

** Gross and Mauro's basic findings are summarized in Table 2:

✓
TABLE 2

Race and the Death Sentence in Eight States

Number of criminal homicide cases in which negligence was not a factor and there were known suspects at least 15 years old, and the number of times the death penalty was invoked in these cases. Multiple homicides are counted as a single incident. Unless otherwise noted, totals are from 1976-1980. In states where the death penalty was instituted later than January 1976, the date of the legislation is given.

	WHITE VICTIMS			BLACK VICTIMS		
	Homicides	Death Penalty	Percent	Homicides	Death Penalty	Percent
Florida	1,803	114	6.3%	1,683	14	0.8%
Georgia	773	67	8.7	1,345	12	0.9
Illinois (1)	1,214	35	3.0	1,866	10	0.5
Oklahoma (2)	581	40	6.9	252	3	1.2
North Carolina (3)	850	21	2.5	966	4	0.4
Mississippi	208	17	8.2	639	5	0.8
Virginia (4)	646	15	2.3	742	4	0.5
Arkansas	396	13	3.3	398	2	0.5

- (1) July 1977
 (2) August 1976
 (3) June 1977
 (4) May 1977

‡ ‡ ‡



NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
99 Hudson Street, New York, N.Y. 10013 • (212) 219-1900

CONTACT: TANYA COKE
212/219-1900

CONTACT: FREDA EISENBERG
212/736-5050

RACE AND THE DEATH PENALTY

Death Row, USA 1986
August 1, 1986

Total Number of Death Row Inmates: 1765

Race of Inmates	Number of Inmates	Percentage of Total Inmates
Black	729	41.30
White	898	50.88
Hispanic	103	5.83
Native American	25	1.42
Asian	7	.40
Unknown	3	.17
Sex of Inmates		
Male	1,745	98.87
Female	20	1.13

- MORE -

Contributions are deductible for U.S. income tax purposes

The NAACP LEGAL DEFENSE & EDUCATIONAL FUND is not part of the National Association for the Advancement of Colored People although it was founded by it and shares its commitment to equal rights. LDF has had for over 25 years a separate Board, program, staff, office and budget.

3/3/87
Attachment #10

705 FIFTH AVENUE
LEAVENWORTH, KS 66048
MARCH 3, 1987

CHAIRMAN AND MEMBERS
FEDERAL AND STATE AFFAIRS COMMITTEE
KANSAS SENATE

I AM T. A. LOCKHART, A CITIZEN AND TAXPAYER OF LEAVENWORTH, NOT REPRESENTING ANY SPECIFIC ORGANIZATION BUT A MEMBER OF SOME THAT HAVE A SPLIT SUPPORT FOR THIS BILL, YET ARE HISTORICALLY OPPOSED TO A DEATH PENALTY. NONE, OF COURSE, ARE OPPOSED TO 'PUNISHMENT FOR A COMMITTED CRIME' BUT ASK ONLY THAT THE PUNISHMENT BE EQUITABLE.

THERE HAVE BEEN STATEMENTS TO THE EFFECT THAT ONLY MINORITIES AND POOR PEOPLE WILL BE PUNISHED TO THE EXTENT OF THE DEATH PENALTY. HIS TORY GIVES US THE EMPIRICAL DATA IN THAT AREA. THE LOWER THE POPULATION RATIO THE HIGHER THE NUMBERS IN THE AFFECTED CLASS. DOWN THROUGH THE YEARS THE UNITED STATES SUPREME COURT HAS GRAPPLED WITH VARIOUS ASPECTS OF THE PROBLEM. I NEED NOT BRING THE LATEST TO YOUR ATTENTION.

I WOULD LIKE TO CALL YOUR ATTENTION TO SOME DATA IN OUR STATE:

1. RECENTLY BEFORE AN AUGUST BODY OF THIS LEGISLATURE THE WARDEN OF KANSAS STATE PRISON - LANSING STATED THERE WERE APPROXIMATELY 180 LIFERS IN THE INSTITUTION. LIFERS COULD BE SUBJECT TO THE DEATH PENALTY.
2. STATISTICS OF 1984 SHOWED THERE WAS APPROXIMATELY 40% BLACK INMATES IN KANSAS CORRECTIONAL INSTITUTIONS. THE NUMBER OF BLACK LIFERS WAS NOT STATED BY THE WARDEN.
3. ACCORDING TO THE 1980 U. S. CENSUS THE DISTRIBUTION OF THE TOTAL KANSAS RESIDENT POPULATION OF 2.3 MILLION WAS AS FOLLOWS: 5.4% BLACK, 91.7% WHITE AND 2.9% OTHERS.

STATISTICS IN ITEMS 2 AND 3 GIVE THE MINORITY COMMUNITY GRAVE CONCERN AS IT SHOWS THAT BLACKS ARE GREATLY OVER-REPRESENTED IN KANSAS CORRECTIONAL FACILITIES. THIS MEANS THAT THE RATE FOR WHITES SHOW A RELATIVE LOW NUMBER OF ABOUT 74 PER 100,000 RESIDENTS WHILE THE BLACK RATE IS AN ASTOUNDING 658 PER 100,000 RESIDENTS - WHICH MEANS THE STATE INCARCERATES BLACKS AT A RATE 9 TIMES THAT OF WHITES. THOUGH THE NATURE OF THE CRIMES MAY DIFFER THE INCARCERATION ENVIRONMENT IS THE SAME. ALSO THE INCARCERATION RATE FOR BLACKS IN KANSAS EXCEEDS THE INCARCERATION

Attachment #10
FSA 3/3/87

RATE FOR BLACKS IN SEVERAL SOUTHERN STATES NOT WITHSTANDING THE NUMBERS OF BLACKS ON DEATH ROW IN SEVERAL STATES.

I BRING THIS TO YOU FOR SEVERAL REASONS:

1. - INEQUITABLE SENTENCING INTO A PRISON ENVIRONMENT BEGETS EXTREME RETALIATION.
2. - THE INADEQUACIES WE HAVE FOR DEALING WITH CAPITAL SENTENCED PERSONS IS EVIDENT BY OUR PRESENT NEED FOR MORE BEDS - CAPITAL PUNISHMENT REQUIRES GREATER SPACE.
3. - IS OUR JUSTICE SYSTEM READY FOR THIS STEP WHEN ALL ITEMS ABOVE HAVE NOT BEEN ADEQUATELY ADDRESSED?

MUST WE KILL A PERSON TO CONVINCING THAT PERSON THAT KILLING IS NOT SOCIETY'S WAY OF PROVING THAT KILLING SOLVES NO PROBLEM.

I ASK THAT YOU VOTE AGAINST THIS BILL IN COMMITTEE.

THANK YOU



Amnesty International

3/3/87

Attachment #11

USA GROUP 232 316 South 7th Street Salina, KS 67401 913-827-8506

March 3, 1987

To: Senate Federal and State Affairs Committee
From: Donna Schneweis, CSJ, RN--AI State Death Penalty Coordinator
Re: House Bill 2062

Mr. Chair and members of the committee, I thank you for this opportunity to speak on HB 2062. Amnesty International is a worldwide non-partisan human rights movement. We work to free prisoners of conscience, work to obtain fair and prompt trials for all political prisoners, and work to end torture and the death penalty. Today, I as state coordinator, represent Amnesty's 2000 members and supporters in Kansas.

On the 18th of February, Amnesty International launched an international campaign against the death penalty in the United States. This campaign was begun because of the great international concern over the rising use of the death penalty in the US.

The free world is very concerned about the increased use of capital punishment in the US because it comes at a time when much of the free world has or is abolishing the use of the death penalty. All of our NATO allies, except Turkey, have ended their use of the death penalty. In fact, if you look at a map of the free world and then at a map of the countries without the death penalty, you will find the two coinciding almost perfectly. The international community finds it appalling that in 1985, the US, the champion of justice and human rights, added 273 persons to death row and executed 18, while the Soviet Union sentenced 46 and executed 27.

I realize some of you could care less about what other countries do. But, I remind you that we do not live in isolation. Over the past few years, Kansas been engaged in a vigorous campaign to improve its image and encourage investment. Since the AI death penalty campaign on the US began last month, American officials travelling abroad have been called on the carpet for using the death penalty. If Kansas reinstates, the world community will know. And their image of Kansas will be that of a backward state relying on frontier justice, rather than a forward moving state which is realistically addressing its problems.

Prior to the start of the AI campaign, an international mission visited US death rows. They found that the death penalty in the US is given arbitrarily, in a racially biased manner. They found the US death penalty a 'lottery' influenced more by political, financial, and community pressure and geographics rather than by the crime committed. I refer you to the report briefing, which all of you have received, for more information on the findings of the international mission.

I would like to draw your attention to one specific section of the briefing, that which deals with the question of death qualified juries, juries comprised only of persons who would consider giving a death sentence. You have heard some proponents of HB 2062 denounce the bill's current provisions for separate jury panels for the guilt/innocence phase and the sentencing phase. You have heard Attorney General Stephan state that juries

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with persons who are opposed to the death penalty are partial juries. The fact is that juries composed only of persons who would give a death sentence are partial juries. They are 'hanging juries'. Death qualified juries are more prone to convict. In contrast, juries composed of a mix of persons willing to give the death penalty and persons who would never give such a sentence are more impartial. One of the more recent studies on this question, that of Cowan, Thompson, and Ellsworth, an impartial 1984 Stanford study, revealed that juries with such a mix viewed all witnesses more critically and remembered the facts more accurately than death qualified juries. Mixed juries paid more attention to due process and constitutional questions. So, do not be deluded into thinking that if you provide only for death qualified juries that such juries would be impartial.

Aside from the question of jury composition, AI opposes the death penalty unconditionally. We share the frustration of the law enforcement officials over the problem of violent crime. Our members have experienced violent crime. Yet, we oppose the death penalty because it is a cruel, inhuman punishment which violates fundamental human rights. The death penalty is never justified as a response to violent crime, no matter how repugnant the defendant's behavior. We are concerned about what the death penalty does to the defendant and to society.

In our work on behalf of human rights all over the world, we find execution methods changing as governments seek to find a 'decent' way to execute. In the words of Jack Healey, AIUSA executive director, "There is no 'decent' way to kill people . . . executions are simply wrong. Governments should not be in the business of killing their own citizens. That is Amnesty's stand and the stand of all decent people in the world."

Amnesty International's 2000 members and supporters in Kansas urge the members of this committee to reject HB 2062 and any other attempts to reinstate the death penalty.

TESTIMONY - H.B. 2062

3/3/87
Attachment #12

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

Tuesday, March 3, 1987

KANSAS CATHOLIC CONFERENCE
Bob Runnels, Executive Director

Mr. Chairman, members of the Senate 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. 2062 unfavorable for passage.

Attachment #12
FSA 3/3/87