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Date

1/30/89

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

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

11:00 a.m./~~p.m.~~ on January 25, 1989n room 313-S of the Capitol.

All members were present ~~except~~.

Committee staff present:

Mary Galligan, Legislative Research
Mary Ann Torrence, Revisor of Statutes Office
Marty Robison, Secretary

Conferees appearing before the committee:

Bill Lucero, Unitarian Universalist Service Comm. Unit of Kansas
David Gottlieb, Professor, KU Law School
Donna Schneweis, Amnesty International
Therese Bangert, Kansas Council on Crime and Delinquency
Alma Weber, Topeka, representing herself
Dr. Gilbert Parks, Kansas Coalition Against the Death Penalty
Dr. Gordon Risk, American Civil Liberties Union
Richard Ney, Sedgwick County Public Defender
Ken Groves, NAACP
Michael Barbara, Former Secretary of Corrections
Bob Runnels, Kansas Catholic Conference
Rev. Larry Keller, Kansas Religious Leaders Against the Death Penalty

Chairman Reilly called the meeting to order for the purpose of hearing the opponents of Senate Bill 38, the death penalty for certain crimes.

Bill Lucero appeared before the committee in opposition to the death penalty. He addressed the issue of the "overwhelming" evidence of citizenry support and included copies of the results of polls taken in various states (Attachment 1). He said these polls show that under certain circumstances, most Americans oppose the imposition of executions.

David Gottlieb testified that capital punishment is very expensive because trials are longer, jury selection more complicated, and more motions are filed (Attachment 2). Not only is litigation expensive, these cases choke the system and destroy its ability to deal with other criminal issues. The chance of executing an innocent person was also given as a reason for opposition.

Donna Schneweis said Amnesty International was concerned with human fallibility in using the death penalty and would oppose such an attempt to reinstate the death penalty (Attachment 3).

Sister Therese Bangert spoke on behalf of various organizations that work with concerns about violence, crime and the death penalty and voiced her opposition to this bill (Attachment 4).

Alma Weber, mother of a slain parole officer, asked the committee to oppose this bill because she sees capital punishment as a form of retaliation, fed by continual anger (Attachment 5).

Dr. Gilbert Parks appeared before the committee to express his concern that race is the major factor in the system and that the death penalty will only create more disparity among blacks, and particularly, black

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Federal & State Affairs,
room 313-S, Statehouse, at 11:00 a.m./~~p.m.~~ on January 25, 1989.

males (Attachment 6).

Dr. Gordon Risk opposes the death penalty because he feels it is imposed in a discriminatory fashion that has little to do with the crime and more to do with the demographics of the accused and the victim. He said Florida will spend \$3 million dollars to execute Bundy, rather than \$750,000 to imprison him for life (Attachment 7).

Richard Ney told the committee that while there are 2,151 people on death rows, in the last 14 years, only 106 have been executed. He also stated that states are finding the appeal process in capital cases is often taking 10 to 12 years (Attachment 8).

Ken Groves testified that minorities bear the brunt of capital punishment and constitute 50% of those executed (Attachment 9).

Michael Barbara discussed the objectives and cost of the death penalty. He said that the objective does not seem to be deterrence, but to satisfy public rage. He also stated that the cost should be a concern for members (Attachment 10).

Bob Runnels appeared on behalf of the Catholic Conference to express their opposition to capital punishment (Attachment 11).

Rev. Larry Keller testified in opposition to the death penalty and said that revenge does more harm in the long run than good (Attachment 12).

Written testimony in opposition to SB 38 was distributed to members from Peter Korth, Leawood, Kansas (Attachment 13); Ann Heberger, League of Women Voters of Kansas (Attachment 14); Marvin Sevy, Topeka, Kansas (Attachment 15); and Lyle Predmore, Topeka, Kansas (Attachment 16).

A pamphlet, entitled "The Death Penalty", was distributed to members from the Church of the Brethren (On file in the Senate Federal & State Affairs office).

The meeting was adjourned at 12:04.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: 1/25/89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Mr. Kelly	Lv. Ks.	
Miss Bond	Cowd Grove	
Daniel McMahon	Topeka	
Ra. Tshuan	Topeka	
Ann Gelberger	Overland PK	LWOK
Jim 1446 side	Topeka	observer
Cher Brown	J.W.	observer
Chin Brown	Stued	" "
Barbara Risk	Topeka	observer
David Thompson	Topeka	observer
David Cowson Harper	WICHITA	AMNESTY INTERNATIONAL
CHRISTOPHER ERIN	Wichita	Amnesty Internat.
Dr. K.C. Drew	wichita ks	Methodist League
Reverend Larry Keller	4000 DEWEY Lane Topeka, Ks. 66614	Topeka Religious Leaders against the Death Penalty
Donald W Zimmerman	1926 Warner St 66604	observer
Annabelle Haupp	1006 Armedale Wichita, Ks 67205	W.D.S.P.F.
Manita Carlson	910 Holiday Lane	ACLU, 160 Student
Ward Jewell	2266 N. BELMONT WICHITA	AMNESTY INTERNATIONAL
FATHER WILLIAM McEwy	1800 SW 5th St Topeka, ks 66607	Most Pure Heart Ch.
Katherine Kunk	K.C. Mo	
Orin H. Coon	643 Tomlinson	Continental Peace Foundation
W. L. Love	300 W 1st	Lawrence
Barbara Anderson + SON	RR1, Perry	individual
Kate Tomlinson	1522 Madison Ave Topeka	individual
E. Diana Cooper	1236 E 25th St	Topeka

GUEST LIST

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NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Verna Paris	Topeka, Ks	
Hannie Jackson	TOPEKA	
Mary Ann Hunt	Topeka	
Lafetta Rolfs	Topeka	
Susan Bach	905 Lindenwood	Topeka
Jim Waddell	8920 W 37	Topeka
Rebecca Bieberly	1101 Lane	Topeka
Bernie Hammer	2415 Maryland	Topeka
Bob Davis	3115 W 15th	
John Miller	Lawrence	Union Daily News
Jim Brown	Topeka	
Glenn Dean	Topeka	
Bobby Shibe	10	Interim
Rev John T. Bleds	1515 Campbell	Ministers
Mr Ralph Gray	3601 W. 15th	
Thom Altan	616 Jefferson	Topok Law Firm
Conce Lathrop	2112 Hurston	Topeka, Ks
Jim Waters	2112 Hurston	Topeka Ks
Carrie Crook	Reed K5	
ASHOK SHIMH	4419 20th St	Topeka, Ks 66606
Sister Margaret Find	1431 Collins	Topeka
Gene de Vries	401 Elm Lawrence	
Greg Giktrif		W18W TV
Ralph Barber	RR 3	Balwin, Ks 66006
CHEREA EARLES	"	"

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: 1/25/89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Gordon Risk	Topeka	ACLU
B D Kanan	KEK	Senators
Linda Lucille Brenzinger	Topeka	
Gene Kubla		
William Adams	Topeka	
Dr. de la Torre	Topeka	
Jean Simons	Topeka	KTOP radio
Michael P. Berber	"	self
Steve Gidd	Wichita	Senate Liaison
Bilbo R. Park	Topeka	KCADP
Leticia M. Carita Conlon	Topeka	
Carl McConnell	Topeka	UPI
Marhelle Hiza	Wichita	Reporter Haworth
Bill Beachy	Topeka	personal
JH	"	
Edy Robertson	Leavenworth	
Dorlene Foye	Leavenworth	
H. W. L. M. M. M.	Topeka	
Sister Regina Erbacher	Topeka	Holy Name Parish
Ed Warren	Topeka	KSWT-TV
Barry McMurphy	Topeka	
D. Mills		Bank of America
		Sen. Boggs
Brigitte		
Alma	u	RFA

GUEST LIST

COMMITTEE: Senate Federal & State Affairs DATE: 1/25/89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jerry Paul Porto	Farmway KS	KCTO
Terina Doyne	Farmway, KS	KCTV
Alma H. Hines	Topeka	KCADP
Donna L. Hines	Topeka	Amnesty Internat
Sister Marie de Paul Combs	KCK	Sisters of Charity
RICHARD NEY	604 N Main, Winrod	Sevier Co. Pub. Def.
Ruby L. Henting	Topeka, KS	Citizen
Yvonne Gray	Topeka, KS	Citizen
Darlene Skelton	Topeka	KCADP
Jill Lucas	Topeka	185 Cal/ABA/MS Teach. Ass.
Pauline D. Beall	1027 E. 1st	Self
Ann McCall	Topeka	absent
Winifred B. Zimmerman	1408 Topeka Ks 66004	Topeka Peace Research Ctr., 9-200 1st St
Laura Lainger	2131 SW Poloma Blvd	MPH Parish
Pete Kosta	12713 Mohawk	Seawood
David Galt		
Bob Fumelle	708 Commercial Blvd	KS ES.
Lyle Buchanan	3621 2nd	SRDC
Darlene Dault	401 Elm Grand	Grand City KS
Mild Solaberry	Inland Park	Self
Jessie MacThompson	2715 Broadway	City
Thary Beth Teely, S.C.L.	501 Buchanan	Cohen
K. B. Goss	638 - 1/2 - 1/2	K.P.H.
Rev. K.W. Hill	931 Jewell	SELF
Rev. G.W. Glaze	3623 Cavalier	self.

UNITARIAN
UNIVERSALIST
SERVICE
COMMITTEE
UNIT
of KANSAS

1176 Warren, Topeka, Kansas
66604

Testimony Federal and State Affairs Committee

Opposition to Senate Bill 38

January 25, 1989

Mr. Chairman and members of the committee.

I am Bill Lucero, State Coordinator of the Kansas Coalition against the Death Penalty and lobbyist for the twelfth year for the Unitarian Universalist Service Committee Unit of Kansas.

I ^{was} ~~am~~ especially touched listening to Mr. Solaberry's and Mr. Heitzman's personal tragedies yesterday. I too, as most of you know am the son of a murder victim. I would further add, all of us are victimized by murder - you Mr. Chairman and you Senator Daniels-although both of you have differing views on the consequences. All the conferees today are bonded not so much by our compassion for the criminal but by our recognition that a violent response will not eliminate future violence. How may thousands of years can we exist before we learn that simple lesson?

Governor Hayden has based his call for re-enactment of executions on the basis of public support. The Kansas Poll of October 1988 has been cited as "Overwhelming" evidence of citizenry support.

I do not question the reliability of the polling instrument. As ^k abstractly if a person favors the death penalty and you are likely to get the same response if you ask, "Should the Legislature lower taxes?"

But look what happened when the question was phrased differently: When Floridans who favored the death penalty 86 to 13% were asked, "Would you support sentencing a convicted murderer to life in prison and work in prison industry where his earnings would either go into a victim's support fund or go directly to a victim's family?", 53% of the same population chose that ^{SF to SA} alternative to executions.

1-25-89
Attachment 1

UNITARIAN
UNIVERSALIST
SERVICE
COMMITTEE
UNIT
of KANSAS

1176 Warren, Topeka, Kansas
66604

When a similar question was posed to Georgians (who approved ^{of} the death penalty 75 - 25%), 52% unconditionally chose the alternative of life with possibility of parole after 25 years and victim family recompensation.

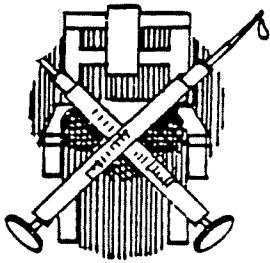
58% of the Nebraskans polled responded to a similar alternative after responding 68-22% to the yes-no question.

If time permitted I ~~also have~~ ^{would discuss enclosed} data reflecting that under certain circumstances most Americans oppose the imposition of executions (eg. to the mentally retarded, defendant under 18, pattern of racist sentencing, etc.)

Call me later if you would like further information in this regard.

Karl Menninger gave a message to me yesterday, "Tell those Senators I don't think we Kansans really want to kill anybody - we just want the killing to stop. We just need to find a better way."

Respectfully submitted
Bill Lucero



GENERAL SUPPORT FOR THE DEATH PENALTY

When asked for their general feelings on the death penalty as punishment for the crime of murder, the majority of Americans express strong support.

FLORIDA:

"Do you generally favor or oppose capital punishment, that is, the death penalty, in cases of murder? Do you strongly favor/oppose or somewhat favor/oppose?"

Strongly favor	67%	Somewhat favor	19%
Somewhat Oppose	3%	Strongly oppose	10%
Don't know	1%		

NEBRASKA

"In general, do you favor or oppose the death penalty?"

Favor:	68%	Don't know:	10%
Oppose	22%		

GEORGIA

"In general, do you favor or oppose the death penalty?"

Favor	75%
Oppose:	25%

MARYLAND

"Do you favor or oppose the death penalty?"

Favor	64%	Undecided:	15%
Oppose	21%		

CONNECTICUT

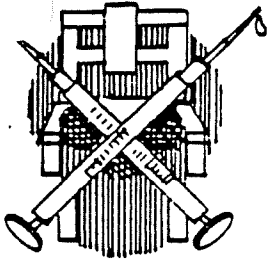
"In general, do you favor or oppose the death penalty for persons convicted of murder?"

Favor	67.6%	Don't know:	11.1%
Oppose	21.3%		

USA TODAY

"In general, do you feel the death penalty should be allowed in all murder cases, only in certain murder cases, or should there be no death penalty at all?"

All Murder Cases	29%	Certain Murder cases:	56%
No death penalty at all	11%	Don't know:	4%



MENTAL RETARDATION

Majorities of those polled oppose the imposition of the death penalty on persons who are mentally retarded. There are estimates that as many as 30% of those now on death row are mentally retarded.

FLORIDA;

"How would you feel about recommending the death penalty if the convicted person was mentally retarded?"

Favor: 14%
Oppose: 79%
Don't know 8%

NEBRASKA;

"Now I want you to imagine that you are deciding the sentence for people who have been found guilty of first degree murder. In each case I want you to say how each factor I mention would affect your decision...The defendant is mentally retarded."

Less likely to impose the death penalty: 66.1%
More likely to impose death penalty: 10.8%
Would not affect decision: 23.1%

GEORGIA:

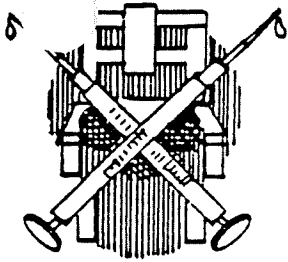
"Some people think that persons convicted of murder who have a mental age of less than 18 (or the retarded) should not be executed. Other people think that retarded persons should be subject to the death penalty like anyone else. Which is closer to the way you feel, that:

Retarded persons should not be executed: 66.4%
Retarded persons should be subject to the DP like anyone else: 17.2%
Depends on how retarded: 16.4%

CONNECTICUT:

"Should a judge impose the death penalty on someone convicted of murder if the person is mentally retarded?"

Yes - death penalty: 8.1%
No : 83.0%
Don't Know: 9.0%



JUVENILES AND THE DEATH PENALTY

The public does not support the death penalty for persons under the age of 18 at the time the crime was committed.

FLORIDA:

"How would you feel about recommending the death penalty if the convicted person was under the age of 18 years -- let's say the youth was 15 or 16 years old?"

Favor 38%
Oppose: 46%
Don't know: 17%

GEORGIA:

"One of the criminal punishments that is available in Georgia is the death penalty. Some people think that persons convicted of murder committed when they were under 18 years old should never be executed, while other people think it is right to execute those who were under the age of 18 at the time the crime was committed. Which is closer to the way you think, that:

Young people who are convicted of a murder committed when they were younger than 18 should never be executed: 47.5%

It is right to execute young people for a murder they committed before they were 18: 26%
Depends on the situation: 26.5%

CONNECTICUT:

"Should a judge impose the death penalty on someone convicted of murder if the person was a juvenile under 18 years of age when committing the crime?"

Yes: 30.6%
No: 54.7%
Don't Know: 14.7%

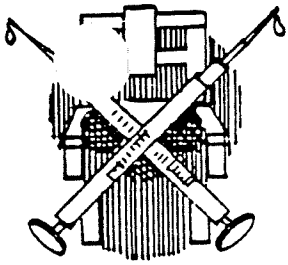
ALTERNATIVES TO THE DEATH PENALTY

When offered several specific alternatives to the death penalty, majorities favor these alternatives to the continuation of capital punishment.

FLORIDA:

"Would you support sentencing a convicted murderer to life in prison and have him work in prison industry where his earnings would either go into a victim's support fund or go directly to a victim's family?. Would you support this plan as an alternative to capital punishment?"

Support	Support as Alternative to DP
Yes 84%	Yes: 53%
No 13%	No: 38%
Don't Know 3%	Don't Know: 10%



(Alternatives, continued)

NEBRASKA:

"How about a life sentence with no possibility of parole for at least 25 years COMBINED with a restitution program that would require the prisoner to work for money that would go to the families of murder victims? Would you favor abolishing the death penalty if this were an alternative in Nebraska?"

Yes 58%
No 42%

GEORGIA:

"Some people have suggested some alternatives to the death penalty. In some states it is possible to impose a life sentence with no possibility of parole for 25 years. Would you favor abolition of the death penalty if this were an alternative in Georgia?"

Yes 41.7%
No 52.5%

"How about a life sentence with no possibility of parole for 25 years, COMBINED with a restitution program that would require the prisoner to work for money that would go to the families of murder victims? Would you favor abolishing the death penalty if this were an alternative in Georgia?"

Yes 52%
No 42.3%
Depends on situation 5.7%

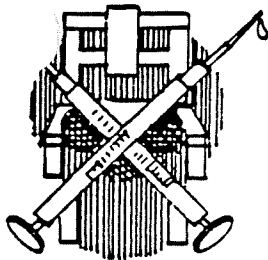
"How about a life sentence with no possibility of parole at all, COMBINED with a restitution program that would require the prisoner to work for money that would go to the families of murder victims? Would you favor abolishing the death penalty if this were an alternative in Georgia?"

Yes 51.2%
No 43.4%
Depends 5.4%

JUSTICE DEPARTMENT:

Respondents were asked whether they thought the offender (if arrested and convicted) should be made to pay a fine, pay restitution, be placed on probation, be made to serve a jail or prison sentence, or (for homicide offenses) be given the death penalty.

Robbery with Gun/Death	Death Penalty: 37.1%	Prison Term: 61.7%
Assault/Death	Death Penalty: 29.7%	Prison Term: 67.4%
Rape/Death	Death Penalty: 41.7%	Prison Term: 57.0%
Overall Mean:	Death Penalty: 36.4%	Prison Term: 71.4%



THE DEATH PENALTY AT THE BALLOT BOX

Elected officials' positions on the death penalty are not a factor in public support or opposition of that candidate.

NEBRASKA:

"Last spring, the Nebraska Legislature took a vote to get rid of the death penalty and substitute a life sentence with no parole for 30 years. Do you happen to remember how your state senator voted?"

Remember: 5%

Don't remember: 95%

"If your senator voted to get rid of the death penalty and substitute a life sentence with no parole for 30 years, how would this affect your vote the next time the senator runs for election?"

No difference: 51%

More Likely to vote for him: 19%

Less likely to vote for him: 23%

Don't know: 7%

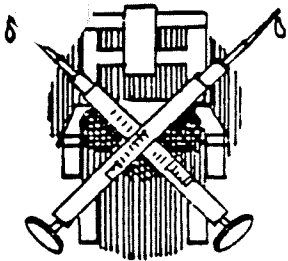
GEORGIA:

"If your Georgia State legislator voted to prohibit death sentences for people who committed murder when they were younger than 18, would this vote increase, decrease, or have no effect on the likelihood of your voting for him or her in the next election?"

Increase likelihood of voting for: 27.1%

Decrease likelihood of voting for: 23.2%

Have no effect: 47.7%



PUBLIC OPINION AND THE DEATH PENALTY

POLLS CITED

GEORGIA: "Georgia Residents' Attitudes Toward the Death Penalty, the Disposition of Juvenile Offenders, and Related Issues" by Robert H. Thomas and John D. Hutcheson, Jr. Center for Public and Urban Research, College of Public and Urban Affairs, Georgia State University, University Plaza, Atlanta, GA 30303. Prepared for the Clearinghouse on Georgia Prisons and Jails. December, 1986.

A survey of 917 Georgians, scientifically selected to represent the state.

NEBRASKA: "The Nebraska Annual Social Indicators Survey" by David R. Johnson and Alan Booth. Conducted by the Bureau of Sociological Research at the University of Nebraska - Lincoln. Lincoln, NE 68588-0325. January, 1988.

A survey of a representative sample of 1882 Nebraskans 18 years of age or older.

FLORIDA: "An Analysis of Attitudes Toward Capital Punishment in Florida" by Cambridge Survey Research. Prepared for Amnesty International. June, 1985.

Conducted among 104 respondents age 18 and older throughout the state.

MARYLAND: Mason-Dixon Opinion Research Inc. Columbia, MD.

A survey of 834 registered voters statewide. February, 1987.

CONNECTICUT: "Capital Punishment in Connecticut" by Peter Tuckel and Stanley B. Greenberg of The Analysis Group, Inc. 588 East Street, New Haven, CT 06511. Prepared for the Archdiocese of Hartford, Office of Urban Affairs. May, 1986.

USA TODAY: Media General/Associated Press. November, 1986.

Representative sample of 1251 persons nationwide.

Bureau of Justice Statistics: "National Survey on Punishment for Criminal Offenses. by Joseph E. Jacoby and Christopher S. Dunn. Bowling Green State University, Bowling Green, Ohio 43403. October 27, 1987. Commissioned for the Bureau of Justice Statistics, an agency of the U.S. Department of Justice.

Representative sample of 1,920 American adults conducted between August and October of 1987.

THE IMPACT OF THE DEATH PENALTY ON THE CRIMINAL JUSTICE SYSTEM
Professor David J. Gottlieb
University of Kansas School of Law
Senate Committee on Federal and State Affairs
January 25, 1989

I am a Professor at the University of Kansas School of Law who has devoted his career to working in the criminal justice system. I am also a husband, father and citizen of this State concerned with violent crime. I'm here to oppose capital punishment, and I do so because, quite apart from any issues of morality, my personal experience and research convince me that capital punishment in this country is a failure at dealing with the problem of violent crime. In fact, it will harm our ability to deal seriously with violent crime and criminals. I have a number of reasons for this belief.

First, capital punishment has been shown to be extraordinarily expensive. In 1987, the Legislative Research Service estimated that the bill introduced in our legislature would cost the State 11.5 million dollars per year, with additional costs of 1.7 to 3 million dollars that would occur in the future. I cannot give you the exact cost of this year's bill, nor should I need to if the Legislative Research Service prepares a fiscal note. I can assure you that their estimates will again show that capital punishment will cost the State millions of dollars per year. While it is possible that this year's bill may cut some costs because of fewer number of capital cases expected per year, there will also be additional expenses caused by a much higher cost per case. The recent decision of the Kansas Supreme Court on attorney compensation makes it likely that the State will have to pay tens of thousands of dollars more for the defense of each case than you estimated two years ago.

I know these estimates may seem terribly high to some of you, but there is no doubt that the Legislative Research Service figures are consistent with the costs experienced by states that impose capital punishment. For those of you who wish to inquire further, I've enclosed a bibliography of a number of cost studies from other states. They show, without exception, that capital punishment cases take extraordinary amounts of time and money.

There are a number of reasons for these extensive costs. First, capital trials are much longer, the jury selection is more complicated, and there are more motions filed. Judges, prosecutors and defense attorneys spend much more time on these cases. But it is after trial that the greatest expenses occur.

SF&SA
1-25-89

Attachment 2

Capital appeals and post-conviction proceedings are completely unlike those in regular criminal actions. They take thousands of hours and hundreds of thousands of dollars. To give you just one figure, defense attorneys in Florida post-conviction cases spend a median of 1200 hours on each case. Florida has estimated that it has cost over three million dollars for each case proceeding to execution.

Capital litigation isn't just expensive. These cases choke the system and destroy its ability to deal with other criminal issues. In Florida, for example, the Supreme Court spends one-third of its entire time on death penalty cases. If we repeat the experience of those states that have the death penalty we may find that judges, police and prosecutors have far less time and money to deal with the overwhelming majority of cases that are not capital.

If something useful were being accomplished for all this effort, it might be worth debating whether we should implement capital punishment, but that is simply not the case. Yesterday we heard talk about deterrence and providing consistent retribution. Perhaps capital punishment in a place like the Soviet Union or Iran can deter, although I doubt it. But there is no doubt that the reality of capital punishment in this country in the 1980's is that it is a dismal failure as deterrence. We have 120 criminal homicides in this State per year. The most ardent advocates of capital punishment do not suggest that the State is likely to impose more than one or two death sentences per year, most of which, by the way, will be overturned on appeal. If an execution occurs, it will likely do so only after a decade of litigation. A punishment imposed this rarely cannot deter, and it will not provide consistent retribution.

Finally, no matter how careful the Judges, prosecutors and defense attorneys of this State try to be, there is nothing they or you can do to eliminate the possibility of executing an innocent person. I have personal experience with this issue, having been involved in two Oklahoma cases where a death sentence was imposed. The first case was ultimately reversed by the U.S. Court of Appeals for the Tenth Circuit on the ground that the State had never adequately proved guilt. The second case, which is still ongoing, involves a situation where another man has actually confessed to the crime. Despite that fact, Oklahoma doesn't even want a jury to be able to decide whether this other man's confession is credible.

Our criminal justice system badly needs revision. We need to think carefully about revising and toughening some aspects of the criminal code. Sentencing and prison issues present terribly tough challenges. I urge you not to harm these efforts by enacting the wasteful and self-destructive policy that is capital punishment.

BIBLIOGRAPHY

Studies on the Cost of the Death Penalty

1. Capital Losses: The Price of the Death Penalty for New York State (New York State Defender Association) (1982)
2. Caseload and Cost Projections for Federal Habeas Corpus Death Penalty Cases in FY 1988 and FY 1989 (The Spangenberg Group; sponsored by ABA Standing Committee on Legal Aid and Indigent Defendants) (September 1987)
3. Comment, The Cost of Taking a Life: Dollars and Sense of the Death Penalty (18 U. Cal. Davis L. Rev. 1221) (1985)
4. Cost of the Death Penalty (Ohio, Office of Public Defender) (Mar. 6, 1981)
5. Cost of the Death Penalty (Nakell, Crim. Law. Bull)
6. Does the Death Penalty Save Money? (Harkin, Iowa District Attorney)
7. Final Report - Cost and Hours Associated with Processing a Sample of First Degree Murder Cases for Which the Death Penalty was Sought in Maryland Between July 1979 and March 1984 (Committee to Study the Death Penalty in Maryland) (April 30, 1985)
8. State Post-Conviction Representation of Defendants Sentenced to Death (R. Wilson and R. Spangenberg) (unpublished, 1988)
9. Study of Representation in Capital Cases in Virginia (The Spangenberg Group) (Final Report, 1988)
10. Time and Expense Analysis in Post-Conviction Death Penalty Cases in Florida, (The Spangenberg Group -- Sponsor, ABA Bar Information Program) (February, 1987)
11. Time and Expense Analysis in Post-Conviction Death Penalty Cases in North Carolina (The Spangenberg Group -- Sponsor, ABA Bar Information Program) (June, 1988)

827 SW Tyler, Apt. 21
Topeka, KS 66612
January 25, 1989

TO: Members of the Senate Federal and State Affairs Committee
FROM: Donna Schneweis CSJ, Amnesty International State DP Coordinator

RE: SB 38

As the volunteer coordinator for death penalty work for Amnesty International's nearly 3000 members and supporters in Kansas, I come before you today to urge you to vote no on SB 38 and any other attempts to reinstate the death penalty in Kansas

Amnesty International recognizes that governments have the responsibility to make laws that protect public safety. We recognize the tremendous anger and grief that murder causes in our society. Members of our organization have known the anguish of being the loved ones of someone who was murdered. AI recognizes that criminals need to be brought to justice. But the death penalty is not the way to bring a murderer to justice.

The death penalty is a violation of the fundamental rights to life and to freedom from cruel, inhuman degrading treatment or punishment. Yes, the person who has murdered has taken away the life, and violated the rights of the person who was killed. But, this does not make it acceptable for the state to act likewise. Public security is not enhanced when the state resorts to violation of fundamental rights, to killing in response to killing.

This morning I wish to speak to you about a very real problem with using the death penalty: human fallibility. Members of the committee, even now in the supposedly enlightened post-Furman death penalty law days, mistakes happen. Innocent people are sent to death row. Some have been executed. There is no way the state can resurrect an innocent person who has been executed.

A study was done by Hugo Bedau and Michael Radelet. They reviewed capital and potentially capital cases in the period from 1900 to 1985. Their work, published in the Stanford Law Review, Volume 40, No. 1, November 1987, reveals 350 wrongful convictions in the period under study. Twenty-three persons were wrongfully executed. Since the publication of this study, they have uncovered evidence in additional cases suggesting innocence. The study notes ". . . the frequency of error over time shows surprising stability. Disturbingly, the decade with the second highest number of errors (fifty-five cases) was the 1970's. . . . in virtually every year in this century, in some jurisdiction or other, at least one person has been under death sentence who was later proved to be innocent."

Mistakes can happen at any phase in a death penalty case. The study documents 1) conviction on murder charges when no murder happened; i.e. the victim showed up alive; 2) incorrect diagnosis of the cause of death; 3) coerced confessions (14% of the cases the confession played an important role in the conviction; the confession was later shown to have been coerced); 4) improper influence by police upon key witnesses; 5) police use of tainted evidence; 6) negligent or willful suppression of exculpatory evidence by prosecutors; 7) error by witnesses (193/350); 8) mistaken eyewitness identification; 9) confusing circumstantial evidence; and 10) voluntary confession by persons who were mentally ill or who wished to avoid a death sentence.

As legislators you must face the sobering reality. The criminal justice system is not perfect. Mistakes happen. They happen in the state of Kansas. We have seen that in the past six months in cases of rape and bank robbery here in Topeka. In other states, the zest of going for the illusion of a solution to murder has led to the imprisonment and deaths of innocent people, even in the post-Furman era. We cannot ignore this fact.

In 1987, the state of Illinois tried for the fifth time Perry Cobb and Darby Williams. They were acquitted. In this retrial, the state's attorney

Amnesty International is an independent worldwide movement working impartially for the release of all prisoners of conscience, fair and prompt trials for political prisoners, and an end to torture and executions. It is funded by donations from its members and supporters throughout the world

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came forward with evidence that destroyed the main prosecution witness' credibility. Five trials--what a cost to the state. And just this month, the state of Virginia pardoned David Vasquez, A Hispanic charged with the first degree murder of a White victim. Vasquez, who is retarded, pleaded guilty to first degree murder charges following repeated, but conflicting confessions. He pled guilty to avoid the death penalty. His blood and semen were of the type found inand on the victim, but DNA testing conclusively proved he was not the assailant. Only by chance, when a serial murderer was arrested was the error found.

Any punishment given by Kansas Courts must allow for remedy of errors against innocent persons unjustly convicted. There can be no remedy for Timothy Baldwin, James Adams, Willie Darden, and James Earl Johnson, all executed since 1984 despite substantial doubts about their guilt.

Murder is tragic enough. Let's not compound the tragedy by employing a punishment that does not allow us to correct our mistakes. Mistakes can and will happen even in death penalty cases despite the legal safeguards.

Please vote no on SB 38 and any other attempts to reinstate the death penalty in Kansas.

Professor Hugo Bedau may be reached at (617) 628-5000
Professor Michael Radelet may be reached at (904) 392-0255



KANSAS COUNCIL ON CRIME AND DELINQUENCY

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Emporia*

Testimony - Federal and State Affairs
January 25, 1989
SB 38

I am Sister Therese Bangert. I am part of a number of organizations that work with concerns about violence, crime and the death penalty in our society. These groups are the Kansas Council of Crime and Delinquency, the Kansas Coalition Against the Death Penalty, the Sisters of Charity of Leavenworth, Kansas and obviously the Catholic Church.

Last week on the holiday of Martin Luther King I attended a meeting at KCTVC - now known as the women's prison in Topeka. Inmates from KCIL in Lansing came to present their STOP VIOLENCE program as they have developed it. They have written this syllabus of topics/lessons that they have studied and discussed in their twice weekly meetins. I cannot explain in a couple minutes what took 3 hours. But I show you this syllabus to state my belief that this STOP VIOLENCE program has much greater potential to make Kansas streets and homes safer places than SB 38.

In my varied ministry which includes State Hospital, prisons, and an emergency center for the poor, I interact with criminals and victims. My experience teaches me that true healing of the wounds of violence does not come from retribution and vengeance.

I am often concerned about the number of words that YOU as legislators have thrown at YOU and I wish I had been able to bring the beautiful statue that greets Kansans as we walk into the Judicial Center.

The statue is of a woman in motion with a prairie falcon in her hand and its explanation plate reads:

Our symbol of Justice has the element of compassion always represented by the female figure. This time she is dynamic, vital, active. She holds aloft a prairie falcon of our own habitat, which is the swiftest creature on earth, whose vision has 8 times the power of the human eye. Together the woman and the falcon symbolize the balance of qualities essential to the realization of equal JUSTICE for all.

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For me that statue speaks of compassion and vision -
the compassion and vision
that enable us to see
a HIGH-WAY for Kansas
a HIGH-WAY that says
as a State
we will not respond to violence
with the violence
that a death penalty includes.

The woman who will testify after me
witnesses that HIGH-WAY to me -
her vision, compassion and aliveness
support my belief
that Kansas can find ways
besides SB38
to protect and care for
our citizens.

**Create
JUSTICE
People**

PEACE to YOU,

L Therese Banzett

I am Alma Weber, mother of Paul Weber, one of the individuals whose name is inscribed on the law-enforcement memorial. Paul was a parole officer -- the only parole officer to be there.

A bit of family history:

I became a single parent about the time Paul entered high school and, as the oldest, he became my assistant and the male role model for his eight brothers and sisters. Even after he married he, and his wife, continued to be emotional support, listening ear, and sometimes mediator to them.

Now, I am going to express my thoughts and feelings on this issue.

I believe that the value of a human being far exceeds any commodity on earth and in the universe. Each human being created is unique and irreplaceable. This is the belief I passed on to my children. To approve of capital punishment would negate this belief and teaching.

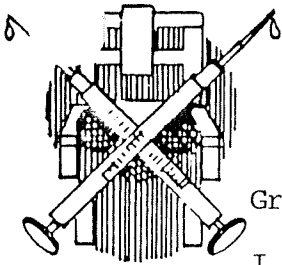
Secondly, I see capital punishment as a form of retaliation. Retaliation I believe must be fed by continual anger -- that would not be fair to me, Paul's brothers and sisters, and all others I interact with.

Next I read that capital punishment would be the sentence given to killers of law-enforcement personnel. Paul was the oldest of the nine children and my youngest son has also chosen the field of corrections in which to work. And I can assure you that if any of the other seven children were killed my feelings of grief, loss, anger, and pain would be no different. They would be just as deep and long-lasting.

I believe that respect for human life must be taught from the day the individual is born, In addition, I believe that the responsibility for his/her actions must also be taught and re-inforced in childhood.

Finally I think we all need to value our own humanness and accept the responsibility for what each of does and says -- respect and value for our fellowman will follow.

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Kansas Coalition Against the Death Penalty

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

January 25, 1989

Greetings!

I am honored to be able to speak before you. I must compliment each of you for your commitment to public service.

As a representative of the Kansas Coalition Against the Death Penalty, let me first preference my statements by allowing you to walk deeply into the mind of consciousness and to explore the issue of how mankind relates to mankind which has been an issue in which the human race has struggled with since man's existence. Since man's early existence, relationships have been strained and many injustices one to the other has been handed down.

Perfect systems to cope with imperfect man has been designed by none other than the imperfect man. Therefore, no system has proven to be totally perfect in terms of fairness. The imperfect man often designs systems which are within themselves by the nature of the designer, flawed. It is with this thought, I wish to focus on the crucial element of race in the execution process - the Death Penalty.

Of all the systems man has attempted to create, the justice system is one of the most important and without a doubt, one with an overwhelming amount of flaws. I would say, then that presently we have two major tasks at hand regarding the system.

1. To continue to work to improve upon the Justice System in making it as fair and just with regard to all aspects of the human race;
2. We must simultaneously work to minimize the damage the imperfect system has done and will do to the souls of the human race.

Task # 2, particularly, is the area which we must give much attention to, in saying NO TO THE Death Penalty as a reflection of the function of the imperfect aspect of a system designed by an imperfect being, man! As much as we prefer for it not to be, the reality is that Race is the major factor in the Just or Injust System, created by an imperfect being. Justice VS Race has been an issue since slavery, and now in 1989, we still suffer from the slave mentality of humans. The Black population receives a gravely disproportionate degree of the injustice of this imperfect justice system. Statistics have proven: 1) there is a greater number of blacks put to death, where there is a death penalty; 2) a greater number of blacks are put to death when the victim is white; 3) there have been no blacks put to death for victimizing other blacks, 4) a greater number of blacks occupy the prison system in almost every state in these United States; 5) in the most restricted areas of our prison system the population is blacken with the black populace, 6) City and County jails are history of the disparity of race.

The black male population occupies a considerable amount of the attention of the Law Enforcement system. I would come to you today with first the effort to minimize the damage that the justice system can do, and is doing, while at the same time seek for a solution to make the system more corelatively, just.

If we the protectors draw up a blueprint even the gods of time have found to be ineffective, then my question to you today is, why discuss the Death Penalty as being just in today's society. We recognize even now that the penalty of death is not the answer. When we the protectors become the killer, then who is the protector. It is very difficult for the black population to develop a sense of safety, a sense of well being, trust, and respect of the white American population when a disproportionate amount of the imperfect system is thrust upon them. It then is obvious that on a racial basis, our justice system is quite unjust. Formal laws and informal practices prevail along a racial line and continues

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Kansas Coalition Against the Death Penalty
January 25, 1989

to express the deficiency in areas. We have not been able to rise above these deficiencies in our struggles to improve the human condition and the relationship one with the other.

As the result of that certain segment of our society the black population receives a gravely disproportionate degree of the damage to the psychological being, physical well being, sense of safety, sense of security, sense of hope and sense of trust in the American promise of freedom and liberty for all.

We beg you to recognize, if you have not already, the disparity of our black race in corelation to the system and take a stance for the defeat of the Death Penalty realizing it will only create more disparity among blacks and particularly, black males.

Thank you.

Gilbert R. Parks, M.D.
Kansas Coalition Against the Death Penalty

I am Gordon Risk, President of the American Civil Liberties Union, of Kansas. I am also a physician and psychiatrist.

The ACLU of Kansas opposes the death penalty because it would inevitably produce gross violations of our concept of due process of law, would deny to citizens the equal protection of the laws, and would impose punishment that is cruel and unusual. The framers of the Bill of Rights probably had garroting, flaying, or burning at the stake in mind when they sought to prohibit "cruel and unusual punishment", yet how much more humane is electrocution, hanging, or death through lethal injection. These are all terrible and uncivilized things to do to another human, and we have it in our power to do better.

The death penalty inevitably conflicts with our commitment to due process of law, since the irreversibility of the death penalty means that error discovered after the penalty has been imposed cannot be corrected. One who suffers the death penalty, and, subsequently is found to have been improperly convicted, has suffered a grievous wrong for which no amends can be made. Moreover, because jury panels in capital cases are selected partly on the basis of a belief in the death penalty, the state is protected against a jury biased against capital punishment, but the defendant is not protected against a jury biased in favor of it. Any death penalty bill will thus necessarily erode our commitment to due process.

The death penalty is imposed in a discriminatory fashion that has rather little to do with the crime and rather a lot to do with the demographics of the accused and the victim. Some of our citizens are thus denied the equal protection of the laws.

Statistical studies have not established a deterrent effect for capital punishment, as Emil Tonkovich, professor of law and criminal procedure at the University of Kansas, acknowledged two years ago, while testifying before the Senate in support of a death penalty bill. In fact, studies have typically found a counterdeterrent effect; an increase in homicides in response to an execution. I think the Senate and the citizens of Kansas need to anticipate that reinstatement of the death penalty may produce an increase, rather than a decrease, in the homicide rate. Perhaps it would be well to note in this regard that Florida, Texas, Louisiana, and Georgia, the states with the most executions since their resumption in 1977, are also leaders in homicides per capita. While this correlation does not prove that executions increase the homicide rate, it does not lend support to the deterrence argument. Ted Bundy, the man just executed in Florida for a number of murders there, has confessed to murders in Colorado, Washington and Idaho. Two of these states had the death penalty in place at the time Bundy committed his murders, and two of them did not, so that the presence of a death penalty had no effect upon his behavior. The impulse-ridden people targeted by this bill are precisely those who attend to internal need and disregard external reality.

Florida will apparently spend three million dollars to execute Bundy rather than \$750,000 to imprison him for life. The public would be equally protected by either form of punishment. The state, in effect, is saying that killing Bundy is so important that it would squander two and a quarter million dollars, money that could be used for education of law enforcement officers,

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for salary increases for law enforcement officers, or for other aspects of public safety that might actually increase the security of the citizens. The state is saying it will pay heavily for the satisfaction of revenge, will even sacrifice the future safety of its citizens. If the state can't act in a rational manner, can't reasonably compare the risks and benefits of alternative courses of action, can it really expect a potential murderer to do so? The state would appear to be saying through its actions that you should do what makes you feel good, no matter what the cost. Is this the message we want to send to potentially homicidal citizens?

Execution will be by lethal injection; the physician in the white coat with the lethal hypodermic will replace the hangman. Medicine will become an accomplice. I am proud to say that a medical organization of which I am a member, the organization of psychiatrists at the Menninger Clinic, last week went on record in opposition to reinstating the death penalty. I would hope that other medical organizations in the state might follow suit, since, I think, the relationship contemplated in the bill is an association physicians would come to regret.

4/mf

Kansas Senate
State and Federal Affairs Committee
Hearing on Senate Bill No. 38
Testimony of Richard Ney
January 25, 1989

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

Let us look at the statistics: There are 2,151 people now on death rows. In the last 14 years there have only been 106 executions, and a number of those individuals were volunteers, like Gary Gilmore. While 106 have been executed, during the same time 49 have had their sentences commuted by governors. Forty-one death row inmates have died of other causes, including suicide, murder and old age. And while 106 were executed, more than 1,500 won their way off death row by appeal.

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

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- * Illinois, 117 condemned, 0 executed.
- * Oklahoma, 94 condemned, 0 executed.
- * California, 233 condemned, 0 executed.
- * Pennsylvania, 113 condemned, 0 executed.
- * Ohio, 85 condemned, 0 executed.
- * Missouri, 70 condemned, 1 executed, last month.

Of course, getting defendants to death row is not as easy as the legislatures of many states imagined. In Kentucky more than 100 capital indictments are filed every year. Kentucky has had a death penalty for more than a decade. Of the more than 1,000 persons charged with capital crimes, only 30 are currently on Kentucky's death row. There have been no executions in Kentucky.

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

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

Can Kansas afford a death penalty? Perhaps. Is it worth millions to execute a handful of murders some 10 to 12 years after their crime? Clearly the answer to that is no, it is not worth the money nor the humanity expended for it.

K. C. GRO
623 FRANKLIN AVE.
KANSAS CITY, KANSAS 66101

NAACP State Conference
Bonner Springs Kansas

January 25, 1989

Senate Federal And State
Affairs Committee
Topeka, Kansas

Ref; Senate Bill 38

Dear Senators,

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

We are opposed to Senate bill 38, commonly known as The Death Bill.

One of the most pointed facts about the use of the Death Penalty in America is racial discrimination. More than two thousand people lawfully executed in this country since 1930 were Black, not to mention the thousands victims of lynch mobs. This capricious pattern of discrimination caused the courts, to declare Death Penalty in the United States Unconstitutional. (Furman vs. Georgia) Currently 16 years later, hundreds of people have been discriminatorily sentenced to Death under new post Furman death penalty laws.

Minorities continue to bear the brunt of Capital Punishment, they constitute 50% Of thoes exebuted, and this figure is going up. A second type of discrimination is used in implementation of the pious system, is bigotry by race of the victim.

98% of thoes executed since Furman v/s Ga., were convicted of killing white people, although 50% of the homicide victims were black, no whites were executed for killing blacks.

Detailed studies have shown that this disparity is not by chance but to enforce phyletic sectarianism.

When these matters again appear befor the courts, it will be legal necessity that they again render current death penalties unconstitutional.

Past conditions in Kansas, in concert with the above analysis would bear out the conclusion that the Kansas justice system discriminates aganist people of color, and is a bastion of conservative racism.

In 1987 the Kansas Legislative Research Dept. estamated that the death penalty would cost in excess of 11,000,000 above current costs.

There would be an over all cost of \$50,000,000 inclusive of building a death row facility at \$8,000,000 per bed.

A Crime and Punishment Bill would make minorities the recipitant of the grossist outrage from government.

As historian Carl Becker said in 1910;" The belief that Kansas was founded for a cause... lifts the history of Kansas out of the common-place... and gives to the temper of the people a certain elevated purpose and quality "

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X C Groves
2nd Vice Pres. State
Chair. St Comm.

January 25, 1989

**THE COMMITTEE ON FEDERAL AND STATE AFFAIRS
SENATE BILL 38**

Testimony of Michael A. Barbara, Professor of Law, Washburn Law School, former Kansas District Judge, former Kansas Secretary of Corrections.

We do not need a death penalty statute to do justice for the people of Kansas. We have adequate laws to deal with the problem of first degree murder.

I want to discuss two concerns for your consideration.

- (1) Objectives of the death penalty, and
- (2) the cost of punishment.

Obviously, for every law there must be a purpose or objective to justify its enactment and existence. The death penalty is not different. It appears clear that even the proponents question, if not doubting, the effectiveness of deterrence. They now speak of punishment for punishment's sake - "to satisfy public rage" - "to restore faith in our justice system" - "get rid of those mad dogs". If these are our legal objectives, we can accomplish this by the present laws. We have adequate laws today which incapacitate convicted class A felons for at least 15 years. Since 1985, Department of Corrections figures show an average length of 17 years and 5 months incarceration before release on parole. Of the 15 class A felons released from prison since 1982, all but two served more than 15 years. The two felons served respectively 8 years and 11 years due to modification of sentence under K.S.A. 21-4603.

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Understandably so, there has been no large number of class A felons released from prison. The few who have been released on parole (15 from 1982 through 1988) have recidivism rates lower than other released felons. Only 1 has been returned to prison for a subsequent offense of Terroristic Threat; three have been returned, not for subsequent crimes, but for technical violations. One has absconded after parole; seven have been discharged from parole without any violation and three are presently on parole. None of these 15 has committed subsequent homicides.

The second concern for your consideration is the cost factor - you have been told not to be worried about cost. But I believe that when you look at the purpose or objective of this bill, the cost of punishment should be very much concern to you. I need not remind you of the financial headaches you have in this session with a request to build more prisons and provide more staff. Now is not the time to commit an expenditure for capital improvements for housing, staffing and all those expenses necessary to house death row inmates - both males and females.

I will not go into the fiscal note here nor the cost of litigation and the extent of its protraction - others will cover this.

TESTIMONY

Senate Federal and State Affairs
January 25, 1989

Kansas Catholic Conference
by Robert Runnels, Jr., Executive Director

Re: Senate Bill 38

Once again the representatives of the people of Kansas are debating the reinstatement of the death penalty. Once again the arguments for and against this ultimate measure will resound in the halls of our legislature and be elaborated on in the columns of our newspapers.

Recent expressions of some political leaders suggest that there is strong sentiment among the people of Kansas to have the death penalty reestablished. Surely the people desire -- and are right in desiring -- less crime. Many of them may believe that to restore the death penalty would result in a decline of violent crime. Whether it will produce that result is a debatable issue: our neighboring states; Missouri, Oklahoma, and Colorado have all three exceeded our Kansas murder record since reinstitution of the death penalty.

There will be argument about the relative cost of executions (and the drawn-out legal proceedings that precede them) as compared to the cost of confining a convicted felon in a penal institution. Here, too, the evidence can be seen in different lights.

There will be recitals of the tragic stories of bereaved families of victims of homicide who find it difficult to understand why the perpetrator of the offense should live while their loved one is dead. And there will be those who will point to the no less tragic incidents in the past when innocent persons falsely convicted have been put

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to death for crimes they did not commit.

For us, the people of God, there is a much more important -- and much more compelling question: Can the death penalty be reconciled with the word of God?

To be sure, the Old Testament offers language that can be used to support an argument for the death penalty. Genesis 9:6 relates God's words to Noah: "If anyone sheds the blood of man, by man shall his blood be shed." Jesus, however, gave us a different message:

You have heard the commandment, "An eye for an eye, a tooth for a tooth." But what I say to you is: Offer no resistance to injury ... You have heard the commandment, "You shall love your countryman but hate your enemy." But I say to you: Love your enemies, pray for your persecutors (Mt. 5:30-39, 43-44).

God sent His only Son to spread the word of His love for all human beings. Jesus taught us what God wants us to do on this earth and it is through Jesus' words that we must look at the world in which we live. These words teach us that God's greatest gift to us is life and, next to it, mercy and love. Indeed, the very fact that God gave His only son to a sinful people reveals the immensity of God's mercy (Rom. 5, 1-11).

In the course of human history, the Church has not always been opposed to the death penalty. But the Church has always exalted God's gift of life. Today, more than ever, God's people decry the destruction of human life -- by any means, at any time. The Bishops of the United States, in their Statement on Capital Punishment in 1980 listed four

reasons why capital punishment should be abolished (or not reinstated):

To do away with the death penalty would, in the first place, send the message that the cycle of violence can be broken. We need not take life for life, that we can envisage more humane and more hopeful and effective responses to the growth of violent crime.

Secondly, it would be a manifestation of our belief in the unique worth and dignity of each person from the moment of conception, a creature made in the image of God.

Thirdly, removing the death penalty from the list of societally imposed sanctions would give testimony to our conviction that God is indeed the Lord of Life, a belief we share with the Judaic and Islamic traditions.

And, fourth, it would be more consonant with the example of Jesus, who taught and practiced the forgiveness of injustice and who came "to give his life as a ransom to many." (Mk. 10:45).

Mindful of these considerations, we ask the Catholic people of Kansas, all our fellow citizens, to examine the issue of the reinstatement of capital punishment in the light of the fundamental moral and religious questions that such an act involves. We consider it incumbent on us to take this position and to raise this challenge because of our commitment to "a consistent ethic of life" by which we wish to give unambiguous witness to the sacredness of every

Pastoral Statement
Death Penalty

-4-

human life from conception through natural death, and to
proclaim the good news that no person is beyond the redemptive
mercy of God.

Signed: Kansas Catholic Conference

- + Most Reverend Ignatius J. Strecker, D.D.
Archdiocese of Kansas City in Kansas
- + Most Reverend Marion F. Forst, D.D.
Archdiocese of Kansas City in Kansas
- + Most Reverend Eugene J. Gerber, D.D.
Diocese of Wichita
- + Most Reverend Stanley G. Schlarman, D.D.
Diocese of Dodge City
- + Most Reverend George K. Fitzsimons, D.D.
Diocese of Salina

January, 1989

11-4

Committee on Federal and State Affairs

Testimony by: Reverend Larry Keller (United Methodist Pastor) 4000 Drury Lane
Topeka, Kansas 66604 (272-8921)

Senators, this is the third time I have been involved in the struggle to keep Kansas free of the death penalty. I know you have already heard about the financial costs of the death penalty. I know you have already heard about the strain the death penalty will put on an already overburdened legal system. These facts are both true and easy to document. A not so easy truth to document and measure is the cost to the soul of our state.

I would like to share two quotes from Martin Luther King Jr. in his book Strength to Love. "In spite of the fact that the law of revenge solves no social problems, men (sic) continue to follow its disastrous leading. History is cluttered with the wreckage of nations and individuals that pursued this self-defeating path." "Hate multiplies hate, violence multiplies violence, and toughness multiplies toughness in a descending spiral of destruction."

I would like to suggest to you that the death penalty will actually tarnish the soul of our state for the following reasons: First: As Reverend King reminds us "violence multiplies violence" even when executed by the state. We live in a violent society that desperately needs non-violent models for ways of solving conflict.

Second: Revenge does more harm in the long run than good. Two years ago Conrad Ide, a Lutheran Pastor, shared the following: "My view of Capital Punishment changed in 1960, after the time of the murder of the Herbert Clutter family near Garden City. Relatives of this family were my Parishioners in the parish where I was serving. It was a gastly Murder 'in cold blood' that had all of us seeking the execution of the perpetrators. How we mourned the senseless death of this fine family and sought revenge. I began to sense the damage that this attitude had for those of us who mourned. Even after the death of the Murderers, we really found no relief. Later when I viewed the movie, 'In Cold Blood', I had to search the scripture to come to the conclusion that 'Two wrongs do not make a right.' How different since, when I have heard of the attitude expressed by loved ones of victims of murder, that they hoped the criminals would come to repentance for their crimes, and through God's grace, and stand in a Saving relationship with their Lord."

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Third: As human beings we make mistakes. The death penalty has the terrible potential of killing the wrong person. It has been well documented that in the past innocent persons have been falsely convicted and put to death for crimes they did not commit. It is not only presumptuous, but also the type of pride which blinds us if we think we will not make a mistake.

Fourth: The death penalty denies the unique worth and dignity of each person, in religious terms, a person created in God's image. It is important for a society to respect the sacredness of every human life.

Fifth: As probably has already been said, the death penalty has been applied unfairly to minorities, the mentally retarded are especially vulnerable, and the poor do not have the financial resources to as adequately defend themselves as the rich.

These are a few of the reasons why almost all of the mainline denominations and other religious bodies strongly protest the death penalty. As a pastor, I also realize that citizens of Kansas are concerned about victims of crime and violent criminals being released too early from prisons. There are other solutions to this problem that will not exact such an expensive spiritual cost. The death penalty will only provide a false veneer towards this problem by executing a few criminals. The real issues of victim rights, violent and nonviolent criminals, and overcrowding of prisons will still need to be dealt with in a substantial manner.

I close with this quote by Coretta Scott King: "Although my husband was assassinated and my mother-in-law murdered, I refuse to accept the cynical judgement that killers deserve to be killed. To do so would only perpetuate a tragic cycle of violence. It would be a disservice to all that my husband, his mother, and I have lived for and believe in. In my heart I know that revenge and retribution can never produce genuine healing."

PETER J. KORTH
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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM OPPOSED TO THE DEATH PENALTY ON RELIGIOUS, MORAL AND ETHICAL GROUNDS. IN ADDITION, I BELIEVE THAT THE PRIMARY PURPOSE OF GOVERNMENT IS TO PROVIDE FOR THE SAFETY AND WELFARE OF THE PEOPLE, AND THAT GOVERNMENT SHOULD ATTEMPT TO PROTECT ALL THE PEOPLE. THEREFORE THE GOVERNMENT SHOULD ONLY TAKE LIFE IF THERE IS AND IMMEDIATE AND IMMINENT DANGER TO THE PEOPLE. THERE IS NO DOUBT THAT CONVICTED MURDERERS DO POSE A THREAT TO SOCIETY, BUT SOCIETY SHOULD BE ABLE TO PROVIDE PROTECTION WITHOUT RESORTING TO KILLING. THE GOVERNMENT'S AUTHORITY FLOWS FROM THE PEOPLE, AND NO REASONABLE PERSON COULD DENY THAT AN INDIVIDUAL DOES NOT HAVE THE RIGHT TO TAKE LIFE, THEREFORE IN MY OPINION THE GOVERNMENT IS WITHOUT LEGITIMATE AUTHORITY TO ENACT CAPITAL PUNISHMENT LAWS. THE FACT THAT LENIENT JUDGES AND PAROLE BOARDS HAVE ALLOWED DANGEROUS CRIMINALS ON THE STREETS DOES NOT MEAN THAT THE SOLUTION IS TO KILL. WE NEED TO STRENGTHEN OUR CRIMINAL JUSTICE SYSTEM AND ENACT VICTIM PROTECTION LAWS, RATHER THAN TO RESORT TO TAKING LIFE.

IF THE GOVERNMENT HAS THE RIGHT TO DETERMINE WHETHER TO TAKE A LIFE, THEN WHAT PROTECTION DO ANY OF US HAVE. HISTORY IS REplete WITH EXAMPLES OF GOVERNMENTS OVERSTEPPING CIVILIZED NORMS AND WANTONLY TAKING LIVES. HITLER'S GERMANY IS THE MOST OBVIOUS EXAMPLE, BUT THERE ARE MANY REPORTS IN TODAY'S WORLD CONCERNING GOVERNMENT OPPRESSION AND WANTON DESTRUCTION OF HUMAN LIFE. WHILE WE ARE HORRIFIED BY THESE REPORTS, SHOULDN'T WE ASK OURSELVES, WHY ARE WE DIFFERENT? AND WHAT GAURANTEES DO WE HAVE THAT WE WILL NOT COME TO THIS? OH, SURE, THIS IS THE ONE EXCEPTION, BUT HOW DO WE KNOW OUR GRANDCHILDREN CAN RELY ON OUR GAURANTEES.

IF WE, ACTING AS A SOCIETY OF CIVILIZED PEOPLE, PUT ONE INNOCENT PERSON TO DEATH, WHAT ARE WE THEN GUILTY OF? HAVE WE NOT BECOME THE MURDERER AND GUILTY OF THE SAME CRIME FOR WHICH WE PUT AN INNOCENT PERSON TO DEATH? SHOULD NOT, AT LEAST THE JUDGE, JURY, PROSECUTING ATTORNEYS, AND THE PROSECUTION WITNESSES BE TRIED AND CONVICTED FOR MURDER? THE PROPONENTS WOULD PROBABLY SAY THAT THIS IS RIDICULOUS AND EXTREME. MAYBE, BUT AS A SOCIETY SHOULD WE NOT ERR ON THE BEHALF OF HUMANITY RATHER THAN AGAINST.

IF WE ARE TO ENACT THE DEATH PENALTY THEN HOW CAN WE INSURE THAT IT WOULD BE FAIRLY AND UNIFORMLY ADMINISTERED. WE KNOW THAT AT THE PRESENT TIME VERY FEW CONVICTED MURDERERS ARE EXECUTED. PLEA BARGAINING AND OTHER

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LEGAL EFFORTS LEAVE TOO MUCH LATITUDE IN THE SYSTEM. THE BERDELLA CASE IS THE MOST RECENT EXAMPLE. TO COMPARE CRIMES IS PROBABLY NOT THE BEST WAY TO MAKE JUDGEMENTS, BUT IF THE DEATH PENALTY IS FAIR AND UNIFORM, THEN IT WOULD SEEM THAT BERDELLA WOULD CERTAINLY QUALIFY. ALONG WITH BEING RACIST, THE DEATH PENALTY WOULD ALSO SEEM TO RELY ON ECONOMICS. THE BETTER LAWYER YOU CAN AFFORD, THE BETTER YOUR CHANCE OF AVOIDING THE PENALTY.

I HAVE FIVE CHILDREN AND I THINK THE DEATH PENALTY TEACHES OUR KIDS A VERY BAD MESSAGE. WE ARE A SOCIETY WHO SEEMS TO BE ENTRANCED WITH VIOLENCE. OUR MOVIES, NEWSPAPERS, AND MAGAZINES REPORT VIOLENCE IN MINUTE DETAIL AND WITH MUCH RELISH. THE ULTIMATE ACT OF VIOLENCE IS OUR GOVERNMENT KILLING A PERSON IN A SYSTEMATIC AND METHODOICAL WAY. OUR KIDS HAVE TO THINK THAT THE COMMANDMENT IS NOT THOU SHALT NOT KILL, BUT IS THOU SHALT NOT KILL UNLESS YOU HAVE GOVERNMENT ON YOUR SIDE.

I OFTEN HEAR THE STATEMENT THAT CAPITAL PUNISHMENT DETERS MURDER. I'VE RECENTLY LIVED IN TEXAS, WHERE CAPITAL PUNISHMENT IS USED, AND IF IT DETERS, THEN IT IS DOING A LOUSY JOB. I JUST CAN'T SEE THAT PUTTING A MAN TO DEATH TEN OR MORE YEARS AFTER THE CRIME WILL DETER ANYONE FROM ANYTHING. IF WE REALLY WANT EXECUTION OF CONVICTED MURDERERS TO DETER FURTHER CRIME, THEN WE SHOULD DO ALL WE CAN TO INSURE THAT WE ARE BEING EFFICIENT AND EFFECTIVE. OUR CURRENT EXECUTIONS ARE USUALLY CONDUCTED IN THE MIDDLE OF THE NIGHT IN THE REMOTE LOCATION WHERE THE PRISON IS LOCATED. ONLY A FEW PERSONS ARE ALLOWED TO VIEW THE EXECUTION AND SECURITY IS VERY TIGHT. IT IS ALMOST LIKE WE ARE ASHAMED OF WHAT WE ARE DOING. FROM WHAT I HEAR THE ACTUAL ACT IS USUALLY CARRIED OUT BY MORE THAN ONE PERSON, ONLY ONE OF WHICH ACTUALLY PERFORMS THE DEED. IF THIS IS THE RIGHT THING TO DO, WHY SHOULD WE GO TO THESE LENGTHS. ON THE BATTLEFIELD WE DON'T PUT FAKE BULLETS IN HALF OF THE GUNS. WOULDN'T IT MAKE MORE SENSE, THAT IF WE ARE TRULY GOING TO DETER, THAT WE CONDUCT THE EXECUTION IN A PUBLIC PLACE, LIKE DOWNTOWN KANSAS CITY. POSSIBLY WE SHOULD DO THIS ON A SUNDAY, AFTER CHURCH, SO THAT WE COULD INSURE MAXIMUM ATTENDANCE, PARTICULARLY THAT OF CHILDREN. THE EARLIER WE TEACH OUR CHILDREN THE CONSEQUENCES THE MORE LIKELY THAT THEY WILL CARRY THE MESSAGE FOR LIFE. FURTHER THERE IS NO DOUBT THAT VISUAL IMPRESSION CARRIES THE MOST LASTING MEMORY. THOSE WHO WOULD SAY THAT THIS IS INHUMANE AND CRUEL TO THE CONVICT SHOULD ASK, DOES THE CONVICT REALLY CARE WHETHER TWELVE OR TWELVE THOUSAND PEOPLE WATCH, AND IN ANY EVENT HOW IN THE WORLD CAN YOU CONDUCT A HUMANE KILLING. THOSE WHO WOULD SAY THAT IT WOULD BE UPSETTING TO THE PUBLIC SHOULD BE REMINDED THAT IT IS THE PUBLIC THAT IS DOING IT AND IF THEY ARE TO TRULY UNDERSTAND THEIR ACTION,

THEN THEY SHOULD BE A WITNESS TO THE MAGNITUDE AND FINALITY OF THE DEATH PENALTY.

IN HISTORY THE GREATEST EXAMPLE OF THE ERROR OF CAPITAL PUNISHMENT WAS THE CRUFIATION OF JESUS CHRIST. I WOULD IMAGINE THE PEOPLE OF JESUS' DAY HAD MUCH THE SAME JUSTIFICATION FOR CAPITAL PUNISHMENT AS WE DO TODAY.

I WOULD ALSO IMAGINE THE EXAMPLE OF PONTIUS PILATE SHOULD PROVIDE MUCH FOOD FOR THOUGHT. IF WE ENACT THIS LAW, WHO IS THE PILATE? NONE OF US CAN ESCAPE RESPONSIBILITY, INCLUDING THE GOVERNOR WHO HAS THE FINAL SAY AS TO WHETHER IT IS A GO OR A NO GO.

AS A TAXPAYING, VOTING CITIZEN OF THE GREAT STATE OF KANSAS, I IMPORE YOU TO VOTE IN OPPOSITION TO CAPITAL PUNISHMENT. I WOULD ALSO SUGGEST A TASK FORCE BE SET UP BY THE LEGISLATURE TO DEVELOP ALTERNATIVES. IN THIS REGARD I FEEL THAT THIS ISSUE IS OF SUFFICIENT IMPORTANCE PUBLIC HEARINGS SHOULD BE HELD IN POPULATION CENTERS THROUGHOUT THE STATE. I WOULD THINK THAT FOR THE AVERAGE CITIZEN TRAVELLING TO TOPEKA FOR A HEARING THAT ALLOWS THE PROPONENTS ONE HOUR AND THE OPPONENTS ONE HOUR ON DIFFERENT DAYS IS SIMPLY OUT OF THE QUESTION.

THANK YOU

LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

STATEMENT TO THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

by Ann Heberger, President, League of Women Voters of Kansas
January 25, 1989

I present this statement on behalf of the League of Women Voters of Kansas to reiterate our opposition to the death penalty and our hope that the legislators of this state will once again reject a bill to reinstate it.

You have heard most of the arguments on both sides before, but some of them are worth repeating. The League's opposition to the death penalty is based on several factors.

1. The death penalty is not applied equally to people of different races and economic classes. Since over one third of the prisoners in Kansas correctional facilities are non-white (much higher than the percentage of non-whites in the total population), it seems likely that non-whites would also be over-represented on the state's death row.
2. The death penalty is arbitrary. Most of the nation's murderers are not sentenced to death. In our neighboring state of Missouri, George "Tiny" Mercer, convicted of the rape and murder of a waitress in 1978, recently became the first person to be executed in that state since 1965; yet Robert Berdella, who has confessed to several even more heinous murders, will avoid the death penalty.
3. The possibility of mistakenly executing innocent people cannot be avoided. There are numerous examples of people who have been convicted of capital murder, some of them actually killed or within hours or even minutes of execution, only to be exonerated later. In the case of Gerald Smith, another inmate of Missouri's death row who has come near to being executed, considerable doubt now exists as to whether he committed the crime for which he was sentenced to die. And Anna Hauptman, the 90-year-old widow of Bruno Richard Hauptman, has spent over 50 years trying to clear the name of her husband, who was executed in 1936 for the kidnaping and murder of the Lindberg baby. Hauptman was convicted on the basis of some weak evidence and the very strong desire of Charles Lindberg and the state of New Jersey to reach a solution to the case. A great many people

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who have studied the case thoroughly now believe in Hauptman's innocence.

4. The death penalty is also expensive in terms of dollars. In 1987 the Kansas Legislative Research Department estimated that the death penalty would cost in excess of \$11,000,000 above current costs for incarceration; no savings could be found for the Kansas taxpayer if executions resumed. In the last year a court ruling has increased the fees that must be paid to attorneys assigned to public cases, so the costs of a death penalty would be even higher now. The state is apparently in a sounder fiscal situation than it was when the death penalty was last voted on, but we feel that the economic argument must still carry weight. Given the desire of the Governor and many legislators to return a greater portion of the "windfall tax" to taxpayers, both individual and corporate, and the calls for more funding for education, the Margin for Excellence, highway improvements, and other important state programs, it does not make sense to us to spend millions of dollars each year in attempts to put people to death.

TOPEKA, KANSAS
JANUARY 25, 1989

THE HONORABLE ED REILLY, SENATOR CHAIRMAN AND HONORABLE MEMBERS OF THE
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
THE STATE OF KANSAS
THE STATE CAPITAL
TOPEKA, KANSAS

SUBJECT: THE DEATH PENALTY BILL

I thank you for your consideration. If you are like my legislative representative you have served faithfully and diligently. I feel that I can provide a wider perspective to the problem before us.

Families, societies, institutions and governments exist to promote, protect and sustain life, and the quality of human life. That society will remain strong and stay in a growth mode that has dignity for the individual and recognizes the great worth of each person, and when each person has a sense of being in community with responsibility for others. We need to appreciate humanity and have a "reverence for life".

I'm sure we would all agree to promote life and the quality of life is what we want to do. I would urge that as you consider any one legislative issue that you approach it with the sum total of all life and quality of life issues in mind as we may tend to forget that all these issues are inter-supportive and do not exist seperately but rather symbiotically.

I am opposed to the death penalty firstly because I feel it will enter into all our personal relationships and social associations and transactions and continue to erode away the values of society. I think we would be sending a message to ourselves that our lives are merely a series of acts for personal posturing and social positioning in the pursuit of pleasure, wealth, influence and power only. We are that we might move toward fellowship with other persons and communion with the Divine Person. To accomplish this we need to strengthen the social fabric, not put rips and tears in it.

Secondly, modern society is always in danger of a takeover by a radical minority that uses the government, the police force, and the judicial system to control society and eliminate its opposition. The death penalty would give such a regime a handy tool. We would like to think it could never happen here. The process is going on now in South Africa. In this decade it was estimated 10,000 Argentinians were eliminated. The Stalin and National Socialist purges are still remembered. We must be vigilant.

Thirdly, there is a false assumption as to why people kill one another. A year or so ago a national news program gave credence to a "preliminary" study that suggested certain human types were born to be criminals. This is dangerous thinking. Before we can solve the terrible problems of killing we need to understand what causes some to kill and others not to. In our

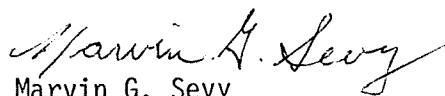
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rush to solve the problem we have forgotten to look at the cause.

Finally, the death-penalty bill diverts our attention from developing programs that solve our problems. Psychologists know a great deal about our inner feeling and external behavior but they have not translated that into public and educational programs. We need to strengthen the family but we continue to pursue fiscal and monetary policies that result in economic decline. As example Kansas City, Kansas made good progress in solving problems but a takeover bid of an insulation manufacturer caused that firm to lay off about half their employees to save the company. We need to continue to support better education. We need to continue to improve job opportunities. We need to provide a wider base of community involvement and political party involvement. When these personal, family, educational, employment and community participation situations improve killing and crime will decline.

I urge you to look at the big picture. Law enforcement officers put their lives on the line everyday for which I am grateful but they should not be the ones to decide what kind of a people and what kind of community we should be. Politicians look for a few extra votes but statesman look to the high road.



Marvin G. Sevy
3413 Westview
Topeka, Kansas 66611

3631 Indiana
Topeka KS 66605

25 January 1989

The Kansas Senate

Dear Senators:

In reference to the discussion on the Death Penalty, I would like to offer the following thoughts:

VIOLENCE BEGETS VIOLENCE - "Burn Bundy Burn" is a good example. It is a sad state of affairs when human beings cheer the death of another human being. School yards turned into killing fields may be an extension of this.

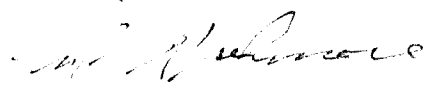
JUSTICE - The system is not perfect. In my position I hear a lot of confessions of convicted felons. Seldom does an inmate set in my office and tell me he is not guilty. When I do here it, I give it some credence. The death penalty carried out allows no reprieve. The system can and does make mistakes.

DISCRIMINATES - The death penalty is unfairly applied to the poor and black. I believe the U.S. Supreme Court agreed that this is true.

BIBLE - The Bible is often quoted, "an eye for eye" as justification for the Death Penalty. My understanding is that this guidance was given the human race to set limits on murder. In other words, the meaning is "don't do more than this.." not "this is the least you need to do". In olden days the death of a family member could escalate into brother killing brother for revenge, leading to other family members getting involved, leading to the clan, to the tribe, etc. "An eye for an eye" was given to stop that chain of events, but not to be interpreted as what has to be done.

GRIEF - The loss of anything important in one's life causes grief. The loss by divorce, loss of employment, loss of a Senate race, anything that has a major life investment causes grief when it is lost. This includes the death of a loved one. Generally the grief process includes steps of denial, anger, bargaining and acceptance. In loss by death the anger is usually directed at God. It is hard to be angry at God, but if there is a person who can be said to be responsible, it is easy to direct the anger that way. I heard this yesterday in those who favored the death penalty. Is emotion of grief a good rational for the death penalty? The death penalty prolongs the grief process.

Sincerely,


Lyle V. Predmore
Clinical Chaplain II
S.R.D.C.

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