

Approved: March 10, 1997
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 18, 1997 in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department
June Evans, Committee Secretary

Conferees appearing before the committee: Representative L. Candy Ruff
Sister Therese Bangert, Coordinator of Kansas Coalition Against
the Death Penalty
Pedro Irigonegary
Reverend Steve Wiard, Methodist Churches Axtell and Beatty
Carolyn Zimmerman
Bob Runnells, Kansas Catholic Conference, Kansas City
Ron Wurtz, Capitol Defense Office
Wilma Loganbill, Newton
Chester Owens, Kansas City, Kansas
Alma Weber, Topeka, Murder Victims Families for
Reconciliation
Donna Schneewis, Amnesty International

The Chairperson announced the first item would be bill introductions:

Representative John Edmonds requested bill introduction for requiring registration of geologist.

Representative Cox moved and Representative Ruff seconded to accept request as a bill introduction. The motion carried.

The Chairperson opened the hearing on HB 2169.

HB 2169 - Repealing the Capital Murder Statute.

Representative Ruff stated this was a serious subject. This subject has been discussed off and on for a long time. It is realized that the death penalty bill meant a lot to a great deal of people when it was passed earlier. There are new people here now as this House and Senate turns over on a regular basis and would like to have the body think about the death penalty again. The Bar Association, of all people has recommended that a hold be put on the death penalty. Representative Gilbert and myself have both been involved in this since we got here and we have both had loved ones brutally murdered and been victims of this. There is no one I would rather pay than the person that brutally murdered my brother back in 1982 and left his body in a cornfield in Missouri. There is no one I want more to suffer than the one that took his life, but let me assure you that as a Christian I rest comfortably knowing that the Lord is going to take care of him. Please listen to the testimony, they might be suffering too, they might also be victims and more importantly they care enough about the way the state does its business to say that we don't have the right to take someone's life.

Sister Therese Bangert, Kansas Coalition Against the Death Penalty, testified as a proponent to HB 2169, stating 90 years ago the Kansas Legislature passed a bill to repeal the death penalty. Governor E. W. Hoch signed that bill into law on January 30, 1907. Before that law the last execution had been in 1870 - so Kansas had not chosen to kill anyone for 37 years - even before Governor Hoch signed the repeal bill into law. Kansas was a state free of the death penalty until 1935 when it was again reinstated. This law remained on the books until 1972 when the U.S. Supreme Court truck down all death penalty laws. Kansas chose not to re-enter the death penalty business again until 1994. The death penalty brings the opposite of peace - whether it be in the struggles of judges, juries, victim family members, prosecutors, defenders or correction officials. Let's repeal the death penalty in Kansas through HB 2169. (Attachment 1)

Pedro Irigonegary, testified as a proponent to HB 2169, stating the American Bar Association adopted a resolution for a moratorium of the death penalty in our nation. The death penalty, in order to be applied with due process to our citizens, is exceedingly expensive. Our resources are better spent on prevention,

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on February 18, 1997.

education, and incarceration of the violent offender. Individuals whose personal finances do not allow them the privilege of private counsel are placed in the hands of overworked and underpaid public defenders. The Capital Public Defender's office in Kansas is of super quality. Resources, or the lack thereof, can be the determining factor between life and death - that is not justice. (Attachment 2)

Reverend Stephen Wiard, Axtell United Methodist Church, Axtell and Beattie, Kansas, testified supporting repeal of the death penalty, stating the violence that exists in our society would not be reduced by the authorization and continued approval of more violence. Constitutional scholars would debate whether capital punishment is a violation of the 8th amendment. Others would wage vigorous dialogue over a more humane way for the state to carry out an execution. The bottom line is that the state has the responsibility to ensure the safety of its citizens. It is believed that such public safety could be provided for with life-time incarceration with no possibility of parole. This is a more civilized alternative to problems. (Attachment 3)

Carolyn Zimmerman, a volunteer lobbyist for Murder Victims' Families for Reconciliation, testified as a proponent to **HB 2169**. Ms. Zimmerman's father was murdered 27 years ago. The death penalty perpetuates disregard for human life, it cheapens and brutalizes the society that inflicts it and it reinforces, ever heightens, an already shameful level of violence. (Attachment 4)

Bob Rannels, Executive Director, Kansas Catholic Conference, testified as a proponent to **HB 2169**, stating this was an opportunity to stop the vicious cycle of killing. Competent research has shown the death penalty does not deter killing in the streets, but does present us an opportunity to kill the possible innocent. The death penalty fuels vengeance, diverts from forgiveness and greatly diminishes respect for all human life. (Attachment 5)

Ronald E. Wurtz, Kansas Capital Defense Coordinator, Chief Attorney, Kansas Death Penalty Defense Unit, testified in support of the **HB 2169**, stating the death penalty was very costly. While the magnitude of the additional costs is impossible to determine with precision, if the penalty is charged more than a couple of times per year, the additional costs would measure over a million dollars per year. The state would spend at least tens of millions of dollars before, sometime in the next 10 to 20 years, the state witnesses its first execution. (Attachment 6)

Wilma Loganbill, Newton, Kansas, in support of **HB 2169**, stated her son had been murdered in 1989 by a young man that had gotten out of prison 3 or 4 months earlier. Ms. Loganbill stated she felt he would murder again and the next time he would murder more than one person. The cost and time involved in putting someone to death is high. It would cost hundreds of thousands of dollars, more than incarceration for life. (Attachment 7)

Chester Owen testified in support of **HB 2169**, stating that race plays an important part in capital punishment. As of July 31, 1996, there were 3,153 inmates on death row. Of this number 1,291 or 40.94% were black and 1,509 or 47.86% were white. The total number of executions since the 1976 reinstatement of capital punishment is 335, 334 males and one female. Of this number 187 have been white, 128 black, 17 latinos, 2 native americans and asian. Of the 335 executions, roughly 83% of the victims were white although roughly half of all murder victims in the U.S. are black. Since the reinstatement of the death penalty, only one white person has been executed for the killing of a black. Of the 16,000 executions in U.S. history, only 31 cases involved a white sentenced for killing a black. Statistics show that the murderers of whites are four times as likely to receive the death penalty as murderers of blacks. There has been progress in race relations, but a still a great disparity involving race when it comes to capital punishment. (Attachment 8)

~~ALMA~~
Alma Weber, mother of a state parole officer testified in support of **HB 2169**, stating the value of human life far exceeds that of anything anywhere. (Attachment 9)

Donna Schneweis, CSJ, Kansas Death Penalty Abolition Coordinator, Amnesty International, U.S.A., testified in support of **HB 2169**, stating the fundamental basis of Amnesty's work is the Universal Declaration of Human Rights, passed on December 10, 1948, by the United Nations General Assembly. The UDHR grew out of the world's horror over World War II and the unchecked abuses of power by governments. The UDHR articulates basic human rights that all governments, no matter where they are in the world, are to respect. When a person takes the life of another in an act of murder, that is wrong. When the state takes the life of a convicted murderer, that state sanctioned violation of the right to life is wrong. (Attachment 10)

The following testimony was distributed in support of **HB 2169**: Wendy McFarland, American Civil Liberties Union (Attachment 11), Pastor Robert R. Keller (Attachment 12) and Ben Coates (Attachment 13).

The Chairperson closed the hearing on **HB 2169**.

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MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on February 18, 1997.

Representative Ruff moved and Representative Gilbert seconded to move **HB 2169** out without recommendation. The motion carried.

The meeting adjourned at 2:45 p.m.

The next meeting is scheduled for February 19, 1997.

HOUSE FEDERAL & STATE AFFAIRS

February 17, 1997

HB 2169

Sister Therese Bangert - Ks. Coalition Against the Death Penalty

Did you know that 90 years ago the Kansas Legislature passed a bill to repeal the Death Penalty? Gov. E. W. Hoch signed that bill into law on January 30, 1907. Before that law the last execution had been in 1870 - so Kansas had not chosen to kill anyone for 37 years - even before Gov. Hoch signed the repeal bill into law. We were a State free of the death penalty until 1935 when it was again reinstated. This law remained on the books until 1972 when the U.S. Supreme Court struck down all death penalty laws. Kansas chose not to re-enter the death penalty business again until 1994.

Why consider repeal at this time?

At the time of the drafting of the death penalty bill in Kansas, many parts of the bill were modeled after the Virginia law. In 1996 Virginia led all states in executions. They executed 8 people. **Yet, at the same time that Virginia was leading the country in executions, their juries, when given the option of life without parole, sentenced only one person to death as compared to 10 in 1994.** Indiana and Georgia also dropped in the number of death sentences when juries had the option of a long prison term:

Indiana went from 10 death sentences '91-'93
to ONE '95-'96

Georgia went from an average of 10 death sentences
a year prior to '93 to an average of 3 per year since

A Virginia juror who voted for life without parole in a murder case recently was quoted in the WASHINGTON POST saying, "If a person is dangerous, you don't want him to get out to cause harm again . . . I'm not sure what we would have done if we knew he could get out. I'm glad we had the choice we did." I believe that this juror spoke to the need for all of us to have public policy that enhances our safety. Is Kansas really a safer place to live because we have embraced what the American Bar Association recently called "**a haphazard maze of unfair practices with no internal consistency**"?

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I want to conclude my part today telling you that this week holds a powerful memory for me. It has been 5 years since my co-worker at Topeka State Hospital was killed by the hands of a man hospitalized there. (A man whose move out of a locked unit was precipitated by a decision of the legislative body to cut funds at TSH.) I walked the grief journey with her husband as he struggled with the despair and hate that raged inside him. On the second Christmas that his wife was gone I asked him what gift he thought she would like him to have for Christmas. He did not ponder at all as he responded, **“PEACE OF MIND”**. Now, five years later his pain is not ended but he has found a PEACE and he has made a new life for himself and their two children.

My experience of the death penalty says that it brings the opposite of peace - whether it be in the struggles of judges, juries, victim family members, prosecutors, defenders or correction officials. Let's repeal the death penalty in Kansas through HB 2169.

BEFORE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

In re: House Bill 2169

I wish to first express my appreciation for the opportunity to share my views in support of House Bill No. 2169. The death penalty should be abolished in Kansas.

As you know, the American Bar Association has adopted a resolution for a moratorium of the death penalty in our nation. I support such resolution.

Competent counsel does not mean perfect counsel. Mistakes are made in the trial process by even the most competent lawyers. Just like a competent physician may, on any given day, accidentally fatally injure a patient, so can a competent lawyer make mistakes during the very difficult process of a capital case. I have never met a perfect lawyer - do not expect perfect trials.

Federal courts are, by virtue of the present political and fiscal environment, diminishing the appellate review process. *Habeas corpus* appeals are under immense attack and the diminution being suggested will greatly increase the possibility that an innocent person may be executed.

The death penalty, in order to be applied with due process to our citizens, is exceedingly expensive. Our resources are better spent on prevention, education, and incarceration of the violent offender.

Individuals whose personal finances do not allow them the privilege of private counsel are placed in the hands of overworked and underpaid public defenders. Our Capital Public Defender's office in Kansas is of super quality; Mr. Wurtz and his staff are dedicated public servants, and I strongly encourage you to listen to their concerns. Resources, or the lack thereof, can be the determining factor between life and death - that is not justice.

The defense of a capital case is very expensive, complicated, and difficult. While many scientific tests are available today, the costs are very high and subject to challenge from many different aspects. The investigation and process of a crime scene can have immense consequences for the accused. With so many variables and results reasonable minds many differ regarding the conclusions one can draw from such evidence. If the death penalty is a possible consequence, the defendant is, by the nature of the penalty, placed under immense pressure to take a plea when it may otherwise not be appropriate. While expedience is important, it should not be at the expense of due process.

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We can, of course, lower the cost of legally putting a fellow human to death by reducing his or her appellate rights; however, we do so with the very real knowledge that innocent people will die.

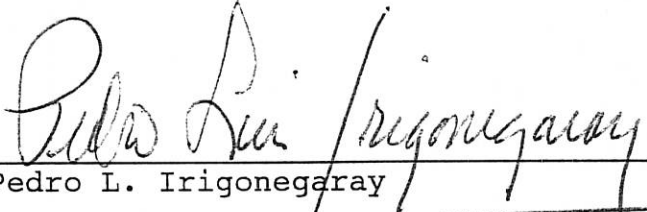
Consider that it's not just the competency of counsel, you also must consider the judge and jury, as well as the media attention to the case. If we agree that there is not such a thing as a perfect lawyer, the same thing is true for the judges, juries, and media.

As a trial lawyer with almost 24 years of trial experience, I can assure each of you that you are asking us to provide justice at a level we cannot assure. The perfect solution is not capable of being delivered by an imperfect system. Keep the convicted violent offender behind bars - it's cheaper and more likely to result in less injustice.

The murder victims and their families cry out for justice. We can deliver such justice without adding to the violence. Legalized killing does not decrease crime.

I strongly urge you to support House Bill No. 2169 and stop the killing, for it may be as unjust as the crime with which the accused was charged, and that is a risk a civilized society cannot take.

Thank you.


Pedro L. Irigonegaray

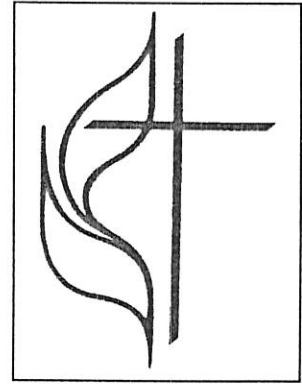
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Axtell United Methodist Church

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2/18/97

House Federal and State Affairs Committee
Statehouse, Rm 519-s
Topeka, Ks. 66612

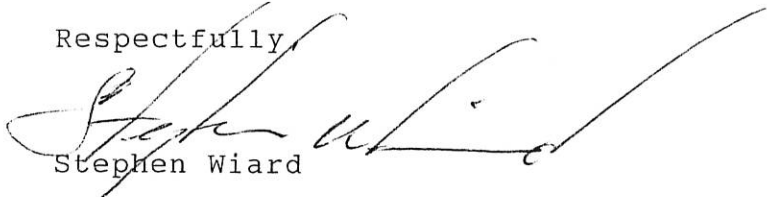
Mr. Chairman and members of the committee:

My name is Stephen Wiard. I am here today to state my support for HB 2169. I am a United Methodist pastor serving two congregations in Marshall Co.; the communities of Axtell and Beattie. I also serve on the Executive Committee of Kansas Interfaith Impact, an ecumenical organization of churches which also supports this legislation. I also stand with Bishop Fritz Mutti, the United Methodist Bishop of Kansas, in support of this legislation.

I firmly believe the violence that exists in our society will not be reduced by the authorization and continued approval of more violence. Constitutional scholars will debate whether capital punishment is a violation of the 8th amendment. Others will wage vigorous dialogue over a more humane way for the state to carry out an execution. The bottom line is that the state has a responsibility to ensure the safety of its citizens. I believe such public safety can be provided for with life-time incarceration with no possibility of parole. I submit to you that this a more civilized alternative to our problem.

The state of Kansas should not be about the business of revenge. I will not debate statistics with you today, but simply and sincerely ask you to leave final judgment to God. Those persons, under the present law, who could be sentenced to death , if convicted, should instead be locked up, denied their freedom, and remain in prison until they are carried out in a pine box! It costs money either way, but I, and many others I speak for, are willing to pay said dollars in order to live in a more civilized society. Let us not use our governmental powers to carry out such an act of state approved aggression, vengeance, and violence. There is a better way; I ask you to consider it. Thank you .

Respectfully,


Stephen Wiard

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**Testimony to House Committee
Regarding Repeal of the Death Penalty in Kansas
Carolyn Zimmerman
February 18, 1997**

Mr. Chairman and Members of the Committee:

I am Carolyn Zimmerman of Topeka. I am a volunteer lobbyist for MVFR: Murder Victims' Families for Reconciliation, a 4,000-member organization headquartered in Atlantic, Virginia, since 1980. The membership is united in its opposition to the death penalty and I speak on their behalf today.

Only a few of my friends know that my father was murdered 27 years ago. Murder is not a subject for casual conversation -- and even close friendships seldom provide the occasion for sharing such a sad and disheartening story.

My family members rarely speak of it. Perhaps we have adopted the reserved stoicism of my mother, who almost always kept her thoughts and feelings to herself. For my part, I think there was always a vague sense of shame or embarrassment. Some idea that nice people don't get murdered. And we were nice. We still are.

The only reason I talk about this murder now is because I hope the telling of my family's story will give witness to others of what I believe about the death penalty.

- First, that it perpetuates disregard for human life.
- Second, that it cheapens and brutalizes the society that inflicts it.
- And third, that it reinforces, even heightens, an already shameful level of violence.

My father was 54 years old when he was killed, a year younger than I am now. He and my mother, along with my three younger siblings, had just moved to Warrensburg, Missouri, where my parents were to open a tax office. It had been my father's lifelong dream to have a business of his own and in November of that year he had begun. By January, he was swamped with work, keeping late nights at the office. On one of those evenings, shortly before my mother would have driven from home to give him a ride, he phoned home to say that because of a sleet storm and the treacherous streets, he thought it would be better if he called a taxi.

That telephone conversation was the last time any of us spoke with him. My sister, who was fourteen at the time, recalls that he said to her, "Now you be a good girl, Nancy." A strange comment, it seemed then, but perhaps he was already under threat and knew he would not see his family again.

**Testimony to House Committee
Regarding Repeal of the Death Penalty in Kansas
Carolyn Zimmerman
February 18, 1997**

My father was a missing person for three weeks. His office was found locked as usual, but with money and checks missing from the safe. There were literally no clues. The weather those three weeks was terrible. It was not until the snow and ice melted that his body was discovered in a field outside of town. He had been brutally stabbed to death -- over a dozen wounds inflicted.

No one was ever charged in my father's death. There were not even any suspects. What happened was a mystery then, and it has remained so.

Life changed for my mother most of all. She was a widow with her youngest child only ten years old. She was unable to keep the new business alone and went to work full time at the community hospital. She raised her children with the help of her parents. She never remarried. We children are all grown now, married and with children of our own. Sadly, my father never knew those joys that come with old age -- the leisure to reflect upon accomplishments, the time to see grandchildren grow. Those were stolen from him by persons we will never know for reasons we can only guess. I think I am grateful not to bear that awful knowledge -- and grateful that resentment has not caused me to turn away from my conviction that the death penalty is wrong.

Despite my convictions, I am represented whenever the state executes someone. The killing is done in my name and in yours. I urge you to repeal the law that permits capital punishment because I still believe that the death penalty is no way to reconcile grief, no way to protect the innocent, no way to execute justice. There are better ways.

[I will stand for any questions.]

TESTIMONY

H.B. 2169

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
February 13, 1997 - 1:30 p.m. - 519S

KANSAS CATHOLIC CONFERENCE
Bob Runnels, Executive Director

Thank you Chairman Boston and members of the House Federal and State Affairs Committee for my opportunity to testify in support of H.B. 2169.

I would hope that this committee sees the presentation of this bill for consideration as an opportunity to amend the current legislation by eliminating the **DEATH PENALTY** as a law that is flawed in its conception.

Let's rather see this as an opportunity to stop the vicious cycle of killing. Competent research has shown the **DEATH PENALTY** does not deter killing in the streets, but does present us an opportunity to kill the possible innocent.

We believe firmly that the **DEATH PENALTY** takes us down the wrong road of life. It fuels vengeance, diverts from forgiveness and greatly diminishes respect for all human life.

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Testimony - H.B. 2169
House Federal and State Affairs Committee
Thursday, February 13, 1997

Society wants those found guilty of killing others off our streets, but can't justice be better served by placing them in prison for 40 years.

We call all thinking people of good will to see the superior logic and opportunity for correcting a serious error that occurred when the **DEATH PENALTY** was passed into law.

Please favorably pass this bill to eliminate the **DEATH PENALTY**. It is a better law which will keep those judged to be dangerous to our communities in prison.

THE COST OF THE DEATH PENALTY

Testimony of Ronald E. Wurtz
Kansas Capital Defense Coordinator
Chief Attorney, Kansas Death Penalty Defense Unit

Kansas Legislature
Federal and State Affairs Committee
February 18, 1997

I have been asked to testify regarding the costs of the death penalty. I know some of this committee stand firmly opposed to a repeal of the death penalty, and some are leaning towards support of the bill. Still others are ambivalent. This subject--cost of the death penalty--is one area all of us should be able to agree on. In the past ten years the issue of cost has been reviewed by states that use the death penalty and by sister states that have considered re-enactment of the death penalty. There really can be no doubt that the death penalty is costly, and the following assumptions, first proposed by Professor David Gottlieb three years ago in testimony before this committee, are still true:

1. The death penalty is an expensive "add-on" to a criminal justice system which produces significant additional costs, and no measurable savings.
2. While the magnitude of the additional costs is impossible to determine with precision, if the penalty is charged more than a couple of times per year, the additional costs will measure over a million dollars per year.
3. We should expect each case in which the death penalty is imposed after a verdict to cost, at a minimum, hundreds of thousands of dollars more than each similar non-death penalty case. We should also expect to spend millions to tens of millions of dollars to tens of millions of dollars per case that finally results in an execution.
4. We should expect that the State will spend at least tens of millions of dollars before, sometime in the next 10 to 20 years, the State witnesses its first execution.

We should expect these things to occur for the very simple reason that they have

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occurred across the board in those states that have reintroduced the death penalty since 1977. The warnings of high costs have been borne out since the passage of the Kansas death penalty in the fact of increased costs if not in the amount of those costs. To date, no one charged with capital murder has proceeded to trial, so the full cost of taking a case through trial has not been tested. However many of the increased costs inherent in the modern death penalty are being seen in Kansas.

A review of the reasons for high costs in death penalty cases is in order:

I. THE REASON FOR THE HIGH COSTS OF CAPITAL CASES

Now deceased Justice Thurgood Marshall, in *Furman v. Georgia*, 408 U.S. 238, 357-58, bears quoting:

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, it 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.

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 done since Justice Marshall's writing supports his assertion. Capital cases are very expensive. There are five 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, across the nation, guilty pleas are often less common than in non-capital cases.¹ For similar reasons the defense contests every potential issue. Preparation for trial is more extensive, with two to five times as many pretrial motions filed.² 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 also takes longer than an ordinary homicide prosecution, with far more extensive use of experts and investigators.³

Second, death penalty cases require a second, separate trial on the sentence of death if the jury returns a guilty verdict. There is no equivalent to this procedure in a regular murder case.⁴ 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 the death penalty is further expanded. The most extensive recent study of cost, in North Carolina found that the impact of the expanded guilt

¹Because of insufficient numbers, this assertion has not yet been confirmed in the recent Kansas experience. Nine of the 18 capital or potentially capital cases to date have pled. Two have been tried as non-capital cases; seven are still pending. The plea rate for non-capital off-grid crimes in FY 1995 was 71%. Annual Report of the Courts of Kansas.

²In *State v. Kleypas*, which is approaching trial in March, approximately 100 motions have been filed to date.

³See, e.g., Garey, The Cost of Taking a Life: Dollars and Sense of the Death Penalty, 18 U.C. Davis L. Rev. 1221, 1245-62 (1985); Gradess, Execution Does Not Pay, Wash. Post, Feb 28, 1988, at C5, col. 3; New York State Defenders Association, Capital Losses: The Price of the Death Penalty For New York State, (1982). For example in *State v. Brady*, Wyandotte County, which was pled immediately after the preliminary hearing in the case, \$17,038.60 was spent for a mitigation investigator and \$10,608.76 was paid for a fact investigator.

⁴Although the procedure in a "Hard 40" case is theoretically the same, the presentation has never been as extensive or intense as that required in a capital case.

and sentencing proceedings extended the number of days in a capital trial by approximately **four times** the length of a non-capital trial, with more than four times the number of attorney hours spent in preparation.⁵

Third, if the jury imposes a death sentence, a long appeal process will begin. The process will include an appeal to the Kansas Supreme Court, a petition for certiorari to the Supreme Court of the United States, post-conviction applications in the Kansas State Courts, appeals of those applications, post-conviction applications in federal courts, appeals of those applications to the United States Court of Appeals for the Tenth Circuit, and a petition for certiorari to the Supreme Court of the United States. The process which can take up to a decade or longer to accomplish, will involve ten times the cost of ordinary appeals. **In fact, the post-conviction stage is often the most expensive of the entire process.**⁶ Obviously, a defense attorney is obliged to pursue every legal means to avoid execution of his client. Unlike the normal case, there is no occasion of an attorney to recommend to his client that he not take further appeals.

Fourth, during the time of the appeals, the defendant is typically housed in a death row. These facilities cost money to build and are also more expensive to staff and maintain than normal prison facilities.

Fifth, nationally, executions have so far occurred in fewer than one in 10 cases when a

⁵Cook and Slawson, The Costs of Processing Murder Cases in North Carolina, (Sanford Institute of Public Policy, Duke University) (May, 1993).

⁶*Id.* at 75-84. See also The Spangenberg Group, A Caseload/Workload Formula for Florida's Office of Capital Collateral Representative (Sponsored by ABA Standing Committee on Legal Aid and Indigent Defendants, Bar Info. Proj.) (Feb. 1987); The Spangenberg Group, Study of Representation in Capital Cases in Virginia (Final Report, Nov. 1988). Recently the Anti-Terrorism and Effective Death Penalty Act of 1996 mandates provision of qualified counsel in post-conviction cases in order to take advantage of the speeded-up process.

death penalty is imposed. **Thus, these costs will be borne in more than 10 cases for each case that ultimately results in an execution.⁷**

All of these steps cost money. It is critical that the legislature recognize that in virtually every case, these expenses will be borne by the taxpayers. The prosecution, judicial, and prison costs, of course are borne by the taxpayers. As well, the defense costs in most cases must be paid by the State, since most criminal defendants in death penalty prosecutions are indigent and cannot afford counsel. Moreover, these costs have occurred even in States, such as North Carolina and Texas, that have been least concerned about protecting due process or fair procedures in capital cases. The costs incurred in northern states have been far greater.

Finally, in no study has there been any documented evidence of any savings produced by the death penalty. The argument made by some capital punishment supporters that the presence of the penalty will increase the number of guilty pleas in non-capital cases is not documented by a single study. The incarceration "savings" produced by the execution of a prisoner will occur only in a decade, and will, in any event, be entirely hypothetical. Our Department of Corrections will not request or spend any less money on housing or feeding its 6000 inmates because of the possibility that one inmate less may reside in a facility by reason of his execution.

II. SUMMARY OF OTHER STATE STUDIES

Ten years ago the question of whether the death penalty was more expensive than a system of life imprisonment was somewhat controversial, and the estimate of the extent of the

⁷To date in Kansas over 50% of potential capital cases have been settled for less than a death sentence.

cost differential was necessarily tentative.⁸ Since then the issue has been studied in academic reports, fiscal notes in State legislatures, and in newspaper and magazine articles. While the studies differ in their accounts of the magnitude of the increase that will occur if we continue our system of capital punishment, they are consistent.

The most important recent study was completed in North Carolina. The study is a comprehensive report which required several years of effort by the North Carolina Administrative Office of the Courts under a grant from the State Justice Institute.⁹ The report exhaustively analyzed data from 1991-92 and found that the average additional cost of a capital trial and sentencing was \$67,000.¹⁰ For appellate and post-conviction costs, the report found amounts of over \$200,000 for a fully-litigated death penalty case. The study thus found the additional cost of litigating a capital case to be over \$300,000 per case. The study then computed hypothetical "savings" of approximately \$160,000 resulting from reduced prison costs per inmate, and arrived at a total figure of \$163,459 of additional costs per capital case. Adding in cases that began as capital but in which the death penalty was not imposed, the study concluded the extra costs per death penalty judgment was over a quarter million dollars. Since fewer than 10% of the cases in which the death penalty is imposed result in executions, the cost per execution was calculated at over \$2 million. It should be noted that these figures occurred in a state that is ruthless in pursuing the death penalty and has done little in insuring the fairness of its proceedings.

⁸See U.S. Government Accounting Office, Limited Data Available on Costs of Death Sentences (Sept. 1989).

⁹Cook & Slawson, The Costs of Processing Murder Cases in North Carolina, (Saford Institute of Public Policy, Duke University) (May 1993).

¹⁰*Id.* At 2, 59.

The North Carolina findings have been supported, in broad outline, from at least three other states. In Florida, each execution has been calculated to cost the state \$3.2 million,¹¹ and in Texas, a figure of \$2.1 million has been cited. The report is also supported by a Maryland study.¹²

While these figures may seem high, they are dwarfed by the amounts of money spent in Northern and Western states which spend more effort to assure that the decision of who is to die is made fairly and accurately. For example, New Jersey, which has yet to execute a prisoner, spends \$16 million per year on capital punishment.¹³

Two neighboring states have also studied the question in connection with the resumption of capital punishment. In Iowa, the legislature's fiscal director concluded that the cost for the State "for the first defendant" taken through the process would be approximately \$2 million for the State. The Iowa study projected trial costs of some \$400,000 per case, and appellate costs of close to \$1,000,000.¹⁴ In Wisconsin, the State did not project a total cost for the penalty. However, it did produce estimates of \$285,000 in defense costs (trial and appeals) per case, a yearly Department of Corrections Budget increase of \$500,000 to staff a death row, and a capital

¹¹Drehle, Bottom Line: Life in Prison One-Sixth as Expensive, The Miami Herald, July 10, 1988, at 12A.

¹²The Report of the Governor's Commission on the Death Penalty: An analysis of Capital Punishment in Maryland: 1978 to 1993 (Nov. 1993).

¹³Benien, No Savings in Lives or Money with Death Penalty, The New York Times, Aug 7, 1988.

¹⁴Fiscal Note, Senate File 384, State of Iowa, at 3 (April 9, 1991); Fiscal Note, House File 19, State of Iowa (March 4, 1993).

request of \$1.4 million from the Department to construct a death row.¹⁵

IV. THE COST OF THE DEATH PENALTY IN KANSAS

The cost of the death penalty turns in large part on the number of cases which are potentially capital. The more cases that are filed, the higher the price, and the fewer cases filed the lower the cost (and the lower the likelihood that there will be an execution). In the first 12 months after enactment of the death penalty there were 10 potential defendants in six separate cases.¹⁶ During the next fiscal year only three cases were filed,¹⁷ and in the current fiscal year we have seen seven potential cases.¹⁸ Thus far, prosecutors have tended to file the charge of capital murder if it is arguably present. In only four cases have the prosecutors refrained from filing capital murder when the potential was present.¹⁹ It thus appears that if the charge is possible, there is a 79% chance that a potentially capital case will be so charged.

A. Defense Trial Costs

¹⁵Bob Lang, Legislative Fiscal Bureau, State of Wisconsin, Fiscal Note, October 13, 1993.

¹⁶Peirano, Saline county; Brady, Wyandotte County; Tillman, Leavenworth county; Everett and Young, Geary county; Amos, Spain and Winter, Haskell county; Wilson and Barnes, Sedgwick county.

¹⁷Shively, Shawnee; Kleypas, Crawford; Green, Johnson. Note that Green retained counsel but she was determined to be partially indigent so there would have been some state defense costs had she not settled the case.

¹⁸Marsh, Scott and Gillespie, Sedgwick county; Stanford, Shawnee county; White, Saline county; Watson, Johnson county; _____, Doniphan county.

¹⁹Barnes, Wilson, Gillespie and Amos. In the case of Wilson and Gillespie, a plea agreement was quickly struck. In Barnes, the prosecution held the possibility of amendment to capital murder over the accused's head right up until the time of trial. The attorney general determined early on that Amos was not an appropriate candidate for the death penalty although she was a co-defendant with two others who were good prospects.

Attorney costs carry the highest potential for added expense with the additional care that must be taken in the defense of one charged with a capital crime. So long as the present rate of capital case filings remains the same, the salaried Public Defender Death Penalty Defense Unit will be able to fulfill this function. It is the conflict case or ballooning numbers of cases that will cause attorney costs to rise. Private counsel must accept conflict appointments, and there are very few private attorneys who are both experienced enough and willing to take the cases. Those who are willing to take the cases command premium fees ranging from \$85 per hour to \$150 per hour, and at least two attorneys have been assigned to every capital case thus far. The Barnes conflict case which went right up to trial before the state clearly withdrew its threat to amend it to capital murder, paid over \$90,000 in attorney fees. The Tillman case, still pending although filed in the first year after capital punishment was reinstated, has paid private lead counsel \$38,211.50 to date which is roughly triple the **total** cost of a non-death penalty murder case.

Investigative and expert costs are also higher in capital cases. The mitigation expert costs, which will not be seen in non-capital murder cases, approaches \$20,000 per case, and none of those cases has gone to trial yet.²⁰ Guilt phase investigators have similarly cost more due to the extensive and detailed investigation needed. Finally, experts are also used more extensively than in a non-death case because of the need to provide not only a defense to the charge, but to provide mitigation in case of a conviction of capital murder. Three of the cases pending rely on DNA for proof. This complex evidence is likely to cost much in expert fees, especially if the prosecution sends it to commercial DNA laboratories rather than use the KBI or Johnson county labs.

²⁰Brady, \$17,028; Tillman, \$39,800 ; Spain, \$24,396 ; Kleyvas, \$58,544.48

Not including attorney hours, the Peirano case, which settled in less than two months, cost \$22,758. Brady, \$55,106 including \$20,325 in private co-counsel fees for over 200 hours of work for a plea immediately after preliminary hearing in less than four months. The Tillman case, which is still pending, has topped \$127,625.93 in expenses, not including the time of co-counsel in the Death Penalty Defense Unit. The Spain case, which was handled by the Death Penalty Defense Unit, expended, excluding attorney hours, \$33,119.75, and that case was effectively settled before the accused was extradited back to Kansas, although about 18 months passed between the first appointment of counsel and sentencing.

B. Prosecution Trial Costs

Since prosecution costs are borne locally, it is more difficult to construct precise estimates of such costs. However, anecdotal evidence suggests they are substantial. Just as the defense must file more pretrial motions, so must the prosecution, in addition to preparation of responses to the defense motions. The prosecutor, like the defense attorney, must prepare for and present a trial that is several times as long as the typical trial. Experience in cases to date is that prosecutors allocate at least two attorneys to each capital case.²¹ If police costs are included in this number, the additional court appearances alone will significantly increase costs. If, like Judge Nolan in *State v. Kleypas*, hearings are held on Saturday and Sunday, overtime costs will rise even further. Court time, of course, is in addition to the additional care that must be given to the investigation and follow-up work which is inevitable in any complex trial, but which is multiplied in a death penalty case where every aspect of the investigation is minutely scrutinized. An example of added costs is found in the need of the defense to document evidence seized before it

²¹At one time, in *State v. Shively*, five prosecutors were assigned to the case.

is altered by scientific testing. The Kansas Bureau of Investigation loudly complains of the time they must take to supervise defense inspection of evidence.

In other states, these additional costs have produced severe burdens on local governments. Sierra County California authorities were required to cut police services in 1988 to fund death penalty prosecutions.²² In Mississippi two counties once fought over venue in a death penalty case, each desiring to avoid the expense of the case. The losing county had to raise taxes to pay for the prosecution.²³

C. Judicial Costs

Death penalty costs also result in increased judicial costs of at least three types: Jury costs, security costs and the need for additional judges. The juror costs result from the additional time involved in selecting a jury, the disproportionate time spent in prosecuting a capital case, the additional time spent in sentencing, and the larger panels typically required for voir dire of jurors. While this cost has not recently been measured, in 1987, Legislative Research predicted an increase of \$729,750 per year in increased juror costs. That was based on a higher number of trials than we expect under the current law, however, for each trial there will be several thousand dollars in additional expenses. Juror fees are \$10.00 plus mileage per day, and at least 36 jurors must be qualified for cause in an arduous process which must comply with Supreme Court case law. This will require the original venire called to be significantly larger than in a non-capital

²²Magignini, Sierra County Robs Police to Pay Lawyers, The Sacramento Bee, March 28, 1988.

²³Maxwell Murder Trial May Up Kemper Taxes, Meridian (Miss.) Star, July 21, 1992; *see*, Death Penalty Information Center, Millions Misspent: What Politicians Don't Say About the High Cost of the Death Penalty (Wash. D.C. 1992).

murder case.

Security costs will also be greater, and must be borne by the counties. This cost will likely hit rural counties harder than in urban areas where security is in place at all times.

Finally, the increase in trial time will eventually require increased judicial resources. Just counting the pretrial motion increase alone, it is obvious that judicial time dedicated to the case will necessarily increase. In the first Shawnee county capital case, one judge was essentially relieved of other duties in order to attend to this case. In the pending Crawford county case, the judge is holding hearings on Saturday and Sunday to reduce damage to his remaining docket.

D. Total Trial Costs

Each trial can be expected to cost at least an additional \$100,000, and likely will exceed this by a factor of two or even three. Much of the cost is hard to determine, but it will be there nevertheless.

E. Post Trial Defense Costs

The mandatory appeal to the Kansas Supreme Court will be handled by the Appellate Defender which has estimated the cost \$240,000 per case, which includes some of the post conviction costs in addition to the first appeal itself. One would only need to weigh the record of a properly tried capital case to see the additional cost. It is also necessary that no issue be missed, otherwise it will be waived in future reviews. This type of "fine tooth combing" of the record will require much additional professional time.

After an unsuccessful mandatory appeal, the post-trial work must begin as described above. While the Federal government has attempted to speed up this appeal process with the passage of the Antiterrorism and Effective Death Penalty Act (AEDPA), states must show their

systems provide qualified and staffed attorneys to handle both the trial and post appeal work. This likely means that the State must pay the fees necessary to find attorneys qualified to handle the very specialized and sometime esoteric work in post-conviction habeas corpus work in death penalty cases. As of today, there are few attorneys in Kansas who would qualify to do this type of work under either the American Bar Association Guidelines for Appointment and Performance of Counsel in Death Penalty Cases (1989) or the National Legal Aid and Defender Association "Performance Guidelines for Criminal Defense Representation." This likely means that at some time in the future, when a death row is peopled with convicts, that this body will be required to set up yet another office to handle death penalty post conviction work. Failure to make this significant commitment will likely lead to the involuntary delay of executions now found in Texas where the abolition of the Death Penalty Resource Centers has resulted in the courts' inability to find lawyers to handle the cases. Without lawyers to handle the cases, appeals cannot be completed, and executions must be delayed.²⁴

Looking to other states to measure the costs that might be expected, we find estimates ranging from \$151,900²⁵ per case to \$500,000²⁶ per case. In Ohio, which has yet to execute a prisoner, the State spends over a million dollars a year to fund a Capital Litigation Unit with some 35 employees, whose primary responsibility is to litigate appeals as well as state and federal post-conviction proceedings. In Oklahoma, more attorneys work on capital appeals and post-

²⁴Judy Clark, Crisis in Capital Representation, The Champion, Jan/Feb 1997

²⁵Legislative Fiscal Bureau, State of Wisconsin, Joint Committee on Finance, Fiscal Note at 12.

²⁶Dennis Prouty, Fiscal Director, State of Iowa, Fiscal Note, Senate Bill 384 (April 10, 1991), at 16.

conviction cases than on other criminal appeals. It is also notable that the Oklahoma Court of Criminal Appeals, the highest criminal appeals court has a backlog of 200 capital cases. A regular reading of the Pacific Reporter, discloses that Court is apparently doing little but capital appeals.

F. Prosecution Appellate Costs

As with trial level costs, there is no reason to believe that the increases in prosecution cost for appeals will be any less than the increase for the defense. Thus, the State should be prepared to spend thousands of dollars per year for appellate and post-conviction costs if the death penalty is continued and charged at the present rate. In 1994 our Legislative Research Department estimated additional prosecution costs for appeals at \$181,000 per case.

G. Prison Costs

Last, but not least, the state may be required to fund increased costs to set up and staff a death row. The current Secretary of Corrections has had subpoenas to account for plans regarding this blocked, so we are unable to obtain an estimate of these costs from the Department of Corrections. However, in 1987, the DOC estimated the cost of renovation and staffing of a death row as \$922,682 per year. While the current death penalty law may result in a scaling back of this estimate, the housing of death row inmates will increase costs for the Department of Corrections. Nebraska took 14 years to reach its first execution date, and Ohio has seen no executions since re-enactment of its death penalty in 1981. So the DOC can expect to house prisoners under sentence of death for a significant time. With the cost of cell construction ranging to \$100,000 per bed, even a small death row should be expected to reach the hundreds of thousands to build and maintain.

H. Summary

With capital prosecutions averaging seven per year the state will spend several million additional dollars per year in defense, prosecution, judicial and prison costs attributable to the death penalty. It is not free. Other states have seen the capital punishment costs drain funds from other criminal justice programs designed to compensate victims and prevent crime.

I am Wilma Loganbill from Newton, Kansas.

My youngest son was murdered at the age of 22 in 1989 by a young man only 23 years of age who had just gotten out of prison 3 or 4 months earlier. After hearing the story of my son's death most people assume I support the death penalty. They are surprised when I say I am not. I do not support the death penalty for several reasons.

Taking a life is serious regardless of who does it. When the judicial system takes a life we are saying it is OK for US to kill but it is not OK for YOU to kill. What do we do when the judicial system has put an offender to death and then learns they were innocent?

The cost and time involved in putting someone to death is high. Kansas has re-instated the death penalty. It will cost Hundreds of Thousands of dollars just to prepare a place to do it. In addition there will be the cost of continual appeals and last minute legal maneuvers. It costs more to put someone to death than to incarcerate them for life.

All the legal delays before someone is put to death also delay the healing process for victims. There is hope the end is in sight and then there is another delay. When the news media question surviving victims after an execution, victims usually say their pain is still there. Putting the offender to death does not bring back our loved ones or end our grief.

The individual who shot my son was suicidal at the time. I have heard several offenders on the news ask for the death penalty. Some don't want to live anyway. So it does not serve as a deterrent. Some say at least that offender won't kill again. This is true. I believe the person who shot David will kill again when he gets out. I also believe there are better ways to prevent this from happening.

My son David is dead. Nothing can change that. In spite of the fact David's offender was given a life sentence, he will not die in prison. He WILL get out. Spending energy on punishment without working toward rehabilitation guarantees continued defeat.

What would happen if we worked as frantically to prevent crime as an offender's attorneys work to stop the execution? If we would channel the energy and money used to put offenders to death into prevention and constructive confinement we would be surprised at the results. More than anything else victims want offenders to accept responsibility for what they have done. I believe this is Fred Goldman's message, too. He doesn't want O.J.'s money. Fred has been determined to get justice and part of this includes O.J. accepting RESPONSIBILITY for his actions. Putting offenders to death will never accomplish this.

We used to fear polio. One person decided to work on a vaccination to prevent polio. We no longer fear polio. Our younger generations hardly know what it is. Let's work hard to PREVENT crime. Only then will we have more freedom to live without fear.

840 Trinity Court, Newton, Ks 67114

316-283-2199

FedeState
2-18-97
Atch #7

Duron

DEATH PENALTY HOUSE BILL No. 2169

RACE PLAYS AN IMPORTANT PART IN CAPITAL PUNISHMENT. AS OF JULY 31, 1976 THERE WERE 3,153 INMATES ON DEATH ROW. OF THIS NUMBER, 1,291 OR 40.94% WERE BLACK AND 1,509 OR 47.86% WERE WHITE. THE TOTAL NUMBER OF EXECUTIONS SINCE THE 1976 REINSTATEMENT OF CAPITAL PUNISHMENT IS 335, 334 MALES AND ONE FEMALE. OF THIS NUMBER 187 HAVE BEEN WHITE, 128 BLACK, 17 LATINOS, 2 NATIVE AMERICANS AND ASIAN. OF THE 335 EXECUTIONS, ROUGHLY 83% OF THE VICTIMS WERE WHITE ALTHOUGH ROUGHLY HALF OF ALL MURDER VICTIMS IN THE U.S. ARE BLACK. SINCE THE REINSTATEMENT OF THE DEATH PENALTY, ONLY ONE WHITE PERSON HAS BEEN EXECUTED FOR THE KILLING OF A BLACK. OF THE 16,000 EXECUTIONS IN U.S. HISTORY, ONLY 31 CASES INVOLVED A WHITE SENTENCED FOR KILLING A BLACK. STATISTICS SHOW THAT THE MURDERERS OF WHITES ARE FOUR TIMES AS LIKELY TO RECEIVE THE DEATH PENALTY AS MURDERERS OF BLACKS

EVEN THOUGH WE HAVE MADE PROGRESS IN RACE RELATIONS IN THIS COUNTRY, THERE IS STILL A GREAT DISPARITY INVOLVING RACE WHEN IT COMES TO CAPITAL PUNISHMENT. THE ECONOMIC GAP BETWEEN BLACK AND WHITE IS INCREASING EACH YEAR. THE POOR DO NOT HAVE EQUAL ACCESS TO ADEQUATE REPRESENTATION IN CAPITAL CASES. ALL TOO OFTEN, POOR PERSONS ARE REPRESENTED BY ATTORNEY'S WHO FALL ASLEEP DURING TRIAL, SOME WHO ARE BARELY OUT OF LAW SCHOOL OR WHO SAY NOTHING WHEN THEIR CLIENTS LIFE IS ON THE LINE. TOO MANY STATES ENCOURAGE POOR REPRESENTATION BY NOT OFFERING ADEQUATE PAY AND RESOURCES FOR

*Fed & State
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DEATH PENALTY DEFENSE.

VOLTAIRE STATED THAT "IT IS BETTER TO RISK SAVING A GUILTY PERSON THAN TO CONDEMN AN INNOCENT ONE." WHEN WE THINK OF PERSONS WHO MAY BE ON DEATH ROW FOR A CRIME THAT THEY DID NOT COMMIT AND IN MANY CASES BECAUSE OF INADEQUATE REPRESENTATION AND RACE, IT IS FRIGHTENING. I READ IN THE NEWSPAPER JULY 1996 A CASE OF THREE BLACK MEN WHO SPENT 18 YEARS IN PRISON FOR A CRIME THAT THEY DID NOT COMMIT. ONE OF THE PRISONERS SPENT MOST OF THAT TIME ON DEATH ROW. THE VICTIMS IN THIS CASE WERE WHITE. WHEN YOU STRIP EVERYTHING AWAY AS TO WHAT WENT WRONG, IT WAS STRICTLY RACISM. THERE ARE MANY CASES WHERE WE KNOW RACISM WAS THE MAIN FACTOR IN THE LEGAL PROCESS.

WE IN AMERICA CAN NOT SPEAK TO OTHER NATIONS ABOUT HUMAN RIGHTS VIOLATIONS AS LONG AS THIS GREAT DISPARITY EXIST BETWEEN THE RACES THAT ARE PRESENTLY ON DEATH ROW. WHAT WILL WE SAY WHEN OTHER NATIONS, THE MAJORITY OF WHOM ARE NON WHITE, RAISE THIS QUESTION?

I WOULD LIKE TO CONCLUDE MY COMMENTS WITH A QUOTE FROM CORETTA SCOTT KING "I WHOLEHEARTEDLY JOIN IN THIS PROTEST AGAINST THE DEATH PENALTY. EVEN IF IT WERE NOT RACIST, I WOULD BE FIRMLY OPPOSED TO IT. ALLOWING OUR GOVERNMENT TO EXECUTE ITS OWN CITIZENS DIMINISHES OUR HUMANITY, ENCOURAGES THE USE OF VIOLENCE, AND SETS A DANGEROUS PRECEDENT THAT IS UNWORTHY OF A CIVILIZED SOCIETY. ALTHOUGH MY HUSBAND WAS ASSINATED AND MY MOTHER-IN-LAW MURDERED, I REFUSE TO ACCEPT THE CYNICAL JUDGMENT THAT KILLERS DESERVE TO BE

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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.

I am Alma Weber, mother of Paul Weber - a State Parole Officer killed in the line duty by one of his parolees at age 26, in 1976. I became a single parent about the time Paul entered high school, and due to a virus to which my mother was exposed about six months before my birth; I did not drive at that time and Paul became the chauffeur, male role model for his five sisters and three brothers as well as my assistant for it was at that time I became a employee of the state full time, After his graduation from Washburn, he married and he and his wife remained an integral part of our family life.

The first eight to ten years after his death, we learned to grieve and adjust to his absence at holidays and at those family events -marriages, births, baptisms, etc. At these times I was asked about my anger and I learned remaining so was not fair to Paul's memory and definitely not to his daughter, his brothers and sisters and their children. It sapped me of the time and energy which was so necessary in appreciating and enjoying each of their uniqueness and personhood. I was determined not to let this happen.

As this time passed, I looked about and really SAW the escalation of violence and devaluation of human life. I read about eruptions of anger resulting in violent behavior which definitely indicated the acceleration of disrespect for human life without seeing the pain suffered by both the families of the victim and the perpetrator.

I believe that the value of a human being far exceeds that of ANYTHING ANYWHERE. Each of us is unique and irreplaceable and we have the opportunity of learning from all around us -some provide examples and/or values we may choose to emulate some provide examples and/or values not acceptable to society and some even ^{those} which cause us to stop and evaluate our own morals and values.

I hear the word "revenge" used so easily even when discussing athletic events and I shudder. I see this as a useless feeling and one that seems to give approval to violent behavior. We, as a society, must become acquainted with and practice RECONCILIATION. I thank God this emotion of revenge did not become a part of my life and I learned the meaning and peace of RECONCILIATION.

As a mother of eight now, grandmother of 21 and great-grandmother of 1, as of the other day; I cannot condone the taking of a life of another's child or grandchild.

Thank you for giving me the opportunity to express my interest in this bill and to ask for the passage of it.

2-18-97

Alma Weber

Fed & State
2-18-97
Atch #9



AMNESTY
INTERNATIONAL
USA

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Testimony to House Federal and State Affairs Committee
HB 2169

February 18-19, 1997

Mr. Chair and members of the Committee, I come before you today on behalf of Amnesty International, a worldwide, politically non-partisan human rights organization which has members and supporters in all regions of Kansas. Amnesty stands in full support of HB 2169 and urges its passage.

The fundamental basis of our work is the Universal Declaration of Human Rights, passed on December 10, 1948, by the United Nations General Assembly. The UDHR grew out of the world's horror over World War II and the unchecked abuses of power by governments. The UDHR articulates basic human rights that all governments, no matter where they are in the world, are to respect.

The question before the committee today is the state's response to murder. Amnesty International is fully aware of the pain and suffering that is caused by murder. Some of our own members have been through this very horrible experience. In no way do we condone the violation of the right to life by an individual through the act of murder.

With regard to how the state should respond to murder, two articles of the UDHR are applicable: Article 3 and 5.

"Everyone has the right to life, liberty, and security of person" (Article 3)

"No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment." (Article 5)

These rights are not dependent on moral rectitude. They apply to every person without reservation. Thus, the UDHR places limits on what any government, for any reason and under any circumstance, may do to a human being.

To put it simply: when a person takes the life of another in an act of murder, that is wrong. When the state takes the life of a convicted murderer, that state sanctioned violation of the right to life is wrong.

If you do not agree with the concept of human rights, I still urge you to reflect carefully on the testimony of the others who stand in support of HB 2169. You will find many additional reasons this bill should be passed.

Thank you.

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.

Fed & State
2-18-97
Atch #10

AMERICAN CIVIL LIBERTIES UNION
OF KANSAS AND WESTERN MISSOURI
1010 West 39th Street, Kansas City, Missouri 64111 (816) 756-3113

Testimony in Support of HB 2169
House Committee on Federal and State Affairs
February 18, 1997

Members of the Committee: The American Civil Liberties Union urges you to support House Bill 2169, which would repeal the death penalty in Kansas.

No criminal justice system is infallible. One kind of mistake or another will always be made. Countries we consider less civilized – Iran, for example – agree as a society that it is worse to release someone who is guilty than it is to imprison or execute someone who is truly innocent. Consequently, the heavy hand of justice falls frequently and with little scrutiny of the facts or concern for the "rights" of the accused. Many innocent people are convicted and cruel punishments inflicted, including execution.

Other countries choose to err on the side of the innocent. Understanding their government is fallible, they establish protections for the accused which they know will increase the risk that some people who really are guilty will be released. In order to keep the police from searching the homes of some people just because they don't like them, warrants are required. Properly obtained evidence must be reviewed in court, with an attorney representing the accused. If found guilty, the person who is convicted has the right to an appeal, and those who serve time in prison are free from "cruel and unusual punishment."

The Bill of Rights to the US Constitution carefully articulates these rights, of course. The words resonate with us even when reality does not. And although it can be very hard to release someone who is guilty, it is much harder on our society and our national pride to hear that someone who served hard time was later proven innocent – or worse, that an innocent person has been executed.

Those who speak to you today will eloquently address many reasons to repeal the death penalty before the first execution is carried out in Kansas. The ACLU agrees that, nationwide, the death penalty is unconstitutionally arbitrary, especially for the poor and minorities. We agree that the death penalty is too expensive for a state looking for ways to save money. We agree that the threat of the death penalty has proven no effective deterrent to crime.

However, our main point is that this country has predicated its entire criminal justice system on ensuring the rights of the innocent who are accused of committing a crime -- and as the protections of due process have eroded in recent years, so the number of reckless, wrong convictions have increased. The only way to be sure no innocent person is executed in Kansas is to repeal the death penalty now.

Feds State
2-18-97
Ach # 11

WHY ONE CONSERVATIVE OPPOSES CAPITAL PUNISHMENT?

by
Pastor Robert R. Keller
February 18, 1997

I am a conservative. I am a conservative politically. I am a conservative fiscally. I am a conservative theologically. I am a conservative. I am registered as a Republican. I wear Rush Limbaugh ties. I even believe Newt got a raw deal. I am a Pastor of a church in the area. And most would consider me an Evangelical, perhaps even a Fundamentalist.

Probably most people would assume that I would be in favor of the capital punishment. They would assume that as a conservative, registered Republican, an Evangelical Christian pastor I would be in favor of the death penalty. I am not. I oppose it.

The death penalty debate is not a matter of conservative versus liberal. It is not Republican versus Democrat. It is not an even an issue where there is strong agreement in the religious community. There are strong Christian leaders I respect, who disagree on this issue.

I oppose the death penalty for several reasons.

1. As a fiscal conservative I oppose it because executions are not cost effective. Executions waste scarce law-enforcement, financial and personnel resources. An authoritative study by Duke University in 1993 found that for each person executed in North Carolina, the state paid over \$2 million more than it would have cost to imprison him for life, in part because of court proceedings.

I oppose the death penalty because I don't think it is the best way to fight crime. To deter crime punishment must be prompt and certain. Resources should be focused on that goal and on recidivists and career criminals, who commit a disproportionate share of all crime, including murder. I think it distracts society from more fruitful, less facile answers. It drains millions of dollars from more promising efforts to restore safety to our lives.

2. As a conservative Christian Pastor I will grant you, the Bible authorizes the state to use capital punishment. But the Bible also insists on justice for all...not just the rich, but also the poor. Not just those in the majority, but also those in minorities. Today, in America, the rich do not reside on death row. The death penalty is for poor people.

3. Finally, I oppose the death penalty because I believe the death penalty adds to the trauma and suffering of the murder victim's family. On the surface it might seem that it would be "comforting" to these family members to know that the one who took their loved one's life will pay the ultimate penalty. Unfortunately, while some may perhaps take pleasure in the death of their loved one's murderer, I seriously doubt that it will help them heal.

I think perhaps I might be able to speak with some authority on this subject. Over five years ago, in October of 1991 my own 12 year old daughter was kidnapped, raped and murdered. The man who killed our daughter was sentenced to at least 40 years in prison. Is that long enough? Will he suffer deeply enough? Does that pay for his crime? In a very real sense no amount of time would be enough. In fact, how many times would he have to die for it to be enough? How much suffering is enough? The fact is, his crime is so heinous, so depraved, there is no way he can pay for what he has done. But at least, the way things are, I know he will not be on the streets to do it again. And I also know we will not have to endure an endless series of appeals, and hearings. We won't have to face years of uncertainty and indecision by the courts. And we will not have to endure the final media circus as the day of death comes nearer. It is difficult enough to heal as it is without adding to it years of this kind of trauma.

And that's why I, as a conservative, oppose the death penalty. I urge you to abolish this practice, and seek out better, more effective ways to fight crime and protect our children, and ourselves from violence.

Fede State
2-18-97
Atch # 12

BEN COATES
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TOPEKA KANSAS

February 18, 1997

DEATH PENALTY OUTCOMES

- WE CAN GUARANTEE THAT ONE MORE FAMILY WILL MOURN THE LOSS OF A CHILD/SIBLING/SPOUSE.
- WE WILL KNOW, WITHOUT A SHADOW OF A DOUBT, THAT THE DEATH WAS PREMEDITATED. WHEN THE STATE KILLS A CITIZEN EVERYONE KNOWS WHAT THE OUTCOME WILL BE AND THE DELIBERATE CARRYING OUT OF THE ACT IN SPITE OF THAT KNOWLEDGE. CERTAINLY MEETS THE TEST OF PREMEDITATION.
- WE CAN BE ASSURED THAT THE VICTIM WILL NOT COME BACK AS A RESULT OF THE STATE'S ACTION.
- IF THE WILLFUL KILLING OF ANOTHER HUMAN BEING, REQUIRES THE DEATH OF THE PERPETRATOR TO SET THE BALANCE SHEET STRAIGHT, WHO WILL BE PUT TO DEATH IN A CASE WHERE AN INNOCENT PERSON DIES AT THE HAND OF THE STATE? WILL WE LOOK TO THE PROSECUTOR, THE WITNESS, THE POLICE OFFICER, OR WILL THE DEATH PENALTY ONLY BE RESERVED FOR THOSE WHO DO NOT HOLD OFFICIAL POSITIONS, ARE POOR, OR OCCUPY LOWLY SOCIAL POSITIONS.?

INTRODUCTION

There are many reasons why I am opposed to the death penalty. I am convinced that the state should never take the life of a citizen. The the state should preserve life; provision its members; care for its young, it's elderly and it's disabled. Putting a citizen to death even after a rigorous investigation and sufficient due process is foreign to this mission. States should not succumb to an eye for an eye and a tooth for a tooth philosophy. These bloody remedies may have had a place in a pre-enlightenment civilization that depended on the blood feud and the revenge of the clan to resolve differences. Once we adopted the concepts of reason and the value of the individual human life as guiding principles the taking of human life as payment for wrongdoing simply does not make sense. There must be some reason why civilized countries have turned their backs on the death penalty. We are left in the company of Russia, Iran, and Iraq; hardly a group to emulate. Even South Africa abolished the death penalty last year; thus we stand alone in the ranks of modern countries who purport to espouse Christian ideals

However, these arguments are moral concerns and are subject to individual conscience. There are more pragmatic reasons why I am opposed. I will deal with two such issues: the disproportionate application of the death penalty to the poor and minorities, and the question of innocence.

WHO GETS EXECUTED

African Americans make up less than 12 percent of the nation's population but 40 percent of the death row population, a 333 percent over-representation. The same disparity holds true for the number of persons executed and represents more than three times the expected percentage. When other non-whites are added in the percentage rises to 46 percent almost four times the expected average. Thus it becomes clear that the penalty is over applied to minorities; one of the powerful arguments why the death penalty was struck down in 1972. The so called unbiased application provisions necessary for death penalty statutes to meet constitutional muster have done little to remedy the disparity. The disparity is a function of prejudice coupled with poverty; a lethal combination for poor people and especially people of color.

Almost 70 percent of the death row inmates have previous felony convictions, but only eight (8) percent have a prior homicide conviction. Thus, while there is little doubt that these inmates have high levels of criminal history; there is little evidence to support the contention that these individuals have extensive histories of prior murders. In fact, over 30 percent have no prior criminal history at all, this is their only felony event.

THE QUESTION OF INNOCENCE

Justice Marshall wrote the following in the 1972 Furman decision:

"No matter how careful courts are, the possibility of perjured testimony, mistaken honest testimony, and human error remain all too real. We have no way of judging how many innocent persons have been executed, but we can be certain that some were."

These somber words written in 1972 still ring true. There is a great probability that mistakes will happen and innocent people will be put to death. This chilling possibility is reinforced by a 1993 U.S. House of Representatives staff report entitled INNOCENCE AND THE DEATH PENALTY: ASSESSING THE DANGER OF MISTAKEN EXECUTIONS. The report details 48 cases where the person sentenced to die was found to be innocent. (The number has risen to almost 70 individuals by now) There is no estimate of how many actually died before they could receive a new trial or someone came forward to confess. However, the report, like Justice Marshall, indicates that out of the 300 plus executions since the Forman decision the probability that an **INNOCENT PERSON HAS BEEN EXECUTED IS VERY HIGH**.

These findings identified several areas of concern within the process and clearly speak to the finality of the death penalty and the impossibility of correcting mistakes and deliberate misdeeds once the convicted person has been put to death. The only reason these 70 people are alive today is the perseverance of dedicated attorneys and family members. **You must remember all 70 were prosecuted, found guilty and sentenced to die, in spite of the array of due process protection's surrounding the trial.**

The report identified several themes present in the cases that were overturned:

RACIAL PREJUDICE - A black man was convicted of the murder of a white school girl. The school's five janitors were all suspects, but the police looked at the group and were reported as saying to the only black "Since you are the only nigger, you're elected." All blacks were struck from the jury pool and 166 of the 309 exhibits used at the trial were destroyed and unavailable

for an appeal. Prosecution witnesses perjured themselves. The wrongfully convicted man was granted a retrial 10 years later and all charges were dropped.

PRESSURE TO PROSECUTE - A black man, who had dated a white woman, in a small southern town was arrested after the murder of a white woman. He had a viable alibi, and there was no physical evidence linking him to the event. The state produced three witnesses including one supposed eyewitness. All three later recanted their testimony and the alleged eyewitness reported being pressured by the prosecutor to implicate the suspect. The man convicted served six years on death row before his case appeared on 60 minutes; then and only then did the state of Alabama agree to re-open the case and admit its mistake. He was released a year later.

OFFICIAL MISCONDUCT - Two men were released from murder convictions after an investigation indicated that the Los Angeles Police Department had been over zealous and had implicated two innocent men. The city of Los Angeles awarded them seven million dollars in damages.

These dramatic examples are representative of the remaining cases and point to the possibility for error either deliberately promoted by the state or accidentally. Luckily these men had advocates who kept them and their causes alive; without the intervention of the press, or a civil rights group all of these men would have perished at the hands of the state. The names of the men who were scheduled to be executed, but were found to be innocent are listed below

DAVID KEATON
WILBER LEE
FREDDIE PITTS
THOMAS GLADISH
RICHARD GREER
RONALD KLINE
CLARENCE SMITH
DELBERT TIBBS
EARL CHARLES
JOHNATHON TREADWAY
GARY BEEMAN
JERRY BANKS
LARRY HICKS
CHARLES RAY GIDDENS
MICHAEL LINDER
JOHNNY ROSS
ANIBAL JARRAMILLO
LAWYER JOHNSON
ANTHONY BROWN
NEIL FERBER
JOESPH BROWN
PERRY COBB
DARBY WILLIAMS
HENRY DRAKE
JOHN KNAPP
VERNON MCMANUS

ANTHONY PEEK
JUAN RAMOS
ROBERT WALLACE
JERRY BIGELOW
WILLIE BROWN
LARRY TROY
WILLIAM JENT
EARNEST MILLER
RANDALL ADAMS
JESSEE BROWN
ROBERT COX
TIMOTHY IIENNIS
JAMES RICHARDSON
CLARENCE BRANDLEY
PATRICK CRORY
JOHN SKELTON
GARY NELSON
BRADLEY SCOTT
KIRK BLOODSWORTH
FEDRICO MACIAS
WALTER MCMILLIAN
**PLUS 20 OR MORE NEW NAMES SINCE THIS
REPORT WAS PREPARED IN 1991**