

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 26, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Helen Pedigo, Office of Revisor of Statutes  
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Senator Haley  
Senator Jean Schodorf  
Richard Ney, Attorney  
Donna Schneweis, Amnesty International  
Professor William Arnold, Kansas Coalition Against the Death Penalty

Others attending:

See attached list.

Chairman Vratil opened the meeting. There were no bill introductions. The Chairman opened the hearing on **SB 6**.

**SB 6 Abolition of the Kansas death penalty**

Proponents:

Senator Jean Schodorf testified on behalf of her brother, Bill Kurtis, a graduate of Washburn Law School and successful journalist. Mr. Kurtis has covered many high profile murder cases and is no longer in favor of the death penalty. Mr. Kurtis wrote The Death Penalty on Trial. Senator Schodorf asked that the Committee read, as part of her brother's testimony, pages 12 through 16, and she provided copies of the book for the Committee members. (A copy of the book is on file with the Legislative Research Department.)

Senator Schodorf paraphrased from the book, stating that in the 80's, there was no DNA testing. In the '90s, DNA was used and began to reveal mistakes in investigations. She stated, on page 13 in the book, new studies showed reversible errors in seven of every ten capital cases in over 23 years of study. Senator Schodorf concluded, quoting her brother from his book, after he had done extensive research on the death penalty, "The statistics became disturbing to me. One-hundred-eighteen death row inmates were released because of wrongful convictions. Headlines seem to come daily about exonerations. I concluded there became too much of a risk of sending innocent men and women to death row and possible execution to continue the death penalty." (Attachment 1)

Senator Haley testified regarding an Audit that was performed by the Legislative Post Audit Committee in 2003, which stated that Death Penalty Cases in Kansas cost about 70 percent more than cases in which the death penalty was not sought. Additionally, death penalty cases tend to have higher costs at the trial and appeal stages. (A copy of the report, "Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections", dated December, 2003, is on file in the Legislative Division of Post Audit.) Senator Haley stated that the Division of Budget, in its Fiscal Note, stated that if the bill were passed, the savings at each trial case would be approximately \$300,000. Senator Haley also supplied a copy of a report from the January 24, 2005, issue of the Houston Chronicle, in which the Houston, Texas, Police Department announced that evidence from thousands of cases, including those of twenty-eight death row inmates would require external oversight. (Attachments 2-4)

Richard Ney, a Wichita Attorney, testified that Kansas' recent 10-year history with the death penalty has been one of arbitrariness, racial disparity, appellate reversals, and incredible expense. (Attachment 5)

## CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 26, 2005, in Room 123-S of the Capitol.

Donna Schneweis testified on behalf of Amnesty International, in support of the bill. Ms. Schneweis stated that, according to the Legislative Post Audit study on the Death Penalty, the median cost of a case in which the death sentence was given was \$1.2 million, compared to the same estimated costs for a non-death penalty case cost of \$740,000. Ms. Schneweis stated that Kansas already has life without parole as an alternative to the death penalty, and cited that the money saved could be spent for victim services, enhanced monitoring of persons on parole, or general crime prevention. (Attachment 6)

Professor William Arnold testified on behalf of the Kansas Coalition Against the Death Penalty in support of the bill. Professor Arnold stated that although the public wants to believe that having the death penalty deters crime, it does not. He provided a comparison of contiguous states, including Kansas, listing the rank order and murder rates between 1984 and 2003. Professor Arnold stated that, statistically, the death penalty may "kill the killer" so that individual may not kill again, but it leaves the homicide rate the same as before the killer was killed. (Attachment 7)

Chairman Vratil stated that the meeting time had run out, but that anyone wanting to testify would be given an opportunity to do so at another time before final action would be taken on **SB 6**.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for January 27, 2005.

# Please Route to All Guests

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/26/05

NAME	REPRESENTING
Donna Schneeweis	Amnesty International
Alma Tibur	MVA R
Van R. Arnold	KCADP
Richard Ney	
Jeff Lucas	MVFR
PAT SCALIA	BIDS
Randy M. Hearrell	KS Judicial Council
Doris Slocombe	League of Women Voters
John Granger	
Rosalie Granger	
Sarah Granger	
J Butler	KSC
B. Hammon	KSC
Scott Heidner	KADC
A. Harrison	KAAAC
Kevin Barone	KTLA
Jessie Bangum	KGC
Elisa Rawls	KNASW Intern
Suannah Meyer	KNASW Intern



A-1

SENATE JUDICIARY COMMITTEE  
TESTIMONY BY SENATOR JEAN SCHODORF  
REGARDING THE DEATH PENALTY (SB 6)  
JANUARY 26, 2005

Thank you, Mr. Chairman. Senator Haley has been working with my brother Bill Kurtis regarding his testimony. Thank you for allowing me to testify for my brother about the death penalty. He wishes he could be here, but he is in Los Angeles today.

I don't know if the committee knows that my brother attended Washburn Law School, graduated in 1966, and was studying for the bar when he volunteered to do the weather for WIBW. A tornado came over Burnette's Mound, and Bill and fellow journalist Jerry Holly, who is now working as a doorman here in the Senate, were both on duty when the tornado roared through Topeka. At that moment, my brother's destiny changed, and he left the law profession before he even started to become a journalist. He has covered many high profile murder cases and was always in favor of the death penalty.

About four years ago, Bill, Governor Graves, Senator Schmidt, and I were riding in a jeep at his ranch, and that is when I heard him talking to Governor Graves about his doubts. He has written a book on the death penalty, which you have, and would like you to read pages 12 to 16 as part of his testimony.

In the '80s, there was no DNA testing. In the '90s, DNA was used and began to reveal mistakes in investigations. On page 13, he indicates that new studies showed reversible errors in 7 of every 10 capital cases in over 23 years of study. In Illinois, the error rate in capital sentences was slightly over 66%. On page 14, he quotes, "Lawyers recognize that there are too many errors under the justice system to use it as a basis for taking a human life. It is a battle against judges who don't want the judgements questioned, against prosecutors and

defense attorneys who made mistakes, and against shoddy investigations.” On page 14 and 15, the possible reasons why the system routinely breaks down are listed.

In summary, after extensive research on the death penalty, “The statistics became disturbing to me. One hundred eighteen death row inmates were released because of wrongful convictions. Headlines seem to come daily about exonerations. I concluded there became too much of a risk of sending innocent men and women to death row and possible execution to continue the death penalty.”

Thank you for allowing me to present this testimony for my brother.

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SENATE CHAMBER

**DAVID B. HALEY**

SENATOR  
DISTRICT 4  
WYANDOTTE COUNTY

Good Morning and Thank You, Chairman Vratil, Vice-Chairman Bruce and ranking member Goodwin for allowing the Committee Schedule to have this Bill, Senate Bill 6, be heard. This bill, beginning with this Committee's favorable recommendation, could abolish the imposition of death on a criminal offender as a societal response (or "Death Penalty") in Kansas.

The Death Penalty became legal again in our great State in 1994 after a 22 year hiatus. Currently, approximately 75% of our 50 States have some form of a death penalty statute. In addition to the United States of America, other major countries in the world which sanction, and regularly administer, this once prolific practice are Iran, China and Iraq (the latter is scheduled to have a Democratic election later this week and may actually elect leadership which repeals death as a penalty in an effort to rid the "New Iraq" of the stigma of practices wielded by its deposed dictator; Saddam Hussein). Regardless of what Iraq does to institute reforms, Iran and China and, regrettably, our own Country will in all probably not.

As each of you are aware, 7 men have been sentenced to death in Kansas.

Earlier this Session, the members of this Committee were provided an Audit performed by our own Legislative Post audit Committee. (A second copy is being provided.) Without elaborating in as extensive detail as has been shared by Barbara Hinton, the peanut of these findings are found on Page ii of the Executive Summary and read: *(Please refer to report)*

The Division of Budget reports in its Fiscal Note if SB 6 is passed the savings at each trial case to be approximately \$300,000.

Reports the Houston Chronicle on Monday of this week (01/24/2005), the Houston (TX) Police Department announced that evidence from thousands of cases, including the involving of twenty-eight death row inmates (seven awaiting execution) would require external oversight. *(See Attachment)*

In closing, Mr. Chairman and Honorable Colleagues, please allow me to be frank. The death penalty, especially for our beloved Kansas, is just wrong. Period. I, along with countless others who may have begun as supporters of capitol punishment, now through education or through maturation or through salvation or a combination of these elements can no longer support barbaric, archaic ritual which has no redeeming social justice value. This statute is ridiculously expensive. This statute, in a Justice system which is not infallible, once administered is irreversible. This statute, in a Christian State in a Christian Nation, is an immoral contradiction. We, each of us, are but temporary stewards in this capacity as legislators. I realize this immutable fact. I hope each of you today actually realize that too. On our watch, we have the power to govern with policies of sound fiscal management. In this brief moment of public service, we hold the power to mete out appropriate punishments to heinous

COMMITTEE ASSIGNMENTS  
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ST. 1-26-05  
CORREC Attachment 2  
HEALTH

criminals while sharing compassion and justice for the victims and protecting our communities. We, in this session of many many sessions, today hold the moral authority to live out the commandment of "Thou shalt not kill" and respect the passage in scripture that "Vengeance is mine, sayeth the Lord" and to be a beacon to other States and to our own future legislatures ... Mr. Chairman, visionary colleagues, earlier this week Attorney General Phil Kline was quoted "As it stands today, Kansas doesn't have an offerable death penalty."

Simply, end it. We cannot mend it.



Submitted by  
Senator Haley

January 26, 2005

The Honorable John Vratil, Chairperson  
Senate Committee on Judiciary  
Statehouse, Room 522-S  
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 6 by Senator Haley

In accordance with KSA 75-3715a, the following fiscal note concerning SB 6 is respectfully submitted to your committee.

SB 6 would remove all references to the sentence of death in the Kansas criminal code and would list specific offenses that would require the sentence of life imprisonment without the possibility of parole. In essence, this bill would abolish the death penalty in Kansas. This bill would take effect after publication in the statute book. However, offenders who have been sentenced to death before the publication in the statute book still would be subject to execution.

According to the Board of Indigents Defense Services, passage of this bill would affect expenditures for both trial costs and appeal costs. On the trial side, a death penalty case under current law that would proceed as a non-death case under this bill would cost approximately \$200,000 per case. Death penalty trials currently cost approximately \$500,000 per case. As a result, savings at the trial level for these cases under this bill would be approximately \$300,000 per case. There would be no cost savings on cases where the sentence of death is already imposed. For appeal costs, the agency states that it cannot estimate an amount for savings per case, as death penalty appeals can continue for an average of 12 years from the commission of a crime. The Kansas Sentencing Commission states that the proposed legislation would have no effect on prison admissions or offender population levels through FY 2014.

Sincerely,

Duane A. Goossen  
Director of the Budget

cc: Pat Scalia, Indigents Defense Services  
Brenda Harmon, Sentencing Commission

Patti Biggs, Sentencing Commission  
Jeremy Barclay, Dept. of Corrections

Senate Judiciary

1-26-05  
Attachment 3

Submitted  
by  
SENATOR HALEY

Jan. 24, 2005, 10:10PM

## RANGERS TO REVIEW CRIME LAB

### HPD chief agrees to 'impartial review' by outsiders

By ROMA KHANNA

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AUSTIN - Houston Police Chief Harold Hurtt agreed Monday to let outside investigators examine the department's crime lab and property room, opening the scandal-plagued divisions to external oversight for the first time since problems were exposed more than two years ago.

Hurtt made the decision after state lawmakers, with the support of Lt. Gov. David Dewhurst, strongly urged Houston officials to immediately open to external scrutiny the Houston Police Department's efforts to catalog thousands of pieces of misplaced evidence. Lawmakers said doing so would restore confidence in the lab.

Hurtt said he has asked the Department of Public Safety for assistance.

"We welcome someone with credibility to work shoulder to shoulder with our project team," Hurtt said in a prepared statement.

Under a plan proposed by Houston-area Sens. John Whitmire and Tommy Williams, Texas Rangers from the DPS will step in, possibly within days. They will, according to a letter the senators sent to Mayor Bill White, conduct "an impartial review of which cases might be affected."

What effect the Rangers' presence will have on HPD's plans to hire its own outside investigator was unclear Monday. That person was to begin work in April.

Hurtt's agreement may end months of tension between lawmakers and local officials over how best to handle the crime lab problems. Whitmire, D-Houston, and Williams, R-The Woodlands, reiterated their concerns that HPD, without impartial supervision, is sifting through evidence from 280 mislabeled boxes discovered in the property room and deciding which cases may have been affected by problems with crime lab analyses.

"Enough is enough," said Whitmire, who chairs the Senate Criminal Justice Committee. "It is time for the city of Houston to see the urgency of this crime lab crisis because we cannot wait any longer for the city to put in place (an outside investigator.) This is too late and too slow."

#### Rebuilding confidence

#### RESOURCES

- [HPD Crime Lab special section](#)

- [Pauline Louie's letter](#)
- [E-mail correspondence between prosecutors about crime lab concerns](#)

■ **Audio:** Irma Rios, the new director of HPD's crime lab, talks about:

- [Her background and the new job](#)
- [What she plans to do in the position](#)

**Extra:** [Archive](#) of HPD crime lab coverage.

(Some files require [Acrobat Reader](#); audio requires the free [RealPlayer](#).)

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Dewhurst said crime lab controversies in Houston and around the state have put a "dark cloud" over the justice system and may require an overhaul of the statewide network of forensic labs.

"In Texas, we want to be tough on crime but to be tough on crime we have to be fair and just," he said. "If the fourth largest city in the United States cannot run a crime lab, what confidence do we have in smaller cities?"

HPD's crime lab has been under scrutiny after an audit exposed widespread problems with its procedures and personnel. Errors have since been identified in the work of several other crime lab divisions, including ballistics, serology and toxicology. Two men were released from prison after HPD's errors on work in their cases were exposed.

In August, HPD announced it had discovered in its property room mislabeled evidence from thousands of cases. The cases date to the 1970s and include evidence used against 28 death row inmates, including seven who await execution.

Two Harris County grand juries examined the crime lab problems without the traditional direction of a prosecutor. The Police Department and the Harris County District Attorney's Office, which is overseeing the retesting of evidence from hundreds of cases processed by HPD analysts, have been conducting the primary investigations.

Problems similar to those at HPD have been uncovered at crime labs around the state, including those run by the DPS, which conducted the analyses that led to the wrongful conviction of an El Paso man, who was released from prison last year after serving 17 years.

Dewhurst said problems in Houston and statewide may signal the need for an overhaul of the state's forensic system, which comprises a "patchwork" of labs run by large cities and counties around the state and DPS-run labs that serve smaller jurisdictions.

### **'One gold standard'**

Among the ideas Dewhurst asked Whitmire to explore are centralized state crime lab or several regional crime labs.

"I guess my instincts are that we eliminate controversy if we have one gold standard and it's done on more of a centralized basis," Dewhurst said.

In his statement, Hurtt said he agrees that regional crime labs should be created.

[roma.khanna@chron.com](mailto:roma.khanna@chron.com)

Testimony before the Senate Judiciary Committee  
January 26, 2005  
Senate Bill 6

Richard Ney  
Ney, Adams & Sylvester  
200 N. Broadway, Suite 300  
Wichita, Kansas 67202  
(316) 264-0100

Kansas' recent 10-year experiment with the death penalty has been one of arbitrariness, racial disparity, appellate reversals and incredible expense. This should be no surprise, however, since this has been the history of capital punishment throughout the nation.

The legal debacle created by the *Marsh* and *Kleypas* decisions does not make Kansas an aberration. State after state has seen the majority of its death sentences reversed, even with unflawed statutes. A Columbia University study found that of 4,578 death sentences adjudicated completely, i.e., through federal habeas review, during a 23-year period, 68% -- more than two out of three -- were found to be "seriously flawed." According to the study, 1,885 death sentences (41%) were reversed because of serious error when reviewed on direct appeal. Of the death sentences that survived state direct and post-conviction review, 599 were federal review. Of those 599 death sentences, 237 (40%) were reversed due to serious error. Based on the foregoing, the study concludes that nationally, the overall error-rate in our capital punishment system was 68%. Error rates in the two most experienced death penalty states tracked this basic average, with 52% of Texas cases reversed and 73% of those from Florida.

Non-death belt states fared no better. The reversal rate of New Jersey capital cases reviewed on state direct appeal alone is 70%. Of 51 death sentences reviewed on direct appeal, the

New Jersey Supreme Court found reversible error in 36. A high affirmance rate by a state's highest court does not change the overall reversal rate. The California Supreme Court, one of the most conservative in the nation, reverses only 10 percent of death sentences, one of the lowest rates in the country. However, federal courts have reversed 62 percent of the sentences affirmed by the California court, the highest rate nationally, resulting in an overall reversal of two out of every three capital cases.

Neither does the amount of funding for death penalty defense alter the two-thirds reversal rate. California typically spends much more money on capital cases than most states, but the dozens of death sentences reversed since 1987 involved trials marred by the same types of problems found in states known for spending less on capital cases, such as Texas and Alabama: lawyers who put on perfunctory defenses; prosecutors who concealed evidence; and mistake-prone trial judges.

If the death penalty continues in Kansas, with a repaired statute, we can look forward to two cases reversed for every case upheld. This Legislature must decide if this is a course worth pursuing.

Besides being prone to reversal, the death penalty is both racially and geographically biased. The recent report issued by the Kansas Judicial Council Death Penalty Advisory Committee examined the State's application of capital punishment and the hefty price tag of seeking the death penalty. The Committee found that since Kansas reinstated the death penalty in 1994 there were 44 potential capital cases involving minority victims. However, none of these cases resulted in a death sentence. Of the eight defendants in Kansas who did receive death sentences, all of their victims were white. This racial disparity in Kansas is mirrored in the practice in the rest of the nation. As

has been the case for many years, the great majority of those executed in 2004 were guilty of murdering white victims. Only 12% of those executed were convicted of murdering a black person, despite the fact that blacks are victims in about 50% of murders in the U.S. Texas, which has carried out 336 executions since the death penalty was reinstated, has executed only one white person for the murder of a black person, and in that case there was also a white victim.

Geographic disparity is also an issue in Kansas. Sedgwick County had 17 potential capital cases. Wyandotte County had 25. Sedgwick County went to trial in eight of its 17 capital cases, Wyandotte only two. Of the eight death sentences imposed in Kansas in the past 10 years, six originated in Sedgwick County and only two cases were from the entire rest of the state. No death verdicts have come in Wyandotte County cases, although that county has the most potential capital cases of any county in the state. The Legislature must ask itself if a law this arbitrarily enforced represents justice at all.

All of these systemic failures come when, by every measure, the death penalty in the U.S. is at its lowest ebb in popular support

One of the best measures of public support for the use of the death penalty is the number of death sentences meted out annually. In the late 1990s, the number of death sentences in the country averaged about 300 per year. That rate has dropped by 50%. The Bureau of Justice Statistics reported 144 death sentences in 2003, the lowest number in 30 years, until 2004 when there were 130 death sentences.

The size of death row had increased steadily from 1976 until 2001. Since 2001, however, it has been in decline. One year ago, the NAACP Legal Defense Fund reported 3,504 people on death row; at the same time this year, the total was down to 3,471. The decline this year

occurred even without a large number of commutations as occurred in Illinois in 2003.

Actual executions in 2004 were down 10% from 2003 (from 65 to 59), and they have dropped 40% since 1999. Again, in 2004, the great majority (85%) of the executions took place in the South. Only 2 states outside of the South (Ohio and Nevada) carried out executions last year. Seventeen percent of those executed this year waived their appeals.

Public support for the death penalty has also declined. This is shown most clearly in opinion polls that offer a choice between the death penalty and life without parole as the appropriate sentence for first-degree murder. When those options are considered, support for the death penalty has dropped and support for life without parole has steadily increased, so that they are now within a few percentage points. The Gallup Poll of May 2004 reported that 50% of respondents favored the death penalty while 46% favored life without parole, a difference close to the 3-point margin of error in the poll. In 1997, the difference between these two choices was 32 percentage points.

The continuation of the death penalty in Kansas will be a futility which will result only in more reversals, more disparity and more expense. I urge you to pass Senate Bill 6 and end this 10-year folly.



Submitted  
by DONNA  
Schneeweis

**SB 6**  
**Senate Judiciary Committee**  
**January 26, 2005**

Chairman Vratil and Members of the Committee, my name is Donna Schneeweis. I appear on behalf of Amnesty International, a worldwide human rights organization. Our mandate is based on the Universal Declaration of Human Rights and other international human rights treaties. We oppose the death penalty without reservation as a violation of the right to life and the right to freedom from cruel, inhuman degrading treatment or punishment. We have nearly 1800 Kansas members.

Today I want to speak with you about the real dilemma of the cost of capital punishment. Kansas is no different than other states. Death penalty cases are more complex and the fiscal impact far different than non capital homicide.

The Kansas Legislative Post Audit "Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections", December 2003 reported:

- \* **"Cases in which the death penalty was sought and imposed could cost about 70% more than cases in which the death penalty wasn't sought.**
- \* *"The estimated median cost of a case in which the death sentence was given was \$1.2 million, compared to the same estimated costs for a non-death penalty case of about \$740,000.*
- \* *"The State will bear about 85% of the total estimated and projected costs for the 14 cases in which the death penalty was sought.*
- \* **"Death Penalty Cases tend to have higher costs at the trial and appeal stages."** [all from Executive Summary, page ii]

The Office of the Judicial Administrator's response to the cost study noted the impact of death cases on the courts:

*"State v. Kleypas placed a tremendous burden upon the resources of the court system, both at the district court and the Supreme Court level. Kleypas involved a great deal of judicial resources as the first case to reach the Supreme Court since the death penalty was reinstated in Kansas by statute in 1994...."* [page 46]

**Donna Schneeweis, State Death Penalty Abolition Coordinator**  
827 SW Tyler, Apt. 21, Topeka, KS 66612 785-234-3061 dms2@mind

**Amnesty International is a worldwide grassroots movement that promotes and defe**

Senate Judiciary

1-26-05  
Attachment 6



Mr. Schwartz's reply also address the question of future cases. "However, it has been the experience of other jurisdictions that have had a death penalty for much longer periods than Kansas that these cases never become routine. It is not a reasonable expectation that death penalty cases will ever be easily or quickly resolved, given the nature of the cases and the nature of the death penalty itself." (latter emphasis not in original) [page 46]

Multiple components of the legal process in death penalty cases play out differently in capital cases. The Post Audit study noted these:

- \* There are an increased number of attorneys involved in a given capital case, both prosecution and defense.
- \* The number of issues that result in motion filing and hearings is larger.
- \* Change of venue can be an issue in these cases.
- \* Jury selection process is lengthier.
- \* Trials last longer.
- \* A separate penalty phase is conducted to determine if death penalty is given.
- \* Expert witnesses may be used to testify on DNA and other forensic test results.
- \* Mitigation evidence investigations are conducted.
- \* Psychiatric and medical evaluations are conducted.
- \* The number of issues on appeal is greater.
- \* Cases can be reversed or remanded back to trial court.

On Monday, Ms. Scalia spoke to you about State Board of Indigent Defense Services and the implications of the current legal limbo of the Kansas death penalty. Most cases are proceeding forward in some fashion, with expenses being incurred when we don't even know if the law is valid. As Ms. Scalia noted, the current death penalty trial in Montgomery County and the possibility of two different juries for the guilt and penalty phases is an issue ripe for appeal.

The reporting about the Marsh case has all been about Section K.S.A. 21-4624(e). This case is an example of cases being remanded or reversed. There was a unanimous finding by the State Supreme Court that the trial judge failed to allow evidence critical to Marsh's defense. The Court threw out his capital murder and aggravated arson convictions. No matter what happens to 21-4624 (e), there will have to be a whole new capital trial for Marsh.

The question is not, "Will it be the death penalty or let the murderers go free". Kansas has life without parole now as the alternative to the death penalty. Capital murderers can be kept off our streets. Every Kansas dollar spent in the quest for death is one dollar that you don't have for victim services, for enhanced monitoring of persons on parole, for general crime prevention.

In conclusion, I invite you to consider whether the death penalty may be the Kansas equivalent of Vioxx. Our death penalty was put "on the market" 10 years ago by well meaning legislators who thought it would have positive benefits for our state. The "side effects" of Kansas' death penalty are an ever mounting list of cost dilemmas, legal questions, errors. In government, as in medicine, there is an ever greater emphasis on actual performance data. I ask you to consider this: given all that we know now about the death penalty law's performance, is it not time to "pull it off the market" and relegate it to the history books?

I urge your support of SB 6. Amnesty International earnestly hopes that Kansas does not return to the ranks of the executing states.

## Failure of the Death Penalty

### As a Deterrent to Crime

---William R. Arnold, Associate Professor  
Emeritus of Sociology (Criminology)  
26 Jan. 2005

Almost everything that could be known about the failure of the death penalty to deter crimes made capital was already known by 1980. Thus, many of the definitive studies I mention here may seem to be out of date, but more recent studies have merely refined the older studies.

- I. The public wants the death penalty because they believe it will deter crime. The 1973 Harris poll taken when about two-thirds of the people wanted the death penalty to be available also asked:
- A. If a sentence in prison were as effective a deterrent, would you favor the death penalty?  
48% said no, while 30% said yes.
  - B. Do you favor the death penalty as revenge (eye for an eye, etc.)? 49% said no, while 40% said yes
  - C. Do you favor the death penalty because the criminal is "an animal and deserves to die"?  
51% said no, while 41% said yes.

The people believed that the death penalty deterred crime, so voting for the death penalty if it does not deter crime merely contributes to public misunderstanding, not crime control.

II. The death penalty does not deter people from committing crimes made capital, nor does it deter crime in general.

- A. The safety of the public is no greater when the death penalty is available.
  1. Older, simpler studies from 1920 through 1968 which compared contiguous states having and not having the death penalty available showed there were no systematic differences in their homicide rates
  2. Similarly, older studies comparing the changes in homicide rates in contiguous states as each or both changed their death penalty laws over time showed no variations in accord with the availability of the death penalty.
  3. Only four studies (the most recent one done when Oklahoma resumed use of the death penalty) have been done well to determine whether the publicity about executions affected homicide rates. In two of the studies, the homicide rates stayed constant, while in two they went up.
  4. Three studies in 1975 and 1976 supported the deterrent effect of the death penalty. All were time series studies in which the results depended on the declining use of the death penalty and the rising homicide rates of the 1960s. The longer term data series used in these studies, themselves, do not support the deterrence doctrine. Two of these studies used simple national data which ignored any differences between states with and without the death penalty. Forst's 1977 article demonstrates that when methodological problems are eliminated and other control variables added (especially the rise in non-capital crime), even the data from the 1960s do not support the deterrence doctrine.

Senate Judiciary

1-26-05  
Attachment 7

5. Studies in more recent years are the most sophisticated, taking into account all the variables we have learned contribute to homicide rates. These have demonstrated that:
- a. The certainty of the application of the death penalty has no effect on its deterrent capacity
  - b. The speed of executions after sentencing has no effect on the deterrence of the death penalty.
  - c. Which years are used has no effect on the outcome of the research; no deterrent effect can be shown in any period in the last century, and we have no adequate data for earlier periods.
  - d. Varying the measures of both punishment and "murder" has no effect on the results.
  - e. With all other variables controlled, there is actually a positive (but not statistically significant) correlation between executions and homicide rates. This fact explains why, even though the killer who is killed can not kill again, eliminating these people leaves the homicide rate, at best, the same as before.

B. Making murder a capital offense has no effect on the homicides of police and prison personnel. For example, without any variables controlled, one study showed that from 1919-1954, the number of police officers killed in states with capital punishment was 1.326 per 10,000 officers; in states without the death penalty, the comparable rate was slightly lower, 1.312. Simple assaults on prison staff were, however, significantly higher in states without the death penalty

C. I close with a repetition of one of the earliest kinds of studies of deterrence, comparison of contiguous states, Kansas and three of our neighbors. The data on the next page are self-explanatory. If Galliher, Keys, Koch, and Guess (2002, America without the Death Penalty, Boston: Northeastern, with Kate M Gonigal on Ch. 9 about Iowa) are correct, Kansas and Iowa are similar in "low murder rates, a low minority population, as well as a long abolitionist tradition" ) P. 172.

Overall, it appears that if you want to reduce the murder rate in Kansas, even if ever so slightly, you will abolish our death penalty (finding II5e above).

**RANK ORDER & MURDER RATES PER 100,000 INHABITANTS OF  
KANSAS, IOWA, OKLAHOMA AND MISSOURI  
ACCORDING TO THE UNIFORM CRIME REPORT 1984- 2003**

Year	US Avg	Kansas		Iowa		Oklahoma			Missouri		
		Rate	Rank*	Rate	Rank	Rate	Rank	Executions	Rate	Rank	Executions
1984	7.9	3.7	35	2.0	45	7.8	18		7.1	22	
1985	8.0	4.9	30	1.9	48	7.7	21		8.1	16	
1986	8.6	4.4	36	1.8	49	8.1	19		9.2	14	
1987	8.3	4.4	35	2.1	47	7.5	22		8.3	17	
1988	8.5	3.4	39	1.7	50	7.4	21		8.0	18	
1989	8.7	5.5	29	1.9	48	6.5	24		7.9	19	1
1990	9.4	4.0	39	1.9	48	8.0	20	1	8.8	19	4
1991	9.8	6.1	28	2.0	46	7.2	23		10.5	17	1
1992	9.3	6.0	28	1.6	49	6.5	24	2	10.5	13	1
1993	9.5	6.4	27	2.3	48	8.4	20		11.3	11	4
1994	9.0	5.8	28	1.7	46	6.9	22		10.5	13	
1995	8.2	6.2	26	1.8	48	12.2	3	3	8.8	16	6
1996	7.4	6.6	24	1.9	48	6.8	23	2	8.1	15	6
1997	6.8	6.0	24	1.8	46	6.9	21	1	7.9	14	6
1998	6.3	5.9	23	1.9	47	6.1	22	4	7.3	16	3
1999	5.7	6.0	20	1.5	49	6.9	14	6	6.6	17	9
2000	5.5	6.3	13	1.6	45	5.3	22	11	6.2	15	5
2001	5.6	3.4	32	1.7	45	5.3	20	18	6.6	12	7
2002	5.6	2.9	34	1.5	46	4.7	24	#7	5.8	17	#6
2003	5.7	4.5	28	1.6	47	5.9	18	#14	5.0	23	#2

\* Rate refers to the rate per 100,000 inhabitants. Rank refers to rank order of the 50 United States.  
Data supplied by the U.S. Dept. of Justice & the NAACP Legal Defense Fund.