

M I N U T E S

SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

November 9-10, 1976

Members Present

Representative Lloyd D. Buzzi, Chairman
Senator Neil H. Arasmith, Vice-Chairman
Senator Arden Booth
Senator Jim Parrish
Senator Ed Reilly
Representative Tom Slattery
Representative Ken Marshall
Representative Joseph Mikesic
Representative Earl Ward
Representative Jack Rodrock
Representative Fred Harris

Staff Present

J. Russell Mills, Jr., Kansas Legislative Research Department
Donald L. Jacka, Jr., Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office

Others Present

Karen Blank, American Civil Liberties Union, Topeka
Dorothy Koepsel, Manhattan
Dean A. Hinnen, Harris Publications
Vincent DeCoursey, Kansas Catholic Conference, Kansas City
Ruth Groves, AAUW and Episcopal Diocese, Topeka
John C. Hazlet, Department of Corrections, Topeka
Edwin Acoba, Student, Kansas University
Joel R. Maillie, Lawrence
W. R. Arnold, Kansas Citizens for Justice, Lawrence
Sister Dolores Brinkel, Catholic Social Services, Kansas City
Randall H. McIver, Legal Services for Prisons, Hutchinson
Reverend E. Louis Branch, A.M.E. Church, Wichita
Roy Harden, McPherson
Edith Stucky, Western District Mennonite Church, McPherson
Maynard Shelly, Mennonite Church, Newton
Walter Neufeld, Mennonite Church, Moundridge
Hilda Jantzen, Southern Hills Mennonite Church, Topeka
Jerry Federgreen, Topeka
Jim Marquez, Governor's Pardon Attorney
Father Richard Wempe, Shalom House, Kansas City
Darlene Stearns, Kansas Council of Churches
Nick Tomasic, Wyandotte County District Attorney
Roger Theis, Attorney General's Office

November 9, 1976

Morning Session

Proposal No. 64 - Death Penalty

The meeting was called to order by Vice-Chairman Arasmith who introduced Ms. Karen Blank of the American Civil Liberties Union. Ms. Blank showed a film which dealt

with capital executions and contained interviews with individual penal officials. She also distributed material to members (Attachment I.) A letter from Dr. Karl Menninger was also distributed (Attachment II.)

Mr. Forrest Swall, Committee on Penal Reform of the Kansas Mental Health Association, notified the Committee that he would submit a printed statement later in opposition to the death penalty.

Mr. Vincent DeCoursey, representing the Kansas Catholic Conference, spoke in opposition to any legislation which would reinstate capital punishment (Attachment III.) He testified that he represented the four Catholic bishops of Kansas. A member inquired if there are any bishops who dissent in this position. Mr. DeCoursey stated that this is the official position of all of the Catholic bishops in the United States, but agreed that he would be surprised if this were a unanimous agreement.

Another member asked if Mr. DeCoursey could offer a solution to the problem of serious crime. Mr. DeCoursey replied that there are laws dealing with capital offenses now. The member expressed concern about "repeaters." Mr. DeCoursey stated that he felt there were other remedies than taking the life of an individual.

Mr. William Arnold, Kansas Citizens for Justice, presented a prepared statement (Attachment IV.) He noted that public opinion has varied over the years: in 1953, 68 percent of the people favored the death penalty, but in 1966, the percentage had dropped below 52 percent, and in 1972, was up again to 57 percent. He testified that the percentages also vary among men, women, and ethnic groups. He stated that his concern is with the kind of evidence which is available to indicate whether or not capital punishment is a deterrent. He suggested that there is no significant difference in the homicide rate in states with or without capital punishment.

Father Richard Wempe, Shalom House, appeared on behalf of Father George Seuferling, who was ill. Father Wempe also represented the Priests' Council, Peace and Justice Committee. Father Wempe offered a number of exhibits as he appeared in opposition to capital punishment (Attachment V.) He testified that statistics of law enforcement agencies in England do not indicate that capital punishment is a deterrent. Father Wempe stated that he questioned the morality of capital punishment in that it violates the rules of human dignity and gives no opportunity for rehabilitation. He urged that capital punishment not become a "virtue" in Kansas.

A member inquired if Father Wempe could give the Committee a poll of the Priests' Council. Father Wempe stated that he had not asked for a specific commitment from individual Council members, but agreed he would be willing to do so. The member explained that he had talked with a number of Catholics who were in favor of such legislation and questioned how truly representative the Council might be. Another member asked Father Wempe to give the Committee his remarks in written form. Father Wempe agreed to do so at an early date.

Darlene Stearns, representing the Kansas Council of Churches, appeared in opposition to legislation reinstating capital punishment. She also distributed a position paper (Attachment VI.) She explained that the list of supporting churches has been distributed before, but this list adds American Baptists. She noted that this is the only issue upon which all of the churches agree.

The Chairman suggested that members look at proposed Committee reports before recessing for lunch.

Proposal No. 20-Alcoholic Liquor Price Affirmation

Mr. Mills distributed copies of the proposed report concerning Proposal No. 20 (Attachment VII.) He pointed out that the Committee had instructed him to prepare a conclusion section recommending no additional studies or changes in the law. It was moved by Representative Slattery and seconded by Senator Arasmith that the report be adopted. Motion carried.

Proposal No. 19 - Rural Airport Development

Mr. Mills distributed a proposed report concerning Proposal No. 19 Attachment VIII.) He noted that the Committee had instructed that the report state that an airport

aid program is desirable but, because of constitutional restrictions, the proposed legislation would provide only for planning grants. The Vice-Chairman stated that he was not certain he liked the phrase "desirable and appropriate" and moved that the word "appropriate" be deleted. Motion was seconded by Representative Slattery and carried by a majority vote.

Miss Torrence explained that she had made some clean-up amendments in the bill draft but that the only substantive change was the addition of Section 11 (Attachment IX.) This section concerns the sales tax exemption for aircraft fuel. She explained that there was also a change on page 4 dealing with a percentage match formula of the planning program. It was moved by Senator Arasmith and seconded by Representative Ward that the "up to 50%" provision be approved by the Committee. Motion carried.

Miss Torrence mentioned that another suggestion was to delete subsections (3) and (5) on page 6 since this section gives KDOT the power to engage in airport development, which the Attorney General ruled is unconstitutional. It was moved by Senator Arasmith and seconded by Representative Ward that these items be stricken as suggested. Motion carried.

Miss Torrence explained that the Secretary of Revenue had suggested a change in Section 3(a) regarding the definition of "manufacturers." It was moved by Senator Parrish and seconded by Representative Rodrock that this suggestion be adopted. Motion carried.

It was moved by Senator Parrish that the Committee report be approved and that the draft bill, as amended, be forwarded to the Coordinating Council with the request that the bill be introduced in the House. Motion was seconded by Representative Rodrock and carried by a majority. Senator Arasmith asked to be recorded as dissenting.

Minutes

It was moved, seconded and carried that the minutes of the previous meeting be approved. The meeting was recessed until 1:30 p.m.

Afternoon Session

Proposal No. 64 - Death Penalty

The meeting was reconvened by the Chairman. Colonel W. L. Albott, Director of the Kansas Bureau of Investigation, appeared in support of death penalty legislation. He stated that there is already a death penalty in Kansas: criminals are imposing the death penalty upon victims so there will be nobody to testify against them. Colonel Albott testified that he believes capital punishment is a deterrent, and offered a printed statement to supplement his remarks (Attachment X.)

A member inquired if Colonel Albott had figures to indicate that the death penalty would be a deterrent. Colonel Albott replied that he does not believe figures are available because, through the years, the imposition of the death penalty has not been consistent. He noted that he has personally talked with criminals who indicated that their actions had been dictated by the certainty that such penalty would never be imposed.

A member pointed out that it had been suggested that there is a different brand of justice for minorities, and inquired if the Colonel believed this is true. Colonel Albott stated that at the present time he does not believe this is true. He believed that some of the best lawyers are public defenders and that, regardless of money or status, everyone can receive equal defense. He stated his concern that prosecution might be second-rate because of the great turnover in prosecutors.

Mr. James Reardon of the Kansas County and District Attorneys Association appeared in support of legislation to reinstate the death penalty (Attachment XI.) He explained that Mr. Nick Tomasic of Kansas City had wanted to appear but was unable at this time, and hoped to appear before the Committee at a later date. Mr. Reardon testified that a majority of the members of his association are in favor of the death penalty

and that, generally, their feelings go along with the Gregg v. Georgia case upon which the proposed legislation is based. He pointed out that the U.S. Supreme Court had studied the Eighth Amendment and looked into its history in making the decision that values must be assessed by today's standards. He stated that, in recent years, the emphasis has been on rehabilitation rather than retribution, and, during that time, murders have doubled and other crimes have increased. He stated that the U.S. Department of Justice has conducted a poll which indicated that nearly 70 percent of American citizens feel that they are not properly protected against crime in the streets. Mr. Reardon distributed an article by Patrick J. Buchanan (Attachment XII.)

Proposal No. 61 - Statewide Building Codes

The Chairman asked members to look at the proposed Committee report concerning Proposal No. 61 - Statewide Building Codes (Attachment XIII.) It was moved by Senator Arasmith and seconded by Representative Ward that the report be adopted. Motion carried by a majority vote.

Miss Torrence discussed the proposed bill and described the changes which had been previously directed by the Committee (Attachment XIV.) Section 3(c) requires meetings of the Advisory Council to be held within the state. New Section 4 was added to establish the office of the Administrator, provide for his appointment and specify to whom he is responsible, and set the Administrator's qualifications. On page 7, the section which formerly allowed the use of existing building codes has been deleted. On page 8, new Section 8(a) provides that municipalities adopting the code would be responsible for code enforcement. New Section 11 on page 10 was added to allow municipalities to assess fees for enforcement purposes. New Section 12 deals with appeals and sets time limits within the appeal process.

Section 14(b) deals with counsel for officials who may have charges brought against them in the enforcement of their duties. Sections 17, 18, 19 and 20 are new and were added to prevent municipalities from adopting codes which conflict with the state code. It was moved by Representative Harris and seconded by Senator Booth that the bill be accepted. Motion carried by a majority with Senator Booth abstaining.

It was moved by Representative Rodrock and seconded by Senator Reilly that the Committee recommend that the bill originate in the Senate. Motion carried by a majority.

Proposal No. 60 - Steam Boiler Insurance and Inspections

The Chairman asked for discussion on the proposed bill regarding steam boiler insurance and inspection (Attachment XV.) Miss Torrence explained that the bill repeals the existing mandatory insurance law and that some new exemptions in Section 3 were drafted at the direction of the Committee. It was moved by Representative Ward and seconded by Senator Arasmith that the bill be approved and recommended for introduction. Motion carried.

Mr. Mills distributed copies of the proposed Committee report and pointed out that the conclusion section reiterates the action taken by the Committee in its decision to introduce legislation (Attachment XVI.) Further, the conclusion section clarifies the Committee's intent that the program become self-supporting. It was moved by Senator Arasmith and seconded by Representative Ward that the Committee Report be adopted. Motion carried.

Proposal No's. 21-22

Miss Torrence explained that, as a result of past Committee discussions and instructions, she has made a change in the standard for transfer: the new standard requires a finding that the transfer is not detrimental to the best interest of the individual and also not detrimental to the public safety. There was another change in defining "mentally ill" to follow the definition in S.B. 26. There was no objection to these changes.

Proposal No. 64 - Death Penalty

The Chairman stated that the Committee had been furnished two proposed versions of a death penalty bill: one prepared by the Governor's Office (Attachment XVII); and one prepared by the Attorney General's Office (Attachment XVIII.) He urged members to study these proposed bills.

The meeting was recessed until 9:30 a.m. on November 10th.

November 10, 1976
Morning Session

Proposal No. 64 - Death Penalty

The meeting was called to order by the Vice-Chairman who introduced Mr. Ken North, representing Kansas Citizens for Justice. Mr. North explained that it is the goal of Kansas Citizens for Justice to present a balanced perspective with regard to criminals and victims. He stated that the proposal offered by the Governor's staff is one of the best he has seen and is consistent with the U.S. Supreme Court Decision, but he expressed concern about its constitutionality. He was also of the opinion that whatever legislation is passed will be challenged and that the Legislature should address the issue of what the compelling interest of the state might be. He urged members to be aware that in considering deterrents, one is also considering rewards. He felt that, even if such a bill is passed, it is not likely that the death penalty would ever be imposed because of the many avenues available for appeals.

The Vice-Chairman stated that he could not decide if Mr. North was speaking for or against such legislation. Mr. North stated that his organization is on record as being opposed to any kind of capital punishment.

A member noted that, in the case of speed limits on streets and highways, arrests and fines are a deterrent to speeding. Mr. North agreed this is a valid observation, but this is still a situation of rewards and benefits versus risk, and he doubted that many individuals who commit serious crimes use this type of reasoning process.

Sister Dolores Brinkel, Catholic Social Service in Kansas City, appeared in opposition to the death penalty (Attachment XIX.) She urged the Committee not to recommend such legislation. She noted that studies show that capital punishment does not deter crime, that it discriminates against the poor and the minorities, and that it violates the ideal of human dignity.

A member inquired what the government should be doing, if the system is as bad as is claimed. Sister Dolores stated that it is the poor, who do not have resources for defense, who are spending time in jail; that there should be pre-trial programs available; that court-appointed attorneys are often not qualified to do an adequate job; that the courts and the correctional system should be concerned about the human being; and that there should be a commitment to help people while they are in prison.

The Chairman inquired what should be done with those criminals that simply cannot be changed. Sister Dolores stated they should be held in prison. She agreed that there are psychotic and psychopathic inmates for whom no treatment would be effective, but that the system does not provide anything for them to do while they are in prison.

Another member inquired what her position would be to placing the capital punishment issue on the ballot for Kansas citizens to decide. Sister Dolores stated that it would still be morally wrong.

A member asked what might be an effective deterrent alternative. Sister Dolores stated that she believes the basic cause of violence is the tension and struggle of people to survive. Something needs to be done to supply human needs. She felt that prejudice was an important factor. She also felt that poverty is the basic problem. She expressed the feeling that perhaps additional funding for Human Rights Commissions, the Citizens Advisory Board, the Ombudsman's Office, subsidized education, and more help for the poor would be ways to work in this regard. She also urged intensive work with first offenders in their local communities.

Another member stated that much attention is being given to the criminal, but little consideration to the victim. Sister Dolores agreed that there should be victim compensation legislation and stated that she had worked on such proposals.

The Reverend Lewis Branch of the African Methodist Episcopal Church appeared in opposition to capital punishment. He stated that such a law always discriminates against the poor and the minorities. He stated that capital punishment is inconsistent with moral aspects, even though there is an increase in crime, and that it is surely possible to develop a more meaningful and effective strategy to reduce crime. One strategy could be full employment, income maintenance, and adequate legal services for the poor and minorities.

Mr. Maynard Shelly, representing the Western District Conference of the Mennonite Church, appeared in opposition to legislation which would impose capital punishment. He offered a printed statement for study by the Committee (Attachment XX.) He noted that rarely has the death penalty been imposed upon women, and that equal consideration should be given to men. A member inquired concerning the proportion of women versus males who commit capital crimes, and also the proportion of minorities versus whites who commit such crimes. Mr. Shelly stated he was not in possession of statistics in regard to women, but noted that approximately 50 percent of the people on death row are minorities, mostly blacks, and that they constitute between ten and thirteen percent of the population. He stated there is a larger incidence of crimes against blacks.

Mr. Shelly introduced Walter Neufeld of Moundridge, Edith Stucky of McPherson, and Roy Harden of McPherson, who are also representatives of the Mennonite Conference, and who oppose capital punishment.

Mr. Roy Harden, McPherson, testified as an ex-convict about his experience of being convicted and serving a sentence for an accidental death. He expressed the belief that, if he had been affluent and not a minority, he would not have been convicted. He offered a printed statement detailing the circumstances of his case (Attachment XXI.) A member inquired about the previous statement that the poor and minorities sometimes have inadequate representation, and asked if it were possible that Mr. Harden's defense counsel might have been more able than the prosecutor. Mr. Harden agreed that this may have been possible.

Mr. Nick Tomasic, District Attorney from Wyandotte County, appeared before the Committee in support of capital punishment. He stated that he would prepare a written statement later but that he was speaking only from notes. He stated that the immediate problem facing law enforcement people is that there are people who are criminals and there are those who commit criminal acts, and that there is a definite distinction. He told the Committee that there are many people who make a living out of crime and who know but ignore the risks involved. He felt that the odds are in their favor since, even if they are caught, they can be assured of an indeterminate sentence. He felt it is the responsibility of the Legislature to make sure that punishment is sure and certain.

Mr. Tomasic stated that, in the past year, he had tried 16 first degree murder cases. Two defendants were women, seven were blacks, and nine were whites. In 11 of the cases firearms were used, knives in two cases, and one victim was strangled. In all but one case, they were crimes for profit or sexually-related, and none were crimes of passion. With regard to the proportion of women committing crimes, Mr. Tomasic cited an article in a recent publication which shows an increase in crimes by women. He stated that women are taking an active roll in serious crimes such as stealing, mugging, and murder. He stated there is no way to determine how many individuals are deterred from committing crimes, but it is easy to tell how many individuals are not committing crimes. He urged that there be a certainty of punishment for serious crimes and crimes for profit. He stated he would like to see the following crimes included in the legislation: murder for hire, murder of law enforcement officers in the line of duty, murder of a witness, premeditated murders, and sex-crime murders.

A member inquired what kind of defense is being provided for these individuals. Mr. Tomasic stated that Wyandotte County has the second-highest payment rate in the state for court-appointed attorneys. He felt that the court appoints the most experienced attorneys to represent such people and that they are getting a better defense than if they retained an attorney not experienced in criminal law.

Mr. Lloyd R. Salisbury, Chief of Court Services in Leavenworth County appeared with some suggestions if the Committee is to consider introducing capital punishment

legislation. He offered a printed statement of his remarks (Attachment XXII.) He urged that, if such legislation is introduced, it build in safeguards so that justice cannot be distorted, and contain provisions that will protect the law enforcement people who protect the citizens.

Mr. Roger Theis, Assistant Attorney General, appeared to discuss the draft proposed by the Attorney General. He stated that the draft meets the Supreme Court criteria; that it provides a bifurcated trial procedure; that it takes into consideration mitigating circumstances; and that it provides an appellate review procedure. He stated that the Governor's and the Attorney General's proposals are very similar and have only small differences.

The meeting was recessed until 1:30 p.m.

Afternoon Session

The meeting was reconvened by the Chairman and a statement from the Kansas Sheriffs' Association supporting capital punishment was distributed (Attachment XXIII.)

Mr. Jim Marquez, the Governor's Pardon Attorney explained that it is the position of the Governor that the death penalty should be available for the crime of murder in the first degree and also be available when a person is killed in the commission of other specific crimes. The Governor's recommendation also requires that the trial be in two phases -- a guilt finding phase and a sentencing phase. Mr. Marquez urged that all persons sentenced to death should receive a mandatory review by the Kansas Supreme Court. He stated that both the Governor's and the Attorney General's recommendations are based on recent U.S. Supreme Court decisions and seem to provide sufficient safeguards.

Dorothy Koepsel appeared before the Committee and stated that she was speaking on her own behalf. She stated that she works with Kansas reservation Indians, many of whom go to prison and die in prison, and that she believes these people are not given equal opportunities and rights. She stated that three aspects of capital punishment should be examined: (1) the number of murders which are never solved by arrest; (2) the need to improve the efficiency of arrest systems and assure that the defendant has a professional criminal defense lawyer; and (3) serious consideration of reinstating the death penalty should not be given until adequate defense lawyers are available because all people will not receive adequate protection.

Mr. Jerry Federgreen appeared before the Committee in support of legislation reinstating the death penalty. He stated he had been in law enforcement work for many years and believes that it is indeed a deterrent. He noted that he had been in situations in the past in which he had been able to persuade individuals to put their weapon down because of the consequences.

After some discussion, it was moved by Senator Arasmith and seconded by Representative Rodrock that the Committee Report include a recommendation to reinstate capital punishment in Kansas for certain serious crimes and that the Governor's proposal be used as a working draft.

A member suggested that there was very limited time in which to consider such important legislation and stated that he would like to delay any action on the issue. The Vice-Chairman agreed that possibly more work would be desirable, but that any bill that is introduced will be changed by the Legislature.

Another member noted that apparently both the Governor's and the Attorney General's recommendations meet the guidelines set down in the U.S. Supreme Court decision. He suggested that the Committee go on record in favor of reinstatement of the death penalty and use the two proposals as working drafts.

The Vice-Chairman stated that his motion had been misunderstood: he was not recommending that the Governor's bill be introduced but rather that it be used as a working model. He stated the only reason he was suggesting the Governor's proposal is because it already had been drafted in bill form.

Senator Reilly offered a substitute motion that both proposals be introduced to the 1977 Legislature with the recommendation that they be considered as working drafts. He also suggested they be considered by a joint committee of the two houses and that members not go into individual amendments at this time.

The Vice-Chairman recommended that the issues be taken in individual motions, and all motions were withdrawn. Thereupon, it was moved by Senator Arasmith that the Committee recommend the reinstatement of capital punishment for certain crimes. Motion was seconded by Senator Reilly and carried by a majority vote, with Representative Marshall and Representative Harris asking to be recorded as voting in opposition.

It was moved by Senator Reilly that the two proposals be recommended to the Legislature for consideration and that they be considered in joint committee hearings. Motion was seconded by Senator Arasmith and carried by a majority vote. Representatives Marshall and Harris voted no.

The meeting was adjourned.

Prepared by J. Russell Mills, Jr.

Approved by Committee on:

(Date)

KARL MENNINGER, M.D.
TOPEKA, KANSAS
66601

November 8, 1976

TO THE KANSAS STATE LEGISLATORS:

Some newspaper editors - on behalf of their owners or readers - are backing a dubious solution to the crime problem. Killing a few criminals will not stop many killings. Capital punishment is morally wrong. Its discriminatory application to the poor and the blacks, and the false comfort it gives to complacent whites are persuasive arguments against it. It does no good and costs over much.

One aspect seldom mentioned is an execution's effect on the prison and its personnel. If the committees of the legislature could arrange to see and execution somewhere, I don't think they would vote to command others to do it. I know from observation that it demoralizes the personnel and alters the atmosphere of a correctional institution into something like that of a slaughterhouse. This is bad medicine for everyone.

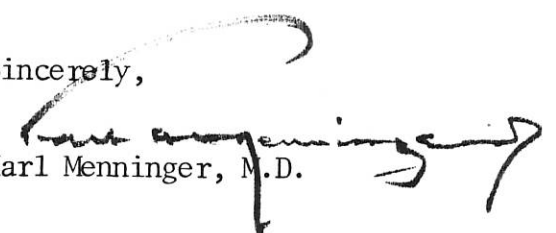
But if a majority of legislators believe they must enact the death penalty in order to please their constituents, let's do it properly and effectively. If it is not for vengeance but for the deterrence of crime, then we should try to do it so as to deter as many potential criminals as possible. We should display publicly what horrible punishments we can inflict, so that they can be forever avoided by the witnesses. The awful spectacle of an execution should be a public event with fanfare. Why confine these lessons to a few prison officials, guards and newspaper reporters? The illiterate, the dim-witted, the uneducated in the community may not read about this great official act of retribution which we inflict at such pain and effort. Most of them have never seen an execution or know anyone who has. Communication

The Kansas State Legislators

is essential if deterrence is to be effected. If the public does not know about executions, how can anyone be deterred by them?

I sincerely hope Kansas will not re-institute barbaric practices as part of the state's correctional program. But if we do, let's do it in a purposive and effective way. The writer Camus said it well: "We must either kill publicly or admit we do not feel authorized to kill."

Sincerely,


Karl Menninger, M.D.

STATEMENT: Vincent DeCoursey, Executive Director
Kansas Catholic Conference

November 9, 1976

TO: The Special Committee on Federal and State Affairs

RE: Proposal number 64 - Death Penalty

I wish to thank the Chairman and members of the Committee for the opportunity to express our opposition to the enactment of capital punishment legislation such as proposed by Governor Bennett in his letter of August 26, 1976 to the Honorable Duane S. McGill, Speaker of the House and the Honorable Ross O. Doyen, President of the Senate.

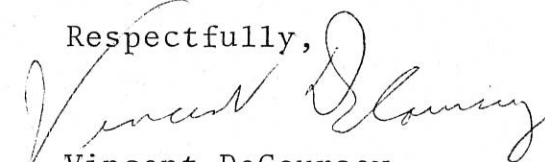
Our opposition is not to the content of the proposal or to the language -- it is to its substance, the restoration of execution as a form of punishment in the State of Kansas.

As Executive Director of the Kansas Catholic Conference I have testified in past sessions before both Senate and House Committees as follows:

"The United States Catholic Conference has officially gone on record as being opposed to capital punishment. The Kansas Catholic Conference concurs with and supports this position."

I repeat this statement here today, and again express my appreciation for the opportunity to do so.

Respectfully,



Vincent DeCoursey
Executive Director
Kansas Catholic Conference

File
Attachment IV
The Deterrent Effect of Capital Punishment:

Remarks before the Special Committee on Federal and State Affairs, Nov. 9, 1976

---William R. Arnold
Kansas Citizens for Justice

The Kansas Citizens for Justice is, as many of you know, the legislative action arm of the Kansas Council on Crime and Delinquency. I am, besides representing this organization, a criminologist in the sociology department at the University of Kansas in Lawrence. I can speak to one or two of the questions just raised. Public opinion is not as overwhelmingly for the death penalty as some polls of voluntary returns to a newspaper suggest. Taking the Gallup polls conducted on carefully designed samples as more ~~p~~ representative, in 1953, 68% of the people favored the death penalty in some form. By 1966 the percentage favoring it had actually gone down to less than half, 42%. In 1972, the latest poll I have a report on, 57% of the people favored the death penalty in some form. However, the various parts of the public were by no means in agreement: 60% of the Whites but only 29% of the Non-whites favored such a penalty. Sixty-four percent of the men favored it, but only 50% of the women did. Thus, it makes a great deal of difference which part of the public opinion we are talking about.

The particular proposal for the death penalty we are looking at is the Governor's. He explicitly stated in his letter to the legislative leadership that he favored the penalty when no other deterrent seemed effective. In other words, we must focus our attention on whether or not the death penalty does, in fact, deter.

Making murder a capital offense has no effect
on the homicide rate.

Making murder a ~~p~~ capital offense has no effect on the overall homicide rate. Several types of studies support this conclusion. ~~There are six types of study~~

Study type 1. Comparisons of contiguous states with and without capital punishment.

This is the most common types of study of the effects of capital punishment. The classic studies compared homicide rates for six different sets of three contiguous states. The only fair comparison is of contiguous states, for the states with both the highest homicide rates and highest capital punishment rates are the Southern states, so a comparison of states with and without capital punishment is not exactly fair. Within these six set of contiguous states, at least one did not have capital punishment for all or part of the period 1920-1963. No significant differences were found between the homicide rates in the states with and without capital punishment. (Sellin, 1967: 136-137). I have here another report of comparable studies done for 1967 and 1968 which reveal the same lack of difference. One of our graduate students has undertaken a study in which he compares homicide rates in Kansas and our surrounding states, some of which have re-enacted the death penalty the last couple of years. The question is whether or not we have become a safe island for murder. The results are not complete, but it appears as if the rates vary together, just as they did in earlier studies.

Study type 2. Comparisons of rates in states when capital punishment is abolished or instituted. Eleven studies of this type have been done. For example, the average number of murders in Colorado during the five years before abolition of capital punishment was 15.4; during the five years of the abolition of capital punishment, the average was 18; during the five years ~~fx~~ after capital punishment was re-instituted, the average was 19. The studies show that there are no significant differences between the periods in which capital punishment is and is not available. (Knudten, 1971: 627-629)

Study type 3. Comparison of rates before and after executions. Two studies were conducted in Philadelphia and one in Chicago. They show that the homicide rates do not change materially after executions, regardless of the notoriety or news coverage of the executions. (Sutherland and Cressey, 1970: 331-333)

So capital punishment does no good as a deterrent. Why have ~~it~~ it? (repeat after each of the following sections.

Making murder a capital offense has no effect on the homicides of police officers.

A questionnaire study was conducted asking police departments in states with and without capital punishment about police officers killed in line of duty from 1919-1954. For the entire period studied, the homicide rate of policemen in states with capital punishment was 1.3 per 100,000 population in the states; in the states without capital punishment, the comparable rate was lower, 1.2. For the period 1961-1963, the numbers of policemen killed in line of duty was compared with the numbers of policemen. In states with capital punishment, the rate was 1.328 per 10,000 policemen; in states without capital punishment, the comparable rate was slightly lower, 1.312.

Making murder a capital offense has a minimal effect on the safety of staff and inmates in prisons.

Study 1. Comparison of staff safety when murderers are and are not executed. While murder was a capital offense in Canada until 1967, the proportion of those convicted whose sentences had been commuted to life imprisonment varied considerably. As the proportion of all convicted murderers who were ~~executed~~ ~~executed~~ decreased from 74.9% for the 1930-1939 period to 12.8% for the 1960-1965 period, the frequency of killing prison guards remained the same. (Akman in Sellin, 1967: 161-168)

Study 2. Comparison of staff and inmate safety in states with and without capital punishment. Questionnaires were sent to prisons in the United States asking about assaults on staff and inmates in 1965. Six states with capital punishment had had no assaults during the year; four states without capital punishment reported no such assaults. The rate of persons committing these assaults in states with capital punishment was 38 per 100,000 inmates, while the comparable rate in states without capital punishment was 68 per 100,000 inmates. The chances are about nine out of ten that this is a "real" difference showing that the states with capital punishment had a lower rate of homicides in prison. (data on assaults and attackers taken from Sellin, 1967: 154-160; rates computed by Arnold) However, correctional systems differ, too.

Study 3. Opinions of prison wardens about the deterrent effect of capital punishment. A survey of wardens in the mid-fifties showed that 89% of those answering did not feel that capital punishment was a deterrent for murder, and 92% said they did not think murderers considered the consequences of their criminal acts. (Thomas, 1957: 244)

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11-9-76
Father Wempe
Attachment I

Diane Leonetti:

CAPITAL PUNISHMENT

"Why do we kill people who kill people to show that killing people is wrong?" That was the question on a button worn by Canadians in their recent successful campaign to persuade their government to abolish capital punishment.

We could use that button on this side of the border, where we seem to be going backward, against the world trend. The Supreme Court's long-awaited constitutionality ruling on the death penalty, handed down last July, has upheld the death laws in Florida, Georgia and Texas, while striking down those in Louisiana, North Carolina and Oklahoma. Thus end for now the hopes raised by the 1972 ruling that it might find the taking of life by the state unconstitutional in any circumstance. The new ruling rejects the major arguments of the NAACP Legal Defense Fund, which has held off the execution of hundreds of persons on death row—mostly non-white—since 1967 (with back-up from the American Civil Liberties Union and others). It has opened the door to every state to come up with a law that meets the new criteria.

For roughly half of the 611 persons now on death row, it was the worst possible news. When they have exhausted their appeals (some already have), they must prepare themselves to be killed. Florida officials have already announced plans "for a course of seminars to give death row inmates psychological preparation for facing the electric chair."

In the years since the NAACP began its campaign, the Court has been reluctant to rule on constitutionality. In 1968, in the case of *Witherspoon vs Illinois*, it ruled against the death sentence on grounds that persons generally opposed to the death penalty should not have been excluded from the jury, thus saving Witherspoon and others who had been convicted by similar juries. In 1970, it ruled in favor of William Maxwell, a young Arkansas black man convicted of rape, on the same ground. Maxwell continued to maintain his innocence during the eight years he waited for the news that would save him.

In 1972, the Court moved closer to a constitutionality ruling in its finding (*Furman vs Georgia*) that the death penalty as administered in the U.S. was cruel and unusual punishment, in that it is applied in an arbitrary and capricious manner. At the whim of judge or jury, without guidelines or standards, some people are singled out to be killed, while others, guilty of the same crime, are not. This courageous ruling seemed to be a first step toward a total ban. But it was not to be.

Following the momentous 1972 decision, legislators in 35 states enacted new death laws in a superficial effort to appease a public alarmed over rising crime. Some new laws made execution mandatory for particular crimes, while others gave juries the power to choose the death penalty for particular defendants after considering certain aggravating or mitigating factors. In its latest decisions, the Court threw out those state laws calling for mandatory death and upheld the latter group, the so-called "guided discretion" laws. In so

doing, it seems to have backed down from its 1972 ruling, that ordering the death penalty for a comparatively few persons in a capricious manner makes it cruel and unusual punishment. By striking down mandatory death for all for certain crimes, it has opted for juries continuing to make selections as to who will die, the difference being that they must take into account aggravating or mitigating features of the individual's crime and past life. But very human people, with weaknesses, prejudices and fears, will still be making the choices as to who will die and who will live. It seems unlikely that new guidelines will change a system that the Court found cruel and unusual four years ago.

The American Civil Liberties Union, while continuing to pursue legal remedies, has responded to the Court's new ruling by mounting a new and broader effort to save people from execution. As "a counter-offensive to the prospect of mass executions in this country," ACLU is calling for a massing of national organizations committed to the abolition of capital punishment into a National Coalition Against the Death Penalty. So far, the new Coalition includes the United Church of Christ, United Presbyterian Church, United Methodist Church, the Fellowship of Reconciliation, the U. S. Jesuit Conference, American Friends Service Committee, the National Council on Crime and Delinquency, NAACP, Southern Poverty Law Center and others. The work will be four-pronged: (1) obtaining executive clemency for persons facing execution, (2) persuading legislators, state executives and community leaders to oppose the death penalty and prevent executions, (3) mounting a vigorous campaign of public education against capital punishment and (4) creating an information network of execution dates, capital trials, legislative developments and the like.

The NAACP Legal Defense Fund will continue its commitment to persons under sentence of death by seeking to show that in practice the application of the death penalty laws remains arbitrary and capricious, that the new death laws, like the old ones, constitute cruel and unusual punishment. David Kendall, who coordinates the legal work for persons on death row for LDF, says that the Fund will continue to represent its clients "as best we can." While recognizing that the Court's recent decision may have foreclosed attacks on *per se* constitutionality of the death penalty, LDF will continue "vigorously to challenge its constitutionality as applied." LDF's main problem is a logistical one, finding enough lawyers. In Kendall's words: "We are swamped."

The LDF is swamped with clients because death (some call it murder) at the hands of the state is reserved for the poor, the friendless, predominantly members of minority groups—in the U. S., non-whites—who arouse anger and fear in the solid citizens who sit in judgement upon them. Justice Potter Stewart, though he voted with the majority in July has stated that we reserve this awesome punishment

The Ultimate Violence

for "a capriciously selected random handful." Professional killers are seldom apprehended; when they are, they do not call on LDF, having ready access to legal help. Persons in the upper economic brackets so rarely even go to trial on a charge that could bring the death penalty that each such case becomes a newspaper sensation. When tried, they do not suffer the death penalty. In the words of former Justice Douglas: "One searches our chronicles in vain for the execution of any member of the affluent strata of this society."

For some, there will never be a way to make the death penalty acceptable. It is the ultimate violence: cold-blooded, premeditated murder of a helpless man or woman who must not only suffer the terrifying experience of being put to death at an appointed time, but live in a small, steel cage with the expectation of that death for years, in the harrowing atmosphere of death row. Few of those who support or oppose the death penalty have visited these tombs for the living—or witnessed an execution. Few would choose to do so. Byron Eshelman, former chaplain at San Quentin, puts it this way:

"Most of the arguments on capital punishment, pro and con...are learnedly expressed by authorities who have never had personal experience with an execution, who have never visited Death Row, nor spent an hour with a man in the Ready Room, nor watched the spittle drip down on his shirt as he was dying."

Guards who must officiate at executions are bolstered by means of extra pay to do the thing they hate. Here is part of a description of an execution from Eshelman's book, *Death Row Chaplain*:

One of the guards tells Richard, 'Take a deep breath as soon as you smell the gas—it will make it easier for you.'

His mouth twitches a little, but he makes no response. None is needed. Up on the Row, men have debated for endless hours, in clinical seriousness and in jest that conceals fear, just how to take the first breath of the fumes, and just what will happen to them.

The officer who has loosened Richard's chest strap slaps him on the shoulder and murmurs: 'Good luck.' Richard nods briefly.

Later, after it is over:

Richard's eyes are closed...His mouth is twisted at one corner in a grimace. Beyond him, two of the witnesses look about to be sick. They stumble toward the door...

To watch another human being burned, strangled or asphyxiated is quite different from signing a petition for or against. David Kendall points out that people express themselves differently on the subject in polls than they do on juries, where they are most reluctant to condemn another

person to death. Down deep, we all have an idea what it is like for the victim if we think about it at all, but it is not easy to imagine ourselves in his place as he awaits his fate.

Gary McGivern, who spent 33 months on death row before his conviction was reversed, tried later to describe the atmosphere there:

New York's death row at Green Haven State Prison was an ugly, degrading and dehumanizing place. Sunshine was considered subversive, so the windows were opaque. The condemned men were locked in their cells 23 hours a day. Living conditions on death row were absent of any human values primarily because the death sentence reduces condemned men to pieces of meat. The function of death row was to preserve the meat until it was legally ready for cooking. On death row it was illegal to grow mentally, develop spiritually and feel emotionally. Execution on these levels of living took place every day. It was a struggle to stay alive. When you sentence a person to death, you aren't treating him like a human being. In fact, the law is saying this human being doesn't belong in our society and we have to kill him. So the confinement on death row is just an extension of that type of thinking. To retain any self-respect and dignity is a daily struggle. It's not the fault of the people working there, the immediate people in charge. It's a matter of the structure itself. It draws what is negative out of human beings. Most of the people on death rows are from that part of our society which is uneducated, poor, from crime-infested areas. Yet they're all people. There's something within us all that's pure and creative.

This century has seen a decline in the willingness of judges and juries to send fellow human beings to their deaths and a world trend away from the death penalty, which has been abolished in Britain, Italy, Holland and West Germany, among others in Europe. Canada voted it out last summer. France still sends people to the guillotine—28 in the past 12 years—and Spain has both the death penalty and a growing movement for its abolition. Belgium has a unique arrangement—the death penalty with automatic clemency—designed, officials say, to forestall the growth of the pro-death movement that might arise should it be abolished!

The death penalty issue touches deep emotions. Psychologists maintain that those who suffered physical punishment as children and develop authoritarian personalities are likely to support it. Others, with deep fears of becoming the victims of violence, believe it may deter, although there is little evidence that it does. The Supreme Court found the data on deterrence "inconclusive." In the end, the death penalty is mere retribution—wound for wound, life for life—foreclosing all possibility of change, repentance, redemption or re-birth. Ironically, prison

authorities have watched men on death row grow into new and productive human beings—Caryl Chessman was one—only to lose their new lives at the hands of the state. It is defended in this aspect by some of the U. S. Justices. “In part,” they wrote in July, “capital punishment is an expression of society’s moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal procedures rather than self-help to vindicate their wrongs.”

Justices Brennan and Marshall, who would have a total ban on the death penalty, do not agree. Justice Marshall feels that “the mere fact that the community demands the murderer’s life in return for the evil he has done” is not sufficient justification for the taking of life. Brennan quoted Albert Camus: “Justice of this kind is obviously no less shocking than the crime itself, and the new ‘official’ murder, far from offering redress for the offense committed against society, adds instead a second defilement to the first.”

Before we settle for retribution, perhaps it should be required that some Supreme Court Justices and others who favor the death penalty attend executions. Wardens, chaplains and others who officiate at these ritual killings are articulate against them. Wrote Warden Lewis E. Lawes, who escorted 150 men and one woman to their deaths at Sing Sing: “Not only does capital punishment fail in its justification, but no punishment could be invented with so many inherent defects.” Prosecutors and judges who send men to death row are sometimes invited to attend the

execution; they rarely do. They are spared the sight sound of men dragged into the death chamber fighting and screaming, even with blood gushing from a self-inflicted wound. Nor do they look upon the faces of those, the great majority, who go with quiet courage. Some of those who die are innocent; many are mentally defective, some suffered brain damage in their early years.

One such victim had a sister, a graduate student in criminology, who wrote to the governor of California to plead for her brother. He had suffered severe illness as a small child that damaged the area of the brain that controls animal impulses. At 18, he killed a young girl who resisted his advances. Brother and sister grew up in such a violent home that she was driven to attempt suicide. In part of a long letter, she described to the governor how her mother, purporting to help Billy with his reading, would hit him on the head with the book, while telling him he was stupid and would surely end up in prison. “This would go on for hours almost daily until I couldn’t bear to hear it any longer,” she wrote.

Her brother, Billy Rupp, spent six years on death row in San Quentin and died in the gas chamber at 24. His sister worked to save him until the last, then went into juvenile probation work in the hope of saving others from his fate.

Death at the hands of the state was summed up briefly in the last words on earth of Barbara Graham, who died for a murder she said she didn’t do. “Good people,” she murmured, entering the gas chamber, “are always so sure they’re right.” ■

I was the first of the now 90 on North Carolina’s Death Row, the largest number of people facing death in this country. Because of the large number of prisoners we’re doubled up in our 6 x 9 x 15 cells with two bunk beds, a toilet and face bowl for 22½ hours a day. These poor conditions are not only physical but psychological and social too. Some of us try to be strong in the face of this, but it’s difficult not to be affected by physical conditions as well as subjective ones too.

Deep in the realms of our minds we sometimes see reason for hope, only to have our dreams shatter. We die not once or even twice, but again and again. It’s a torture that goes on in the mind, cruel and unusual punishment that is mainly unheard and unspoken of.

I have one primary observation having watched Death Row grow from one to ninety. And that is, the death penalty is no deterrent to crime. In order for anything to be a deterrent, knowledge of its existence must be known. Yet here on Death Row most of the men didn’t even know what capital punishment was.

Henry Jarrette

Capital Punishment? I never gave it a thought. If I happened to read in a paper or hear on a broadcast that someone had been sentenced to death or had been executed, it was forgotten a moment later. After all, it was nobody I knew, and certainly I thought I would never be sentenced to death.

If anyone had bothered to ask me in January, 1960, if I was going to kill anybody, the question would have been as absurd to me as if they had asked if I were going to fly to the moon. Kill someone? Of course not! I had no desire or intention of ever killing anyone. And if you had asked those

who knew me, my family and friends, if they thought I would kill anyone, they would have told you the idea was absurd.

Dennis Whitney

When I first went to Death Row in 1963, I was able to avoid the realization of why I was there—to be executed. But after many inner changes over a period of nine years (changes which amounted to growing up), I did face why I was there. I was going to walk downstairs, stay overnight in a dead man’s cell, and, at the beginning of a new day, be strapped into a chair and killed. That’s all.

Soon after this realization took firm root I was taught to meditate through a TV program. I wanted to find out how I could prepare myself to die. No individual could teach me. I’d have to die for myself and by myself. The one beautiful part of facing execution is that the main actor has the final decision as to how it will go. Is he going to scream and kick? What good would that do? I decided to die with peace in my heart. Or as much peace as I could awaken to in the remaining months.

Then, the unbelievable came true: the death penalty was dead. [The 1972 decision.]

Six months later I was sent with my brothers away forever from Death Row. Next month, I hope to receive a parole date. Meditation will continue to be the main interest, the underlying feature of the rest of my life.

Clay Hines

The excerpts from death row statements are from Voices for New Justice (Winter 1975-76), edited by prisoners at Green Haven, N.Y., working together with people outside. Subscriptions: 26 Lexington Ave., Poughkeepsie, N.Y.; \$4



WILLIAM F. CONDON
32ND DISTRICT
CHAIRMAN
COMMITTEE ON INSURANCE

THE SENATE
STATE OF NEW YORK
ALBANY

RECEIVED
WARDEN'S OFFICE
SING SING PRISON

WILFRED L. DENNO,
Sing Sing Prison
Ossining, N. Y.

Dear Warden:

Would it be at all possible to secure two additional
invitations to witness the BURKE execution? You have been very
obliging in the past, and I hesitate to impose. However, if you
can arrange it, would you send notice of same to:

why

do we kill people
who kill people
to show that
killing people
is wrong?

NAME: BURKE, Elmer SSP: #118 - 395 9 January 1958.

TIME IN: 11:01 TIME OUT: 11:04

VOLTAGE: 2000 AMPERES: 10

CORRECTION OFFICER: H. P. O'Brien SGT:

DOMESTIC SERVICE	
Check the class of service desired; otherwise this message will be sent as a full rate telegram	
FULL RATE TELEGRAM	SERIAL
DAY LETTER	NIGHT LETTER

WESTERN
UNION

W. P. MARSHALL, PRESIDENT

INTERNATIONAL SERVICE	
Check U's class of service desired; otherwise this message will be sent at the full rate	
FULL RATE	LETTER TELEGRAM
VICTORY LETTER	SHIP RADIOGRAM

NO. WDS.-CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	TIME FILED

Send the following message, subject to the terms on back hereof, which are hereby agreed to

To HON. THOMAS J. MC HUGH JANUARY 10 1958

Street and No. COMMISSIONER OF CORRECTION

Care of or ALBANY, NEW YORK

Apt. No. _____

ELMER BURKE SSP 118-395 WAS EXECUTED LAST NIGHT IN CONFORMITY WITH THE LAW.

W. L. DENNO

WARDEN - SS PRISON

Sent 8:20 PM
[Signature]

Sender's name and address (For reference)

Sender's telephone number

The following rules have been promulgated by the Superintendent and NO amendments or changes shall be made without the permission of the Superintendent.

Inventory: Inmates to have one outfit of wearing apparel, viz: 1 pair socks, 1 undershirt, 1 pair shorts, 1 shirt, 1 pair pants, 1 towel, 1 wash cloth, 1 bar soap, writing paper. All excess articles will be kept in individual lockers and therefore. Inmates will be permitted to receive other articles that are permitted during the day such as pen, pencil, toothbrush, etc. They may be issued at 7:30 a.m. and noted on the form provided. These articles will be picked up at 9:30 p.m., checked off on form previously mentioned, and signed by the Officer picking them up. Canvas bags have been provided for this purpose.

Cells will be searched at least once per day, preferably when inmate is on a visit or when he is in the recreation area or shower. All articles not permitted will be removed. The cell search report will be submitted to the Deputy Superintendent's Office daily.

There will be no carrying of notes or verbal messages from one inmate to another by anyone other than assigned Officers.

Discussion among employees pertaining to inmates confined on K-Gallery, will be limited to discussion concerning the administration of the gallery only. (NO GOSSIPING).

Every precaution will be taken by direct observation and supervision to prevent any possible attempt at suicide by any inmate on K-Gallery.

TV sets may be turned on at 8:00 a.m. and may program started prior to 9:30 p.m. The volume of

Inmates will be fed in their cells. The K-Gallery Officer will portion and serve the meal up immediately after they have served their purpose.

Commissary: Inmates may purchase same article being that two cartons of cigarettes, or tobacco etc.

All food received in containers such as jars, cans, aluminum bowl and then given to the inmate.

In accordance with the Code of Criminal Procedure Court, except his Counsel, his physician, a priest in accordance with institutional rules on visits and considered confidential.

Hair cuts will be given by the K.L. Barber on the request. The gallery Officer will issue a lock type to be kept in the gallery Log Book. Showers will be

K-Gallery will be visited by the doctor every day not be removed from K-Gallery for treatment unless Superintendent.

Library Books will be brought to the cell on a book frisked when issued and when returned.

Supervised exercise will be permitted in the K-Gallery. Inclement weather exercise will be taken in a designated

Log Book: All movements, incidents, security checks, inmate receiving the visit, will be recorded.

Inmates will not be allowed to have matches at all times the light.

Hobbies, such as painting, drawing, musical instrument or Deputy Superintendent. Approved musical instrument 3:00 p.m. Approved painting and drawing equipment 9:30 p.m. K-Gallery Officers will pay strict attention to strings for string instruments are accounted for when containers when given to the inmate.

PRE-EXECUTION MEAL AS REQUESTED BY INMATE

January 9, 1958

ELMER BURKE - #118-395

DINNER

Fried Chicken
Mashed Potatoes with butter
Creamed Corn
Lettuce & Tomato salad with mayonnaise
2 bottles of Pepsi Cola
Coconut Custard Pie
2 pts. Butter Pecan Ice Cream
4 pkgs. Chesterfield Cigarettes
Coffee, milk and sugar

RECEIVED
WARDEN'S OFFICE
SING SING PRISON

1958 JAN 9 AM 9:28

January 15, 1957

Elmer Burke SSP #118395
Institution

Dear Sir:

I regret to inform you that I am in receipt of an Order of the Court of Appeals, fixing the week of February 18, 1957, as the date for carrying into effect the original sentence of death in your case.

Very truly yours,

Durick text on capital punishment

Following is the discussion of capital punishment in Bishop Joseph A. Durick's pastoral letter, *Humanity Demands It*:

Of the arguments voiced supporting the death penalty, the most often heard is the argument that it deters crime. Several years ago, the Presidential Commission on Law Enforcement and the Administration of Justice... reported that it had found the deterrent argument less than convincing.

The distinguished Kansas psychiatrist, Karl Menninger, M.D., in his widely-complimented book on crime and corrections, *The Crime of Punishment*, flatly denies the deterrent argument. His book was based upon lengthy interviews with offenders and corrections officials.

A former U. S. Attorney General (Ramsey Clark) once asked why anyone should assume capital punishment would deter crime. Crimes which once possibly led to electrocution are committed by persons on impulse, in anger, etc., or by persons who plan the act, namely the premeditated crime. Certainly, those who are so overwhelmed by emotion or passion that they would kill, would not pause to consider the consequences. The second general group would be aware of the possible penalty, but they never intend to be its victim, for just as they plan crime, they also carefully plan to avoid arrest and conviction. Dr. Menninger maintains these same points.

It should also be noted that the so-called "hardened" criminal lives in a veritable world of violence, where brutal and sudden death is commonplace, and where often life is little better than brutal.

Another argument in behalf of the death penalty is that it removes from society someone "dangerous" to it, or "unworthy" of it. Not only does such a proposal grossly overlook the aims and achievements of modern corrections policies, but it is also un-Christian and ungodly.

As a matter of record, in the past capital punishment has most often affected persons who were poor or of minority groups. In other words, it most often was inflicted upon persons unable to secure for themselves expert legal representation. The late criminal lawyer, Clarence Darrow, observed 30 years ago that the walk to



Credit: Pamoja Venceremos/Workers World/LNS

the death chamber has been from the "beginning, a procession of the poor, the weak, the unfit."

Into this discussion, certain specific theological observations should be noted. Christian tradition has always maintained the right of the state to impose the penalty of death. In support of that position, several Old Testament texts are often quoted. One, for instance, is Genesis (9:6), "Whoever sheds the blood of man, by man shall his blood be shed." Another example is in Numbers (35:16), "If a man strikes another with an iron instrument and causes his death, he is a murderer and should be put to death."

There are no New Testament passages sanctioning the death penalty; only those which uphold public authority, as found in the writings of St. Paul.

In response to these aspects, the Roman Catholic bishops of Canada, who recently appealed to their Parliament not to re-institute the death penalty, said:

"We consider it an illegitimate use of the Bible, especially the Old Testament, to quote texts in order to argue, in our time, for the retention of the death penalty... Each such Old Testament text must be weighed against any passages in the New Testament where Jesus constantly rejects the normal human tendency to redress injury by injury and calls instead for generosity. He established a norm that violence and hostility are not corrected by counter-measures of violence and hostility."

The Protestant theologian, Charles S. Milligan, calls the citation of Old Testament texts to advocate the death penalty, in the face of New Testament admonitions to love and be merciful, "strange logic." He further holds that we must "strive for the mind which was in Christ Jesus and to bring it to bear upon the issues of our time." This, he proceeds to say, requires a thorough understanding of sociological facts, some of which were discussed above, regarding the question of capital punishment. Finally, he notes, "Without minimizing justice, the distinctive witness of the Christian is found in compassionate concern."

The Jewish theologian, Rabbi Israel J. Kazis, holds that consultation of Old Testament passages cannot alone reveal the true position of Judaism toward the death penalty. It does note passages such as those mentioned above, but also points out that the theology of Israel was developing then and, citing other procedures and requirements, there later evolved many restrictions upon the use of capital punishment. He holds that "from our discussion of the provisions and restrictions imposed by the rabbis upon the procedure in the trial of capital cases, we believe that it is reasonable to maintain that they did not look with favor upon capital punishment."

In summary, the argument that the death penalty deters crime is of strong question. The theological arguments in its behalf are weak. Let us treasure life gamble with it. I would earnestly ask that the penalty not be renewed in Tennessee.

Michigan catholic conference



505 NORTH CAPITOL AVENUE, P.O. BOX 157
LANSING, MICHIGAN 48901 — PH. 517/372-9310

FOCUS

Volume 11 No. 2

April 26, 1973

NEW FORMAT -- NEW TWIST

This issue of Focus introduces a new format. It also offers a slight innovation in discussion of a particular subject. We think you'll find the following pages considerably more interesting if you take the "three-minute quiz" below before getting into them. The questions are all multiple choice ... let your first impressions be your guide!

CHECK THE ANSWER YOU THINK IS MOST NEARLY CORRECT

1. During the period 1965-1969, there were 6,908 persons paroled from prisons in the United States after serving time for willful homicide. How many of them do you think made it through the first year of parole without being returned to prison for another major offense?
☐ 30% ☐ 50% ☐ 70% ☐ 90% ☐ 100%
2. Parole data from 8 states covers 1,158 paroled murderers for periods starting as early as 1900 and ending as late as 1960. How many of these 1,158 would you guess had been returned to prison by 1969 for committing a second murder?
☐ Less than 10 ☐ More than 100 ☐ More than 250 ☐ More than 400
3. Between 1930 and 1971, there were 455 executions for rape in the United States. How many of those executed were blacks?
☐ 100 ☐ 200 ☐ 300 ☐ 400
4. There has been a number of exhaustive studies by governmental bodies here and abroad concerning the effectiveness of the death penalty as a deterrent to major crimes. How do you think the death penalty rates as a deterrent according to those studies?
☐ Strong deterrent ☐ Weak deterrent ☐ No proof either way
5. The "eye-for-an-eye" philosophy of Mosaic Law has often been cited as theological support for the death penalty. How many passages in the New Testament uphold the execution of criminals?
☐ Less than five ☐ More than forty ☐ None

NOW ... TURN THE PAGE AND SEE HOW YOU DID!

THOMAS M. BERGESON - Executive Director

LET'S TAKE A LOOK AT THE FACTS:

Question #1 involved 6,908 paroled murderers in their first year of parole. If you picked 100%, you selected the answer most nearly correct since 98.23% of them made it through that crucial first year without being returned to prison for any crime whatsoever. If you missed that one by a mile, don't feel badly. The only murder parolees you read about in the newspapers are those who stumble.

Question #2 concerned 1,158 paroled killers and the number of them who have been sentenced for a second murder. The answer most nearly correct was "less than ten." The specific number returned to prison for a second murder was two.

Question #3 asked how many of 455 executed rapists were blacks. You should have checked "400" since the actual number was 405. In the State of Georgia, incidentally, 58 of 61 men executed for rape between 1930 and 1971 were black. We have no statistics on lynchings of blacks in that same period.

Question #4 referred to the considerable number of studies that have been made to determine whether or not capital punishment deters capital crime. The correct answer is that no conclusive proof either way has been found in any significant study.

Question #5 considered the number of passages in the New Testament which uphold the execution of criminals. You were right if you answered "none." The passage which most nearly bears on the subject is found in Paul's Epistle to the Romans (13:4) where he states: *"The magistrate is God's minister, working for thy good ... it is not for nothing that he bears the sword; he is God's minister still, to inflict punishment on the wrongdoer."* Many theologians maintain this passage indicates tolerance of capital punishment, more than approval of it.

WHY DOESN'T THE DEATH PENALTY DETER?

In the pronounced absence of any evidence to the contrary, we can only assume the threat of the death penalty does not effectively deter capital crimes. Psychologists, criminologists and other practitioners of the behavioral sciences have offered a number of explanations. In the case of murder, for instance, most such crimes are committed in fits of rage, jealousy or frustration. And most often by a relative or close associate of the victim! Penologists tell us that murderers, as a group, are the most tractable of prisoners. In general, they were law-abiding citizens before they killed and tend to return to their law-abiding ways thereafter. Since they acted under highly emotional stress in committing their crimes, they obviously did not stop to consider any consequences whatsoever.

BUT WHAT ABOUT THE "HIT MAN?"

The professional killer of the underworld certainly kills in cold blood. And the threat of the death penalty should be a strong deterrent in such cases. But it isn't, according to most criminologists, because the professional killer has no expectation of being caught. He plans his murder deliberately. And his plans include every precaution against detection. Since he fully intends to avoid arrest, the existence of a death penalty is immaterial to him.

SOME INTERESTING SIDELIGHTS

Back in the 1700's, when picking pockets was a capital crime in England, criminals were hung publicly with front-row seats actually sold to spectators. Yet it is a matter of historical record that pickpockets made their biggest hauls during public executions. And the prime moment was as the hangman was getting ready to spring the trap, since the attention of the crowd would be riveted on the gallows! It is also a matter of record that two hangmen were hung in England -- in 1714 and 1750, respectively -- for crimes of their own. And that an Ohio convict who, while in prison, designed the clamps to hold condemned prisoners in the electric chair, was later electrocuted himself for a subsequent crime! Obviously, even close exposure to existence of the death penalty did not deter in those cases.

RETRIBUTION -- OR VENGEANCE?

If capital punishment is not a provable deterrent, there is still the subject of retribution. The criminal must certainly pay for his offenses against society. It is human nature to strike back at an attacker. And who does not feel revulsion in reading about the rape-slaying of a child or the ambush of a policeman on duty? Every instinct cries for vengeance -- swift and certain. We weep for the family of the victim. In our wrath and indignation, we would like to throw the switch or spring the trap ourselves. Somebody has to pay for this outrage! Yet, in the end, vengeance restores nothing. The slaughtering of the killer does nothing for the victim already dead; nor for the victim's family. No balance is redressed; no restitution effected. Payment of a sort is exacted, to be sure, but of that payment there is no recipient. We have simply ended another human life and bereaved yet another family.

WHOM DO WE EXECUTE?

More than thirty years ago, the famed criminal lawyer, Clarence Darrow, observed that the walk to the death chamber has been from the beginning, "a procession of the poor, the weak, the unfit." And it is axiomatic in our society that the well-to-do hardly ever pay the supreme penalty. In fact, those who can afford superior attorneys usually appeal conviction for any major crime and eventually "cop a plea" for sentencing on a lesser count with a much lighter penalty. This pattern has been clear to observers of our judiciary from the start.

THE PRICE SOCIETY PAYS

When a criminal is executed, he is dead. Period. But the price of his execution lingers. The fact that he was killed by society debases that society. The execution has been, in effect, a confession of despair and social immaturity. We can put a man on the moon, but we cannot progress beyond the medieval solution for punishing capital crime. In our frustration and impotence, we devalue human life and human dignity. And every member of our society loses through that devaluation.

THE JOB TO BE DONE

The rising tide of violent crime most certainly must be stemmed.

And society must be protected from criminals. But execution is merely a violent treatment of symptoms. It does nothing to cure the disease of circumstances in which most crime is spawned. Instead, it contributes to the atmosphere of callousness and despair which is a considerable factor in the circumstance of crime. The imperative task ahead is the alleviation of the squalor, privation and hopelessness which comprise the background for the preponderance of criminal acts. Every resource we have should be committed to this objective.

MICHIGAN, THE LEADER

As noted in our last issue of Focus, the State of Michigan was the first

governmental jurisdiction in the English-speaking world to abolish capital punishment for murder and lesser crimes. And that happened back in 1846! How sadly ironic is the prospect of leading a return to re-institution of the death penalty among those states which have followed our early example of abolition, especially when there is so much opportunity for championing a positive program aimed at the root causes of crime.

THE STAND WE TAKE

The Michigan Catholic Conference considers the proposed removal of

Michigan's constitutional prohibition of the death penalty a further assault on the dignity of human life. As Christians, we must follow the teachings of Christ, who was himself executed as a criminal. He taught justice tendered with mercy and compassion for all mankind. He taught forgiveness. As citizens of Michigan, we must actively contest the current House and Senate resolutions for restoration of the death penalty.

There is more than enough tragedy and suffering about us to absorb the attention and energies of legislators and citizens alike in seeking constructive solutions. Let us devote our time and talents in those directions.

11-9-76
Attachment II

January 27, 1976

A STATEMENT OPPOSING SENATE BILL 430

The Kansas Council of Churches reaffirms its position on capital punishment:

The Council is on record as supporting legislation necessary to abolish the death penalty in Kansas. We doubt that capital punishment is a deterrent to crime; it is too arbitrary in claimed victims to meet the requirements of justice; it does not protect society from murder. Certain constitutional authorities argue it violates the Eighth Amendment of the U. S. Constitution (as borne out in the 1972 U. S. Supreme Court decision).

We see the criminal as a product of society as well as a responsible human being. Both external and internal forces can lead to committing murder. We believe the cause of justice is not served when society cuts short the criminal's life for his act of murder. Neither act is any less reprehensible. We believe that in order to protect society, capital offenders should serve sizeable minimum sentences, with proper evaluative safeguards to restrain unwarranted and premature release.

We believe that capital punishment is morally wrong and that it falls disproportionately on blacks, the poor and the powerless.

In relationship to the landmark decision of the U. S. Supreme Court, of June 29, 1972, Justice Marshall wrote:

"In striking down capital punishment, this Court does not malign our system of government. On the contrary it pays homage to it. Only in a free society could right triumph in difficult times, and could civilization record its magnificent advancement. In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute. We achieve a major milestone in the long road up from barbarism and join the approximately 70 other jurisdictions in the world which celebrate their regard for civilization and humanity by shunning capital punishment."

It is our hope that Kansas will take that higher road--and eliminate the death penalty.

Oscar W. Olsen
Executive Director

Darlene G. Stearns
Legislative Coordinator

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in 1975**

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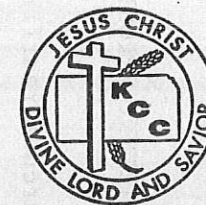
CHURCH WOMEN UNITED

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Interpreting

the

**KANSAS
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OF
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(913) 272-2512

COMMITTEE REPORT

TO: Legislative Coordinating Council
FROM: Special Committee on Federal and State Affairs
SUBJECT: Proposal No. 20 - Alcoholic Liquor Price Affirmation

Proposal No. 20 directed the Special Committee on Federal and State Affairs to conduct "a review of the alcoholic liquor price affirmation statute (K.S.A. 41-1111 et seq.), its effect on manufacturers, wholesalers, distributors, retailers, and consumers, and its implementation by the Alcoholic Beverage Control Division."

Background

K.S.A. 41-1111, enacted in 1961 as part of the Kansas Liquor Control Act, states in part:

That sales prices of alcoholic liquor sold by manufacturers and others to distributors licensed in this state should be no higher than the lowest price for which the same is sold to distributors anywhere in the continental United States. . . .

K.S.A. 41-1112 states that:

The prices filed by manufacturers and others authorized to sell alcoholic liquors to licensed distributors, pursuant to subsection (1) of section 41-1101 of the General Statutes Supplement of 1959, shall be the current prices, F.O.B. point of shipment, and said price as filed by each manufacturer or vendor shall be as low as the lowest price for which the item is sold anywhere in any state in the continental United States by such manufacturer or vendor: Provided, That in determining the lowest price for which an item of alcoholic liquor is sold in any such state there shall be taken into consideration all advertising, depletion and promotional allowances and rebates of every kind whatsoever made to purchasers in such state by the vendor.

The constitutionality of these statutes was upheld by the Kansas Supreme Court in 1966 when the Court stated in Laird & Company v. Cheney (196 Kan. 675) that:

We think then the method used is reasonable and not arbitrary and that there is a real and substantial relation to a proper legislative purpose expressed in the act (the orderly sale of liquor) and no constitutional inhibition appears (at 686).

However, differing interpretations of these statutes in 1975 led to controversy between the Director of the Alcoholic Beverage Control Division and several suppliers, proposed legislation, litigation, and, ultimately, this legislative interim study.

The Director of the Alcoholic Beverage Control Division was informed in 1975 that some suppliers were posting F.O.B. prices which were not the lowest prices that the merchandise was being sold in the continental United States, but which were in fact the F.O.B. plant price plus a shipping charge from the plant to Oklahoma City and a handling charge for warehousing in Oklahoma City. On October 6, 1975, the Director issued a memorandum to all suppliers ordering the cessation of this illegal practice. Litigation has been initiated and, during the 1976 Session, one bill was introduced (S.B. 824) to permit the inclusion of delivery and warehousing costs in the posted affirmation price.

Committee Activity

The Committee heard testimony from representatives of the Alcoholic Beverage Control Division, the U.S. Brewer's Association, the Kansas Retail Liquor Dealers Association, the Distilled Spirits Council of the U.S., the Kansas Wine and Spirits Wholesalers Association, and liquor suppliers, distributors, and wholesalers.

The A.B.C. Director stated his belief that the Kansas Liquor Control Act is one of the best in the nation and that no modifications are necessary or advised at this time. He also stated his conviction that the two statutes in question are clear and unambiguous and that the interpretation advanced by several suppliers is improper. The Director felt that modification or repeal of the price affirmation statute would be detrimental to the best interests of the citizens of Kansas. The Director was confident that his interpretation of the statute would be upheld by the courts.

Much conflicting testimony was received from the various segments of the liquor industry. Representatives of the liquor wholesalers generally supported the affirmation statute and opposed any change in the present law. Some wholesalers felt that repeal of the affirmation law would lead to increased prices.

Liquor retailers had no formal position on the issue, although one retailer believed that the retail price was very high in comparison with the tax revenues generated. It was noted that there are nine principal wholesalers in Kansas, each of which handles basically the same product line.

Representatives of liquor suppliers recommended that changes be made in the existing statutes. One conferee urged that a free enterprise market be established which would benefit both the industry and the consumer. It was stated that the consumer would benefit from legislation removing price controls and allowing competition in the liquor industry. It was alleged that wholesalers are reaping windfall profits through the "artificial"

freight rates established by the affirmation statute and that, although affirmation was intended to reduce prices, prices are, in fact, higher in Kansas than in most other states. Other conferees contended that the freight rates do not permit windfall profits.

Conclusions and Recommendations

The Committee is not convinced that changes are needed in the liquor price affirmation statute. The Committee believes that the Kansas Liquor Control Act is an adequate law which is functioning in the best interests of the state at this time. Therefore, the Committee recommends no legislation in this area and further recommends that no additional studies on the affirmation issue be undertaken.

Respectfully submitted,

_____, 1976

Representative Lloyd Buzzi, Chairman
Special Committee on Federal and
State Affairs

DRAFT

Attachment VIII

COMMITTEE REPORT

TO: Legislative Coordinating Council
FROM: Special Committee on Federal and State Affairs
RE: Proposal No. 19 - Rural Airport Development*

Under Proposal No. 19, the Special Committee on Federal and State Affairs was directed to assess "the desirability of establishing a state program of rural airport aid and development."

Committee Activity

The Committee reviewed two bills, H.B. 2985 and Sub. S.B. 916, which had been introduced during the 1976 Session to establish a state program of airport aid and development. In addition, the Committee heard testimony from representatives of the Kansas Department of Transportation, various airports and airport authorities, the Kansas Agricultural Aviation Association, and other interested individuals.

Most of the testimony was supportive of the enactment of a state program to assist in airport development. Conferees stated that, although many airports are eligible for federal aid, the smaller airports cannot meet federal eligibility requirements and, thus, must look to the state or local sources for funding. The Kansas Department of Transportation, which strongly advocated

*_____

_____ Bill _____ accompanies this report.

a state aid program, stated that 17 new airports will be needed in Kansas to meet expected growth in the next 20 years. It will cost about \$160 million over the next 20 years to construct and develop this number of new airports. It was stated that Kansas is one of only three states which do not provide financial assistance to municipal airports. Testimony indicated that there are about 125 publicly-owned and 100 privately-owned airports in the state.

Other conferees noted the problems experienced by small communities which desire to construct or expand airport facilities to attract industry and provide additional jobs. In most cases, the staggering costs of construction are beyond the funding capacities of the communities. Since these smaller communities can not generally qualify for federal funds, the only funding alternative available is a combination of state and local funds.

One conferee felt that there was already too much government involvement in aviation and that, since some federal funds were available on a 90/10 matching basis, most communities should be able to contribute the required 10 percent to construct an airport.

Several conferees addressed specific comments to the proposed bills considered last session and to the draft proposed by the Kansas Department of Transportation during the course of this study. Sub. S.B. 916 would have a) established an aid program for municipal airports in the state, b) required that 50 percent of the state motor vehicle fuel tax collected from the sale of aircraft fuel be credited to the State Aviation Fund (at present the entire tax is refunded to the person purchasing the fuel for non-highway uses),

- c) exempted the sale of aircraft fuel from the sales tax, and
- d) authorized the Secretary of Transportation to expend monies from the State Aviation Fund by making grants for airport development and construction to municipal airports, except airports receiving federal funds.

The draft proposed by the Department of Transportation during the course of this study contained a similar funding mechanism, although the Department would only have been authorized to make planning grants. This draft also would have permitted grants to all municipal airports, including those receiving federal assistance. The draft also deleted the aircraft registration and licensing requirements which were contained in Sub. S.B. 916.

A constitutional question was raised regarding the use of state funds for the construction of municipal airports, as proposed in Sub. S.B. 916. Some individuals felt that this action would be contrary to Article 11, Section 9 of the Kansas Constitution, the "internal improvements" ban. Therefore, the Committee requested an opinion of the Kansas Attorney General regarding the constitutionality of utilizing state funds for municipal airport construction or planning. Attorney General Opinion No. 76-296 (September 24, 1976) concludes, in synopsis, that:

Article 11, §9 of the Kansas Constitution prohibits the use of state funds for the construction and development of municipal and county airports, although it does not prohibit the use of such funds for local aviation planning. The levy of a motor-fuel tax on aircraft fuel to fund such grants is constitutionally permissible.

At least one conferee stated that the draft proposed by the Department of Transportation, which contemplates only grants for planning activities, would not help the small community which is struggling to provide an adequate airport. This individual felt that the draft ignored the needs of small and rural communities and would merely set up another planning bureaucracy at the state level.

Conclusions and Recommendations

The Committee concludes that establishment of a state program of airport aid and development is both desirable and appropriate at this time. Given the constraints imposed by the Kansas Constitution, however, the legislation proposed by this Committee is limited to funds for planning activities only. The Committee recommends that the 1977 Legislature take favorable action on _____ Bill _____ which would provide for state financial assistance to municipalities for airport planning programs.

The Committee also recommends that the need be assessed for future studies regarding: a) a possible constitutional amendment concerning the internal improvements prohibition of Article 11, Section 9 of the Kansas Constitution, and b) consideration of alternative means for funding municipal airport construction and development.

The major provisions of _____ Bill _____ are as follows:

1. The Secretary of Transportation would be authorized to make grants to municipalities from the Airport Planning Fund for airport planning programs and studies. Grants would be made on a 50 percent matching basis, up to a maximum grant of \$25,000.

2. The bill provides that 50 percent of all motor-fuel tax collected on motor vehicle fuels used for the operation of aircraft would be credited to the Airport Planning Fund. The remaining 50 percent would remain eligible for refund. Under existing law, the entire amount of the tax is eligible for refund.
3. The sale of motor vehicle fuel used in aircraft would be exempt from the sales tax.
4. All municipalities, including those which qualify for federal airport funds, would be eligible to receive planning grants from the Airport Planning Fund.
5. Municipality would be defined as any city, county, board, commission, airport authority or other governmental or quasi-governmental entity authorized by law to own and operate one or more airports.

Respectfully submitted,

Rep. Lloyd Buzzi, Chairman
Special Committee on Federal
and State Affairs

Attachment

11-9-76

PROPOSED BILL NO. _____

By Special Committee on Federal and State Affairs

Re: Proposal No. 19

AN ACT relating to airports and airway systems; providing for state financial assistance to municipalities for airport planning programs; amending K.S.A. 3-604, 3-605, 79-3402 and 79-3453 and K.S.A. 1976 Supp. 79-3425 and 79-3606 and repealing the existing sections.

WHEREAS, The airports and airway systems within the state of Kansas are inadequate to meet the current and projected growth in aviation within the state, the demands of interstate commerce, the postal system and the national defense; and

WHEREAS, Federal legislation provides for federal aid to states for airport planning based on state planning programs already in existence; and

WHEREAS, It is essential to the safety and welfare of the state and the residents thereof to undertake a program to financially assist airport planning in cooperation with municipalities of the state of Kansas and the United States government and agencies thereof: Now, therefore,

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in this act, unless the context otherwise requires: (a) "Federal airport and airway development act" means public law 91-258, commonly known as the airport and airway development act of 1970, or public law 94-353, commonly known as the airport and airway development act amendments of 1976.

(b) "Municipality" means any city, county, board, commission, airport authority or other governmental or quasi-governmental entity authorized by law to own and operate one or more airports.

Sec. 2. K.S.A. 79-3402 is hereby amended to read as follows: 79-3402. The tax imposed by this act is levied for the purpose of producing revenue to be used by the state of Kansas to defray, in whole or in part, the cost of constructing, widening, purchasing of right-of-way, reconstructing, maintaining, surfacing, resurfacing and repairing the public highways, including the payment of bonds heretofore issued for highways included in the state system of this state; the cost of a program of aid to municipalities for airport planning; and the cost and expenses of ~~the director of this state~~ secretary of revenue and ~~his~~ the secretary's agents and employees incurred in administration and enforcement of this act and for no other purpose whatever.

Sec. 3. K.S.A. 1976 Supp. 79-3425 is hereby amended to read as follows: 79-3425. (a) All of the tax collected under the provisions of this act shall be paid into the state treasury by ~~the director, and~~ secretary of revenue.

(b) Of all the tax moneys collected under the provisions of this act, the state treasurer shall place credit: (1) One and seventy-five hundredths percent (1.75%) ~~of all taxes so collected in to~~ the state general fund and;

(2) such amount thereof as the director secretary of revenue shall order ~~in to~~ the motor-vehicle fuel tax refund fund to be used for the purpose of paying motor-vehicle fuel tax refunds as provided by law; ~~i~~

(3) fifty percent (50%) of all motor-fuel tax collected on motor-vehicle fuels used for the operation of aircraft, except fuels purchased and used by aircraft manufacturers for testing or demonstrating, to the airport planning fund created by section 5; and

(4) on July 1, October 1, January 1 and April 1 of each year, beginning in the year 1970, or as soon thereafter as the money is available, the state treasurer shall place six hundred twenty-five thousand dollars (\$625,000) ~~of the remaining tax moneys collected under the provisions of this act in to~~ the county equalization and adjustment fund, which fund is hereby

created, to be apportioned and distributed in the manner provided in K.S.A. 1976 Supp. 79-3425c.

(c) Of the tax moneys collected under the provisos of this act remaining after distribution as provided in subsection (b) of this section, the state treasurer shall credit: (1) Eighty-seven and fifty hundredths percent (87.50%) of the remainder of said tax moneys so collected shall be credited as follows: On and after July 1, 1974, (A) Sixty-five percent (65%) thereof to the state freeway fund which is hereby created, to be expended in the manner provided in K.S.A. 1976 Supp. 68-2301, and

(B) thirty-five percent (35%) thereof to a special city and county highway fund which is hereby created, to be apportioned and distributed in the manner provided in K.S.A. 1976 Supp. 79-3425c. The remaining; and

(2) twelve and fifty hundredths percent (12.50%) of the tax moneys so collected shall be credited to the highway fund.

(d) On July 2, 1974, and on Each day thereafter, after the state treasurer has received certification from the secretary of transportation that provisions have been made for the payment of the pro rata share of the amount required to be paid on the next ensuing payment date of either the principal of or the interest on the outstanding highway bonds issued pursuant to K.S.A. 1976 Supp. 68-2304, the state treasurer shall transfer from the state freeway fund to the state highway fund an amount equal to sixty-nine and twenty-three hundredths percent (69.23%) of the moneys deposited in the state freeway fund on the preceding day.

Sec. 4. K.S.A. 79-3453 is hereby amended to read as follows: 79-3453. (a) Subject to the provisions of subsections (b) and (c) of this section, any person who shall use any motor-vehicle fuels on which the motor-fuel-tax imposed by law has been paid by him, for any purpose other than operating or propelling motor vehicles on the public highways, shall be entitled to be reimbursed and refunded the motor-fuel tax paid by such person on such fuels upon complying with the applicable conditions and provisions of this act. Provided, That such

(b) Any person entitled to a refund of motor-fuel tax paid on motor-vehicle fuels used for the operation of aircraft, except motor-vehicle fuels purchased and used by aircraft manufacturers for testing or demonstrating, shall be entitled to a refund of only fifty percent (50%) of the motor-fuel tax paid by such person on such fuels.

(c) No person shall not be entitled to a any refund of such tax hereunder unless he such person purchases the motor-vehicle fuel from a licensed distributor in quantities of forty (40) or more gallons. The words "licensed distributor," as used in this act, shall also include a licensed importer who is licensed as a distributor.

New Sec. 5. A fund to be known as the airport planning fund is hereby created in the state treasury to provide financial assistance to municipalities of this state for airport planning programs and studies, including, but not restricted to, those which qualify for federal aid and assistance under the provisions of the federal airport and airway development act. Such fund is to be used exclusively to make grants authorized under this act and to defray the expenses incurred in administering the provisions thereof. All expenditures from the airport planning fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of transportation.

New Sec. 6. The secretary of transportation is hereby authorized and empowered to approve and order payment of grants to municipalities from the airport planning fund for airport planning programs and studies. Such grants may include grants for those planning activities undertaken by a municipality in cooperation with the federal government pursuant to the provisions of the federal airport and airway development act, or any amendments thereto.

Any grant made hereunder shall be in an amount equal to fifty percent (50%) of that portion of the cost of the proposed planning program or study which would otherwise be paid by the

municipality or twenty-five thousand dollars (\$25,000), whichever is less.

New Sec. 7. The secretary of transportation shall adopt such rules and regulations as necessary for the effective administration of this act. The secretary of transportation may also delegate any of the powers given to the secretary by this act to a lawful representative. Such representative may exercise any of the powers so delegated as fully as if exercised by the secretary.

New Sec. 8. Moneys allocated to a municipality by a grant made pursuant to this act shall be encumbered as an expenditure from the airport planning fund upon the letting of a contract for the planning services for which the grant was approved regardless of the date on which actual payment of the grant is made, but the secretary of transportation may reallocate any of the moneys committed to a municipality which has not entered into contracts or otherwise committed such allocation for an approved project within the fiscal year for which it was allocated.

Sec. 9. K.S.A. 3-604 is hereby amended to read as follows:
3-604. As used in this act, unless the context otherwise requires, ~~the following words and phrases shall have the meanings respectively ascribed to them herein:~~

(a) "Municipality" means any city ~~or county or any agency thereof and~~, board, commission, airport authority or other governmental or quasigovernmental entity authorized by law to own and operate one or more airports.

(b) "Federal airport act" means ~~the aviation facilities expansion act of 1969 or~~ public law 91-258, commonly known as the airport and airways airway development act of 1969 1970, or such ~~other title as the referred to acts shall be finally enacted under by the United States congress during its 1970 session~~ public law 94-353, commonly known as the airport and airway development act amendments of 1976, and such other existing federal acts as are referred to therein.

Sec. 10. K.S.A. 3-605 is hereby amended to read as follows:

3-605. The secretary of transportation is hereby empowered to

- (1) act as the agent of sponsors located in the state;
- (2) accept in behalf of the sponsors and disburse to them all payments made pursuant to agreements under the federal airport act, including grants made to establish demonstration programs under the airport and airway development act amendments of 1976;

- (3) acquire by purchase, gift, devise, lease, or otherwise, any property, real or personal, or any interest therein, including easements, necessary to establish or develop airports;

- (4) engage in airport systems planning on a statewide basis; and

- (5) undertake airport development, or provide financial assistance to public agencies within the state for carrying it out.

Sec. 11. K.S.A. 1976 Supp. 79-3606 is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, which tax is not subject to full refund, under the laws of this state, except cigarettes as defined by K.S.A. 79-3301 and cereal malt beverages and malt products as defined by K.S.A. 79-3817, including wort, liquid malt, malt syrup and malt extract;

(b) All sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof other than a school or educational institution or purchased by a public or private nonprofit hospital and used exclusively for state, political subdivision or hospital purposes, except when such state, political subdivision or hospital is engaged or proposes to engage in a business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business;

(c) All sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. ~~Provided, except~~ that the exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) All sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision, hospital, school or educational institution. When any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate, and the contractor shall furnish copies of all such invoices to the political subdivision, hospital, school or educational institution concerned, which, upon completion of the project, shall certify to the state that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by

the political subdivision, hospital, school or educational institution concerned for a period of five (5) years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate be found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the twentieth day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, hospital, school or educational institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate shall be issued without the payment of the sales or compensating tax otherwise imposed upon such materials shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (4) of K.S.A. 79-3615 ~~(4)~~;

(e) All sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for

incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate, and the contractor shall furnish copies of all such invoices to the government of the United States, its agencies or instrumentalities concerned, which, upon completion of the project, shall certify to the state that all purchases so made were entitled to exemption under this subsection. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate shall be issued without the payment of the sales or compensating tax otherwise imposed upon such materials shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (4) of K.S.A. 79-3615 (4);

(f) Tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce;

(g) Sales of aircraft including remanufactured and modified aircraft and aircraft repair, modification and replacement parts sold to persons using such aircraft and aircraft repair, modification and replacement parts as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of said foreign government and all sales of aircraft, aircraft parts and replacement parts for use outside of the United States;

(h) All rentals of nonsectarian textbooks by public or private elementary or secondary schools;

(i) The lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

(j) Meals served without charge or food used in the pre-

paration of such meals to employees of any restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public if such employees' duties are related to the furnishing or sale of such meals or drinks;

(k) Any motor vehicle or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle or aircraft is not to be registered or based in this state and which vehicle or aircraft will not remain in this state more than ten (10) days;

(l) All isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 1976 Supp. 79-3603 ~~to~~ and amendments thereto;

(m) All sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of revenue taxation and furnish to his or her supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) All sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to his or her supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, irrigation and in providing such services;

(o) All sales of animals, fowl and fish, the primary purpose of which is use in agriculture, the production of food for

human consumption, the production of animal, dairy, poultry or fish products, fiber or fur, or the production of offspring for use for any such purpose or purposes;

(p) Trade fixtures and equipment which is already installed and second-hand when sold by a person ceasing to do business where said fixtures or equipment is installed.

New Sec. 12. If any provision of this act or the application thereof is held invalid, the invalidity shall not effect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 13. K.S.A. 3-604, 3-605, 79-3402 and 79-3453 and K.S.A. 1976 Supp. 79-3425 and 79-3606 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

HEARING ON PROPOSAL 64 - DEATH PENALTY

NOVEMBER 9, 1976

OVER THE PAST FEW YEARS, WE SEEM TO HAVE DEVELOPED A SO-CALLED "HANG-UP" CONCERNING THE DEATH PENALTY FOR THE CRIMINAL, AND THIS IS EVEN AFTER ALL AVENUES OF OUR JUDICIAL SYSTEM HAVE BEEN UTILIZED AND EXHAUSTED. I SUBMIT TO YOU THAT WE ALREADY HAVE A DEATH PENALTY IN KANSAS, BUT IT IS CARRIED OUT WITHOUT THE BENEFIT OF A TRIAL OR APPEALS, AND IT IS CARRIED OUT BY THE CRIMINAL WHO APPARENTLY, IN MANY INSTANCES, RATIONALIZES THAT IT IS TO HIS OR HER ADVANTAGE OR BENEFIT TO ELIMINATE ANY POSSIBILITY OF THE VICTIM BECOMING A WITNESS OR TESTIFYING AGAINST HIM OR HER, AND KNOWING FULL WELL, FROM THE RECORD, THAT IF APPREHENDED, HE OR SHE WILL ONLY HAVE TO SERVE A MINIMUM OF TIME IN A PENAL INSTITUTION.

WITH THE DEATH PENALTY STATUTE, THE CRIMINAL WOULD HAVE THE BENEFIT OF A TRIAL AND ALL THE APPEALS BEFORE FINALLY PAYING THE ULTIMATE PENALTY, AND IT WOULD HAVE TO BE PROVEN THAT A CRIME WAS COMMITTED. CONTRAST THIS, IF YOU PLEASE, WITH THE DEATH PENALTY CARRIED OUT BY THE CRIMINAL ON THE VICTIM. DID THE VICTIM COMMIT A CRIME? WAS THE VICTIM ADVISED OF HIS CONSTITUTIONAL RIGHTS? WAS THE MIRANDA WARNING GIVEN TO THE VICTIM? WAS THE PRESENCE OF COUNSEL DENIED? WAS THE VICTIM GRANTED A TRIAL OF THEIR PEERS, WITH ALL APPEALS BEING UTILIZED? AND, OF COURSE, WE ALL KNOW THE ANSWERS, YET THE DEATH PENALTY WAS IMPOSED.

COL. ALBOTT
11-9-76

Attachment X

NOVEMBER 9, 1976
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MORE AMERICANS WERE MURDERED DURING THE FIRST FOUR YEARS OF THIS DECADE THAN WERE KILLED DURING THE ENTIRE VIETNAM WAR. MURDER NOW RANKS AS A MAJOR CAUSE OF DEATH IN THESE UNITED STATES. THE KILLERS ARE TYPICAL AMERICANS, WITH AN AVERAGE AGE OF TWENTY-ONE. SEVENTY PERCENT OF THE VICTIMS ARE FRIENDS OR RELATIVES OF THEIR KILLERS. THESE ARE GRIM STATISTICS AND STEPS MUST BE TAKEN TO PROTECT THE INNOCENT CITIZENS WHO ARE HAVING THE DEATH PENALTY IMPOSED AGAINST THEM WITHOUT THE BENEFIT OF LAW.

MANY ARE QUITE VOCAL IN THEIR OPPOSITION TO THE DEATH PENALTY STATUTE. AND ONE SUCH GROUP IS THOSE WHO, IF THERE WERE A DEATH PENALTY, WOULD NOT BE ABLE TO VOICE THOSE OPINIONS. IT IS TOO BAD THAT WE CANNOT HAVE THE BENEFIT OF THE VICTIMS' OPINIONS CONCERNING THE DEATH PENALTY.

THE SUPREME COURT, AFTER MUCH DELIBERATION, HAS SAID THAT A DEATH PENALTY LAW, IN ITSELF, IS NOT CRUEL OR UNUSUAL PUNISHMENT, PROVIDED CERTAIN SAFEGUARDS ARE MET. EVEN THOUGH FOR MANY, MANY YEARS THERE EXISTED DEATH PENALTY STATUTES IN MOST OF THE STATES, SELDOM WAS THAT PENALTY CARRIED OUT. SO WHAT WE REALLY HAD WAS A LAW ON THE BOOKS, BUT SELDOM IMPLEMENTED IT. CONSEQUENTLY, ALL DETERRENT WAS LOST.

I AM CONVINCED THAT SOCIETY HAS A RIGHT TO BE FREE FROM FEAR OF THOSE WHO WOULD IMPOSE THE DEATH PENALTY ON THEM WITHOUT THE BENEFIT OF LAW.

AND I AM EQUALLY CONVINCED THAT IF THE DEATH SENTENCE WAS CARRIED OUT WITH CERTAINTY AGAINST THOSE WHO COMMIT THE CRIMES FOR WHICH IT WAS A PENALTY, MOST OF THE CRIMINALS WOULD BE DETERRED FROM KILLING THEIR VICTIMS. WE HEAR MUCH ABOUT COMPASSION AND CONSIDERATION FOR THE CRIMINAL, BUT HOW OFTEN DO WE ASK, "DID THE CRIMINAL SHOW LIKE COMPASSION AND GIVE CONSIDERATION TO THE VICTIM?"

IN A RECENT ARTICLE IN PARADE MAGAZINE, SOME ENLIGHTENING STATISTICS WERE DOCUMENTED CONCERNING THE CAREER CRIMINAL. "IF CONFRONTED, MANY SHOOT UNHESITATINGLY - AND HAVE ACCOUNTED FOR AT LEAST 857 OF THE LAST 1083 LAW ENFORCEMENT OFFICERS KILLED IN THE U.S." IF THERE IS LITTLE CONCERN OVER OR ABOUT KILLING A POLICE OFFICER, THEN THE AVERAGE CITIZEN DOES NOT HAVE A PRAYER. "WHEN THE PENALTY FOR TAKING ANOTHER PERSON'S LIFE IS LITTLE MORE THAN ROBBING A BANK, THEN WHY NOT KILL THE VICTIM WHO LATER COULD TESTIFY AGAINST YOU. PENALTIES ARE NO DETERRENT TO THOSE WHO COMMIT CRIMES WHEN THEY KNOW THAT THOSE PENALTIES WILL NOT BE IMPOSED. AND ALL ANY CRIMINAL HAS TO DO IS TO LOOK AT THE RECORDS OVER THE PAST FEW YEARS AND IT BECOMES QUITE OBVIOUS THAT THE SURENESS OF SOMETHING HAPPENING HAS ALMOST DISAPPEARED ON THE FIRST, SECOND AND THIRD OFFENSE. IT IS TIME, I BELIEVE, THAT WE LET THE CRIMINAL ELEMENT KNOW THAT SOCIETY, AS A WHOLE, IS TIRED OF THEIR EXCUSES AND TO PUT THEM ON NOTICE THAT IF THEY COMMIT CRIMES THERE SHALL BE PUNISHMENT, AND THAT PUNISHMENT SHALL FIT THE CRIME. I WOULD HOPE

THAT THIS COMMITTEE WILL CONSIDER THE DEATH PENALTY LAWS OF OTHER STATES, WHICH THE U.S. SUPREME COURT HAS ALREADY SAID WERE CONSTITUTIONAL, AND THEN RECOMMEND TO THE FULL LEGISLATURE SUCH A LAW FOR THE STATE OF KANSAS. WHY, I ASK, IN THE LAST TEN YEARS OR SO HAVE WE BECOME SO TOLERANT IN OUR ATTITUDES TOWARD THOSE WHO COMMIT CRIMES, AND LOOK FOR EVERY REASON TO EXCUSE THEM FOR THEIR ANTI-SOCIETY ACTIONS?

I AM NOT HERE TO TESTIFY FOR ANY SPECIFIC LAW OR PROPOSAL, RATHER I BELIEVE THE LEGISLATURE SHOULD STRONGLY CONSIDER THE EXISTING LAWS OF OTHER STATES WHICH THE SUPREME COURT HAS RULED WERE CONSTITUTIONAL.

- SOURCES:
1. The Criminal Law Reporter - published by the Bureau of National Affairs, Washington D.C.
 2. Law Enforcement News
 3. "Ending the Death Penalty Cheapens Life," by Patrick J. Buchanan
 4. "Liberty, Justice and Morals", by Burton M. Leiser, N.Y., 1973 The MacMillan Co.

A LAYMAN'S GUIDE TO THE CAPITAL PUNISHMENT DECISIONS

BY JAMES REARDON, EXECUTIVE DIRECTOR
KANSAS COUNTY & DISTRICT ATTORNEYS ASSOCIATION
November 9, 1976

In a 7 to 2 decision the court declared that capital punishment is not per se unconstitutional. It is only the "arbitrary" and "capricious" application of the penalty which is affected by the 8th amendment's ban on cruel and unusual punishment.

The court's ruling upheld state laws which provide for a two-part trial in capital cases. In such trials, said the court, guilt or innocence will be decided in the first phase, and the sentence in the second phase, based on certain aggravating or mitigating circumstances.

The Gregg decision was arrived at in 2 stages. 1st, seven of the justices with only Brennan and Marshall dissenting, determined that the punishment of death does not per se violate the 8th and 14th amendments of the Constitution.

It is significant that the court stated that the 8th amendment should be interpreted in a flexible manner which would reflect the continually evolving standards of decency.

The 8th amendment was enacted to stop the practice of cutting off the ears, slitting the noses, and branding the cheek. It was designed to prevent perpetual imprisonment (like a \$577,000 fine to be paid with five years in prison and \$2 per day until the fine was paid, not to exceed 288,476 days, a

term of 800 years.) It had no relation to the death penalty which was exercised routinely during those days.

Great weight, said the court, should be given to the legislature in determining whether a death penalty should be enacted.

"The penalty must do more than satisfy public perceptions of 'standards of decency,'" said the plurality. "It must also accord with the dignity of man, the basic concept underlying the 8th amendment." This means a punishment must not be excessive, i.e., an "unnecessary" and wanton infliction of pain or grossly disproportionate to the crime. The role of the judiciary is limited in determining whether a punishment selected by legislature was acceptable. "We can't require the legislature to select the least severe punishment; we must concern ourselves with whether the penalty is not cruelly inhuman or disproportionate to the crime."

The plurality put special emphasis on contemporary standards. They were impressed by the fact that at least 35 states and congress had shown their preference for some sort of death sanction. Also taken into consideration was the fact that the juries in some 460 cases were willing to impose the death penalty under these laws. These factors were considered to be significant and reliable indicators of the acceptability of a death penalty to contemporary society.

RETRIBUTION

The plurality considered whether retribution and deterrence were legitimate social purposes for the imposition of the death penalty. Their conclusion was based on the view expressed by Justice Stewart in Furman, that:

In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many but it is essential in an ordered society that asks its citizens to rely on legal process rather than self help to vindicate their wrongs.

"Retribution," said the plurality, "is no longer the criminal law's dominant

purpose but neither is it a forbidden one."

More importantly these justices determined that retribution was not an objective which was inconsistent with "our respect for dignity of man."

You see, leading philosophers of the last generation convinced us all that by emphasizing rehabilitation rather than retribution we would have a more human and decent society. So for the past 15 years while the execution of criminals has been considered "barbaric", the number of murders has doubled; forcible rapes have tripled; robberies have quadrupled. In 1974 alone, 55,000 American women and girls were raped - one nearly every five minutes. In 1974 more than 20,000 innocent citizens were slaughtered - one every 22 minutes. 209,780 soldiers were killed in Viet Nam. Approximately the same number of innocent men have been slaughtered on our very own streets.

DETERRENCE

"The value of capital punishment as a deterrent is a complex factual issue the resolution of which properly rests with the legislatures." Only the legislatures, said the court, could evaluate statistics, reports, etc. with the flexibility required by local conditions.

However, the plurality was careful to emphasize that it was considering only the crime of murder in which the defendant has deliberately taken a life. The conflicting arguments and documents offered even by the justices showed that the issue was one that reasonable men and reasonable legislatures will differ.

It was the opinion of the justices that the new death penalty statutes could not be considered as "some form of savagery or as purely retributive in motivation: For they are solemn judgements, reasonably based, that imposition of the death penalty will save the lives of innocent persons. "This concern," said the majority, "for life and human values and the sincere efforts of the state to pursue them are matters of the greatest monument with which the judiciary should be most reluctant to interfere."

On the other hand, the court rejected the legislation in North Carolina and Louisiana which required that mandatory death penalties be imposed for those convicted of certain crimes.

The key factor in the decision to uphold discretionary capital punishment and to reject mandatory formulas was justices Potter Stewart, John Paul Stevens, and Lewis Powell, who after drafting the primary opinion upholding the death penalty, reversed course and joined liberals Brennan and Marshall to form the majority which voided the North Carolina and Louisiana capital punishment statutes. They focused upon fitting the punishment to the individual, and a consideration of aggravating and mitigating circumstances, which the mandatory "laundry list" statutes did not provide.

SECOND PLURALITY

The views of the remaining four justices was spelled out in a part of Mr. Justice White's dissenting opinion in Roberts v. Louisiana. The Chief Justice, and Justices Blackman and Rehnquist joined in this opinion which focused on the widespread acceptance of capital punishment past and present and on its legitimacy as an instrument of retribution and deterrence.

The overwhelming response of state legislatures to the Furman decision pretty well laid to rest the argument made by Justices Brennan and Marshall that the death penalty had become unacceptable to contemporary society.

Also this response by state legislatures answered another claim. It was the claim that life imprisonment was an adequate punishment to satisfy the need for reprobation or retribution. Here's what Justice White said about that: "It also seems clear enough that death finally forecloses the possibility that while he is a prisoner he might commit further crimes... "

Capital punishment then does have a purpose, concluded the justices, above and beyond life imprisonment.

We have failed to punish those who commit crimes. All too often crime is

excused because of "deprived childhoods," or because the perpetrator grew up in something less than a "middle class atmosphere."

If any legal or political system loses its capacity to protect its citizens from bodily harm, and from loss of personal liberties, it has lost most of its reason for being. In the name of compassion we have forgotten all responsibility to our nation, to our laws, to our fellow man, and to ourselves. Ordinary men and women should not have to arm themselves to prevent attacks from lawless persons who roam the streets.

IN CONCLUSION

Genuine reverance for life is totally consistent with the advocacy of the reinstatement of the death penalty. The death penalty means that every reasonable measure will be instituted to preserve the lives of Kansas citizens.

Ending Death Penalty Cheapens Life

Reardon 11-9-76

By PATRICK J. BUCHANAN

WASHINGTON — At the Federal Penitentiary in Lewisburg, Pa., "the going price for murder (is) two cartons of cigarettes." This is the sworn testimony of recently released inmate Francis Marziani.

In the last two years, seven of the 1600 prisoners at Lewisburg have been stabbed to death. Four were murdered in the same fashion within the past five months. Mr. Marziani, who admits to having been gang-raped and beaten repeatedly, contends that the inmate population at Lewisburg, not the guards, runs the institution.

The horrors witnessed in his 15 months of incarceration have convinced Mr. Marziani that only the death penalty can deter the convicts. "The cannibals should not be allowed to rape, maim and murder ... where they have nothing to lose."

In a sense, our society has become something of a macrocosm of Lewisburg. Ever since the criminal justice system abandoned the death penalty as punishment and deterrent, that discarded instrument of justice has been picked, dusted off and employed with increasing regularity by the criminal elements of society.

Once gain, one of the bold and progressive ideas of post-war liberation has produced the opposite of the desired effect. Eliminating capital punishment, we were told, emphasizing rehabilitation rather than retribution, would make ours a more humane society. The truth, however, is that the abandonment of the death penalty has been coterminous with, if it has not contributed directly to, the nation's descent into the most barbarous civilized society in the history of man.

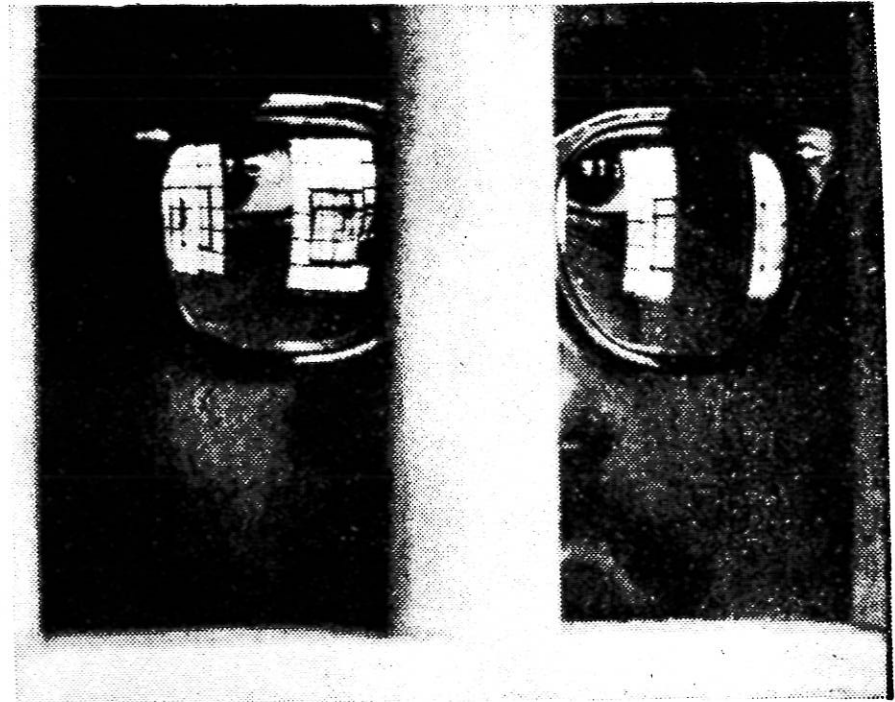
During the past 15 years, as the execution of criminals has been ruled out as barbaric, the number of murders and manslaughters has doubled, forcible rapes have tripled, robberies have quadrupled. More than 55,000 American

To suggest that the death penalty is simply legalized murder is as silly as suggesting that arrest and imprisonment are nothing more than legalized kidnaping and legalized slavery. Use of the death penalty in capital crimes, that ultimate punishment from which there is no appeal, is the mark of a society which holds dear the life of its citizens. It is the society which holds life cheap that imposes weak penalties for the taking of life.

women and girls were raped in 1974; more than 20,000 innocent citizens were executed. The number of criminals who paid for these crimes in the gas chamber or electric chair was zero.

When the electric chair was still a realistic threat to the criminal community, 80 per cent of the killings in New York involved cases where the killer knew his victim. Now, more than a third involve incidents where the killer never met his victim — where he simply executed witnesses during a rape, robbery or assault.

In his excellent new book, "Punishing Criminals," Professor Ernest van den Haag argues for restoring capital punishment with a logic nearly as convincing as Mr. Marziani's experience.



What other deterrent can there be, he asks, to prevent the life-term convict from murdering another inmate or a guard — for "two cartons of cigarettes"? What other penalty can one devise which will deter the kidnapper from murdering his victim — when he knows the killing will enhance his chances of escaping without increasing the penalty for getting caught?

To suggest that the death penalty is simply legalized murder is as silly as suggesting that arrest and imprisonment are nothing more than legalized kidnaping and legalized slavery.

Use of the death penalty in capital crimes, that ultimate punishment from which there is no appeal, is the mark of a society which holds dear the life of its

citizens. It is the society which holds life cheap that imposes weak penalties for the taking of life.

"Life becomes cheaper as we become kinder to those who take it," suggests the professor. For documentation of his argument one need only read tomorrow's paper, or yesterday's crime reports from the F.B.I.

Today the burden of proof has shifted upon those who oppose, not those who favor, the death penalty. For if the death penalty does not deter, all we have lost in exacting it is the life of a convicted killer. But if the death penalty **does** deter, by refusing to impose it we have consigned to death some future innocent victim.

(C., 1976, Patrick Buchanan Special Features)

Attachment XII

COMMITTEE REPORT

TO: Legislative Coordinating Council
FROM: Special Committee on Federal and State Affairs
SUBJECT: Proposal No. 61 - Statewide Building Codes*

Proposal No. 61 directed the Special Committee on Federal and State Affairs to conduct a study of "the feasibility of adopting statewide building codes, with particular emphasis upon the final report and recommendations of the Advisory Committee on Statewide Building Codes."

Background

The Advisory Committee on Statewide Building Codes was created by the 1973 Kansas Legislature (K.S.A. 74-121 et seq.) to: (a) survey and evaluate building codes presently in use in the state; (b) survey and evaluate code enforcement procedures; (c) make recommendations concerning the adoption of building codes, including statewide building codes; and (d) make recommendations concerning code enforcement procedures. This 15-member Advisory Committee conducted its study over a period of three years and, on January 1, 1976, submitted its final report to the Governor and the Kansas Legislature.

The Advisory Committee made two recommendations in the final report:

1. That the State of Kansas adopt enabling legislation to establish a statewide building code and to make such code applicable throughout the state.

* Bill accompanies this report.

2. That the proposed legislation and the model building codes identified herein be used as the basis on which a statewide building code can be established.

The final report contains a proposed bill to enact a "Kansas Building Codes Act." In brief, the Advisory Committee's proposed bill would establish a mandatory statewide building code program, administered at the state level, to create uniformity of building codes and uniformity in procedures for administering and enforcing building codes throughout the state. Although the Advisory Committee's report was submitted on January 1, 1976, no bills were introduced during the 1976 Session to carry out its recommendations.

Committee Activity

The Committee conducted a thorough examination of the final report and recommendations of the Advisory Committee on Statewide Building Codes, including the proposed legislation contained in the final report. In addition, the Committee heard testimony from representatives of the following groups: the Advisory Committee on Statewide Building Codes, the Division of Architectural Services, the Kansas Energy Office, the National Electrical Contractors Association, the Mechanical Contractors Association of Kansas, the League of Kansas Municipalities, the State Fire Marshal, the Department of Health and Environment, various local building code officials, the Federal Energy Administration, and interested legislators and individuals.

Most of the testimony concerning the adoption of a statewide building code in Kansas was supportive of the concept.

Several conferees stated that adoption of a statewide building code would serve to protect the public from uncontrolled construction, establish uniform construction requirements throughout the state, and facilitate the use of new technologies, new techniques, and new materials. Representatives of the construction industry stated that a statewide code would not increase construction costs but, on the contrary, could serve to reduce or stabilize costs by creating uniform construction requirements. It was noted that a statewide code would provide protection for people who choose to build in suburban or rural locations, some of which are not covered by any type of building code. It was also stated that code enforcement would be enhanced because the state agency would not be subject to the local pressures often exerted on local enforcement agencies.

Most testimony indicated a consensus that the responsibility for administering a statewide code should be placed upon an existing state agency, that the agency should generate enough fee revenue to be self-supporting, that local enforcement should remain the responsibility of the local building code official, and that the code be mandatory for all localities throughout the state. It was suggested that the state provide adequate financial assistance to local governments for any expenditures resulting from the implementation of additional state requirements contained in the statewide code.

Several conferees recommended that energy consumption standards be included as a part of the code. Minimum standards concerning energy consumption, energy conservation, and insulation

as part of a statewide code could serve to protect the public and alleviate the present energy problem in Kansas. One conferee suggested that, in lieu of a statewide building code, consideration be given to establishing a state program to train local inspectors so that uniform enforcement could be achieved. It was also suggested that, if a statewide code is adopted, it should require all state agencies having any involvement with building regulation to utilize the statewide code without amendment.

Conclusions and Recommendations

The Committee concludes that adoption of a statewide building code would eliminate many of the conflicting requirements among state and local building regulations, would establish a uniform procedure for building code administration and enforcement, would promote efficiency in the construction industry which could reduce or stabilize construction costs, and would provide additional protection for the consumer. Therefore, the Committee recommends that the 1977 Legislature take favorable action on

Bill which would establish the "Kansas Building Code Act."

This bill is the outgrowth of Committee consideration of the legislation proposed by the Advisory Committee. The Special Committee on Federal and State Affairs considered the proposed bill, made various amendments in particular sections, and approved one major revision of the Advisory Committee's recommendations. The major revision is that, while the bill proposed by the Advisory Committee would have mandated the statewide code on all localities throughout the state, Bill takes a more

permissive approach: localities which adopt a building code would be required to adopt the statewide code in its entirety; however, localities would be free to adopt no building code whatsoever.

The major provisions of Bill are as follows:

1. The position of Statewide Building Code Administrator would be established within the Division of Architectural Services, Department of Administration. The Director of Architectural Services would appoint the Administrator, who would be in the unclassified civil service.
2. The Director would adopt, by rule and regulation, various model codes and requirements, which collectively would be known as the "Kansas Building Code." The Kansas Building Code would apply to all buildings except mobile homes, recreational vehicles, and agricultural buildings not designed for human habitation.
3. A 23-member Building Code Advisory Council, with both members appointed by the Governor and ex officio members, would be established to advise the Director and the Administrator. The Council would appoint a five-member Standing Appeals Board from its membership to hear and decide appeals brought before it.
4. Following the effective date of the act, no municipality would be permitted to adopt or enforce any building regulations which are inconsistent with or do not encompass the entire scope of the Kansas Building Code. Any municipality seeking to adopt building regulations would be required to adopt the Kansas Building Code in total. A municipality not desiring to regulate building construction would not be required to adopt the Kansas Building Code.
5. A municipality which had adopted the Kansas Building Code would be permitted to make application to the Administrator for variations in such code to cover special conditions. The Administrator could grant the variation if it meets certain statutory criteria.
6. Municipalities which adopt the Kansas Building Code would be responsible for the enforcement of the code within their respective jurisdictions. Any two or more municipalities which have adopted the statewide code would be authorized to establish an area enforcement agency and share the expenses of code enforcement.
7. Municipalities which adopt the statewide code could charge such reasonable fees as necessary to fund the

costs of administration and enforcement. However, the fees could not exceed the maximum fees established by the Kansas Building Code.

8. Appeals could be taken to: (a) the municipal appeals board; (b) the Administrator; (c) the State Appeals Board; and (d) the courts. Time limitations are established for each stage of the appeal process, except the court appeal, in order to minimize delays.
9. Units of local government would be specifically authorized to establish land-use zone requirements, building setback requirements, side and rear yard requirements, and property line requirements.
10. The Director would be required to include energy conservation standards and requirements in the Kansas Building Code.

Respectfully submitted,

_____, 1976

Representative Lloyd Buzzi, Chairman
Special Committee on Federal and
State Affairs

11-9-76
Attachment XIV

____ BILL NO. ____

By Special Committee on Federal and State Affairs

AN ACT providing for the establishment, administration and enforcement of a Kansas building code; prohibiting certain acts and providing penalties therefor; amending K.S.A. 12-3301, 12-3302, 12-3303 and 19-3701 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. This act shall be known and may be cited as the "Kansas Building Code Act."

New Sec. 2. As used in this act, unless the context otherwise requires: (a) "Administrative agency" means the division of architectural services of the department of administration.

(b) "Administrator" means the administrator of the statewide building code, within the division of architectural services of the department of administration.

(c) "Agricultural building" means a structure located on property used for agricultural purposes which is constructed for or used to shelter or contain farm implements, hay, grain, poultry, livestock or other horticultural products. Such term does not include any place used for human habitation or a place of employment where agricultural products are processed, treated or packaged; nor does such term include any place used by the public.

(d) "Appeals board" means the state appeals board.

(e) "Building" means any combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any use or occupancy, except as hereinafter provided. Such term shall include any part or parts of any such structure and all equipment therein, but shall not mean or include any mobile home certified pursuant to the Kansas uniform

standards code for mobile homes and recreational vehicles nor any agricultural building.

(f) "Building code" means those standards and requirements adopted by regulation for the design and construction of buildings under this act.

(g) "Construction" means the erection, fabrication, reconstruction, demolition, alteration, conversion, relocation, preservation or repair of a building or the installation of equipment therein.

(h) "Director" means the director of architectural services.

(i) "Equipment" means facilities or installations including, but not limited to, plumbing, heating, electrical, ventilating, air conditioning and refrigerating facilities or installations, and elevators, dumbwaiters, escalators, boilers and pressure vessels.

(j) "Municipal enforcement agency" means the agency or agencies established by one or more municipalities and having authority to make inspections of buildings and to administer and enforce the laws, ordinances and regulations enacted by the state or municipalities which establish standards and requirements applicable to the construction of buildings.

(k) "Model code" means any code, standards or requirements applicable to buildings which are promulgated by nationally recognized organizations, including governmental agencies, such as the building officials and code administrators international, incorporated; international conference of building officials; southern building code conference; and council of American building officials.

(l) "Municipality" means any county or city or any other political subdivision with authority to establish standards and requirements applicable to the construction of buildings.

(m) "Secretary" means the secretary of administration.

New Sec. 3. (a) There is hereby created a building code advisory council, hereinafter referred to as the council, which

shall be composed of the following individuals: The administrator of the statewide building code, who shall be chairperson of the council and a non-voting member; the director of architectural services or his or her authorized representative; the secretary of health and environment or his or her authorized representative; the state fire marshal or his or her authorized representative; one representative of the Kansas energy office; three (3) representatives of the general public; one registered architect; one registered professional structural engineer; one registered professional mechanical engineer; one registered professional electrical engineer; one general contractor; one plumbing contractor; one mechanical contractor; one electrical contractor; one representative of the building trades; one home builder; one component modular building manufacturer; one building official employed by a municipality having a population of more than one hundred thousand (100,000); one building official employed by a municipality having a population of more than twenty-five thousand (25,000) and not more than one hundred thousand (100,000); one building official employed by a municipality having a population of less than twenty-five thousand (25,000); and one attorney qualified to practice law in the state of Kansas.

(b) Members of the council, except members ex officio and representatives of state agencies, shall be appointed by the governor for four-year terms and until successors are appointed and qualified, except that of those members first appointed, five (5) shall be appointed for terms of four (4) years, five (5) shall be appointed for terms of three (3) years, five (5) shall be appointed for terms of two (2) years, and two (2) shall be appointed for terms of one (1) year. Three (3) or more consecutive failures to attend meetings of the council by any member, without reasonable cause, shall constitute cause for removal by the governor or the chairperson of the council with the concurrence of a majority of the members of the council. Vacancies shall be filled by appointment by the governor for the unexpired term, but a majority of the members of the council may appoint

interim members to fill vacancies until the governor appoints a member for the unexpired term.

(c) The council shall meet at the written request of the administrator or three (3) or more members of the council but shall meet no less than four (4) times a year. All meetings of the council shall be held within the state. The council shall establish rules, regulations and bylaws for its operation and shall exercise all powers, duties and functions independently of the division of architectural services. No member of the council may act or vote on any matter in which such member has a private interest. Members of the building code advisory council attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid amounts provided in subsection (e) of K.S.A. 1976 Supp. 75-3223; and amendments thereto.

(d) The council shall appoint a standing appeals board from its membership for the purpose of hearing and deciding on appeals brought before it. The membership of the appeals board shall be represented by one (1) member from each of the five (5) major areas: (1) Local building code enforcement; (2) state agencies concerned with building construction; (3) builders, manufacturers or trades; (4) design professionals; and (5) the general public.

New Sec. 4. (a) There is hereby established, within the division of architectural services of the department of administration, an office for the administration of the statewide building code, the head of which shall be the administrator of the statewide building code. The administrator shall be appointed by and responsible to the director of architectural services. The administrator shall be in the unclassified service under the Kansas civil service act and shall receive compensation fixed by the secretary, in accordance with appropriation acts of the legislature.

(b) The administrator of the statewide building code shall hold a college degree in architecture or engineering, with not less than eight (8) years of experience as a building contractor,

building inspector or practicing architect or engineer and not less than five (5) years of work experience in administration or management. In lieu of each year of work experience in administration or management, a year of graduate work towards a master's degree in public administration or business administration may be substituted, up to a maximum of two (2) years.

New Sec. 5. (a) The building code advisory council, and any other interested party, may propose rules and regulations or amendments thereto. The director shall adopt rules and regulations providing for: (1) Administration and enforcement of this act; (2) regulation of construction of buildings and inspection thereof for compliance with the Kansas building code; (3) issuance and revocation of permits or licenses for construction of buildings; (4) regulation of use or occupancy of buildings; (5) standards and requirements for materials and equipment to be used in buildings, including, but not limited to, standards and requirements for safety, noise insulation and abatement, energy conservation, ingress and egress, fire zones and sanitary conditions; and (6) a schedule of maximum fees chargeable for functions performed by municipalities pursuant to this act.

(b) The director shall adopt, by rules and regulations, model codes which meet the following requirements: (1) Its adoption will not substantially impair regional uniformity of building regulations; (2) such code does not discriminate against particular technologies, techniques and materials; (3) such code does not unnecessarily increase the cost of construction in the state; (4) such code will protect the public health, safety and welfare; and (5) the state will be adequately represented in the code modification proceedings of the model code group whose code is proposed to be adopted. Such rules and regulations may incorporate by reference specific editions, or portions thereof, of such model codes. If the director determines that all codes fail to meet one or more of the requirements, the director shall adopt a code package which is comprised of one or more of the model codes, or which is amended to the extent necessary to meet

the requirements.

(c) The director shall maintain rules and regulations current within two (2) years of research findings of the various model code organizations. Amendments to such rules and regulations shall be supported by findings of fact and shall be submitted to the appropriate code writing organizations for consideration of amendment to that code.

(d) The director shall continually study the operation of the Kansas building code and other laws relating to the construction of buildings to ascertain their effect on the cost of building construction and determine the effectiveness of their provisions. The director shall decide, upon application of any private party or local enforcement agency, that new technologies, techniques and materials which have been tested, if necessary, and found to meet the objectives of the Kansas building code shall be deemed to meet that code. Such determinations shall be binding on all local enforcement agencies within local governments which have adopted the Kansas building code.

(e) The director may also require and provide for the testing of materials, devices and methods of construction and engage experts, consultants and technical advisers for assistance and recommendations relative to the adoption, promulgation and enforcement of the Kansas building code.

New Sec. 6. (a) The rules and regulations adopted pursuant to subsection (b) of section 5 shall comprise and collectively be known as the Kansas building code. Such code shall be so designed as to provide uniform standards and requirements for construction and construction materials within all jurisdictions in which the construction of buildings is regulated, and, to the extent practicable, set forth the standards, specifications and requirements in terms of performance objectives which, among other things, facilitate the use of new technologies, techniques and materials. Preference shall be given to standards reasonably consistent with those of other states.

(b) Building regulations adopted by a municipality prior to

the effective date of this act shall continue in effect for a period of one hundred eighty (180) days following the effective date of this act, unless sooner revoked or repealed. Thereafter, any such building regulations which are inconsistent with or do not encompass the entire scope of the Kansas building code shall be void and of no effect, except as provided in sections 7 and 10. A building permit validly issued within one hundred eighty (180) days after the effective date of this act is valid thereafter and the construction of a building may be completed pursuant to and in accordance with such permit. Any building construction started within such period in any area of the state not having building regulations may be completed without a building permit.

(c) Except as provided in sections 7 and 10, following the effective date of this act, no municipality shall adopt or enforce any building regulations which are inconsistent with or do not encompass the entire scope of the Kansas building code, and any municipality seeking to adopt or enforce building regulations shall adopt, by ordinance or resolution, the Kansas building code in total. Nothing in this subsection shall be deemed to require any municipality not desiring to regulate building construction to adopt the Kansas building code or any other building code.

(d) Building regulations of any state agency, board, department or commission shall continue in effect for a period of one hundred eighty (180) days following the effective date of this act, unless sooner revoked or repealed. Thereafter, such regulations shall be void and of no effect, except that rules and regulations adopted pursuant to the uniform standards code for mobile homes and recreational vehicles shall continue in effect.

New Sec. 7. (a) Any municipality which has adopted the Kansas building code, may make application to the administrator for variations in such code within its jurisdiction to cover special conditions. The administrator shall approve any such variation if it is established to the administrator's satisfaction

that such variation: (1) Is sufficiently consistent with the Kansas building code such that its application will not substantially reduce statewide or regional uniformity of building regulations;

(2) does not discriminate against particular technologies, techniques or materials;

(3) does not unnecessarily increase the cost of construction within the municipality's jurisdiction;

(4) is the current edition of a model code; and

(5) is necessary to protect the public health, safety and welfare within the applicable jurisdiction.

(b) In determining whether any variation meets the requirements of subsection (a) of this section, the administrator shall obtain the advice and counsel of the building code advisory council.

(c) Any municipality which has been granted a variation hereunder shall still be deemed to have adopted the Kansas building code.

New Sec. 8. (a) Municipalities which adopt the Kansas building code shall be responsible for the enforcement of such code within their respective jurisdictions. Any such municipality shall create a municipal enforcement agency and shall employ and designate a building official and code enforcement officers.

(b) Municipalities which adopt the Kansas building code shall appoint municipal appeals boards to hear appeals brought in accordance with subsection (a) of section 12. Until such board is established, appeals shall be heard pursuant to subsection (b) of section 12. A sufficient number of members shall be appointed to municipal appeals boards to allow appeals to be heard promptly by panels of three (3) members, all of whom shall be free of any conflict of interest in cases before them. A municipality shall be relieved of its duty to appoint a municipal appeals board if it is established to the administrator's satisfaction that a sufficient number of qualified persons cannot be found within such municipality's jurisdiction or through cooperation with neigh-

boring jurisdictions.

(c) Any two (2) or more municipalities which have adopted the Kansas building code may establish an area enforcement agency or an area appeals board and shall share expenses incurred thereby.

(d) The administrator may, upon request, assist a municipal enforcement agency in any matter relative to the interpretation or enforcement of the Kansas building code.

(e) Except as otherwise provided in the Kansas building code, within the jurisdiction of any municipality which has adopted such code, the construction of a building shall not commence until an application for a permit therefor has been submitted to, and such permit has been issued by the municipal enforcement agency upon submission of an application thereto. A permit shall be issued if the proposed building will comply with the Kansas building code, but such permit may be suspended or revoked at any time following issuance if any such building fails to comply with such code.

(f) A municipal enforcement agency shall periodically inspect all construction undertaken pursuant to permits issued by such agency to insure compliance with the code and this act. An applicant shall be deemed to consent to such inspection by applying for a building permit. Inspection of any building may also be made at any time a municipal enforcement agency has reasonable cause to believe that a condition hazardous to life or property exists. If a building is found not to be in compliance with the code, a municipal enforcement agency shall notify the permittee in writing to bring such building into compliance and may secure it from entry. Failure to comply with such notification shall be grounds for revocation of the permit.

(g) No building, except one and two-family dwellings, constructed after adoption of the Kansas building code by a municipality, shall be used or occupied until a certificate of occupancy has been issued. Upon submission of an application for such certificate to a municipal enforcement agency, a certificate

of occupancy shall be issued if the building to which the application pertains has been constructed in accordance with the building permit, the building code and any other applicable laws, ordinances or resolutions.

New Sec. 9. (a) The administrator may conduct or sponsor pre-entry and inservice education and training programs on the technical, legal and administrative aspects of building code administration and enforcement. For this purpose the administrator may cooperate and contract with educational institutions and municipal, regional, state or national building officials' organizations and any other appropriate organizations.

(b) Within limits of appropriations therefor, the administrator may reimburse code enforcement officers and other employees of the state and its subdivisions for related expenses incurred by them for attendance at in-service training programs approved by the administrator.

New Sec. 10. Except as otherwise provided by this act, land-use zone requirements, building setback requirements, side and rear yard requirements, site development and property line requirements are hereby specifically reserved to units of local government.

New Sec. 11. Any municipality which adopts the Kansas building code may charge such reasonable fees as necessary to pay for the cost of administration and enforcement of such code, but such fees shall not exceed those established by the code.

New Sec. 12. (a) Any person aggrieved by a decision or ruling of a municipal enforcement agency of any municipality, or any person on behalf of a class of persons so aggrieved, may appeal such decision or ruling to the municipal appeals board of such municipality. Such appeal shall be heard and decided by the municipal appeals board, and notice of the board's decision given to all parties, within seven (7) business days of the filing of such appeal.

(b) Any person aggrieved by a decision of a municipal appeals board made pursuant to subsection (a) of this section or,

if the municipality has not established an appeals board pursuant to section 8, by a decision or ruling of the municipal enforcement agency of such municipality, or any person on behalf of a class of persons so aggrieved, may appeal such decision to the administrator. Such appeal shall be heard and decided by the administrator, and notice of the administrator's decision given to all parties, within ten (10) business days of the filing of such appeal.

(c) Any person aggrieved by a decision of the administrator made pursuant to subsection (b) of this section or pursuant to section 8, or any person on behalf of a class of persons so aggrieved, may appeal such decision to the state appeals board. Such appeal shall be heard and decided by the appeals board, and notice of the board's decision given to all parties, within thirty (30) calendar days of the filing of such appeal.

(d) Any person aggrieved by a decision of the state appeals board made pursuant to subsection (c) of this section, or any person on behalf of a class of persons so aggrieved, may appeal such decision in the manner provided by law for appeals from decisions of administrative agencies.

(e) Any evidence in the possession of a person seeking appeal under this section shall be filed with the appeal tribunal at the time such appeal is filed.

New Sec. 13. The administrator may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, sale, delivery, use, occupancy, erection, alteration or installation of any building governed by the provisions of this act, upon an affidavit of the administrator specifying the manner in which a building does not conform to the requirements of a building code or this act.

New Sec. 14. (a) Notwithstanding any other remedy available, any person or party, individually or on behalf of a class of persons or parties, damaged as a result of a violation of this act or the Kansas building code, has a cause of action in any court of competent jurisdiction against the person or party

committing the violation. An award may include damages, costs and attorneys' fees.

(b) Any person who is employed or appointed by the state or a municipality and who, in the course of such person's duties under this act, has charges brought against such person by an individual or other party on account of damages allegedly suffered due to the administration and enforcement of this act, shall be entitled to be provided with legal defense furnished by the state or municipality by which such person was employed or appointed.

New Sec. 15. Any person convicted of a violation of any of the provisions of this act or of the Kansas building code shall be deemed guilty of a class C misdemeanor. A separate violation shall be deemed to have occurred with respect to each building not in compliance with the Kansas building code or the provisions of this act.

New Sec. 16. If any provision of this act or the applicability thereof to any person or circumstance is held to be invalid, such invalidity shall not affect those provisions of this act which can be given effect without such invalid provisions, and to this end the provisions of this act are declared to be severable.

Sec. 17. K.S.A. 12-3301 is hereby amended to read as follows: 12-3301. As used in this act, ~~the following terms shall have the meanings indicated~~ unless the context otherwise requires:

(a) "Rules" ~~mean~~ means those regulations or orders that have general application;

(b) "Municipality" means any county or local unit of government which is authorized to enact local laws under the state law or constitution;

(c) "Code" means any model or standard published compilation of rules in book or pamphlet form which has been prepared by a technical association, a federal agency, this state or any agency thereof, municipalities of this state or any agency or

instrumentality thereof and any metropolitan or regional agency within this state, and such codes may be specifically, but shall not be limited to: ~~Building codes, plumbing codes, electrical wiring codes, gas piping codes,~~ Health and sanitation codes, codes for the processing, distribution and sale of products for human consumption; codes of local traffic regulations, ~~together with;~~ and any other code which embraces a subject which is a proper legislative matter;

(d) "Published" means printed or otherwise reproduced.

Sec. 18. K.S.A. 12-3302 is hereby amended to read as follows: 12-3302. Except as provided by section 6, the provisions of any code may be incorporated in a city ordinance by reference, in accordance with the procedure and subject to the limitations provided by K.S.A. 12-3009 ~~through to~~ to 12-3012, inclusive.

Sec. 19. K.S.A. 12-3303 is hereby amended to read as follows: 12-3303. Except as provided by section 6, the provisions of any code may be incorporated in a county resolution by reference and shall be as much a part of the resolution as if the same had been set out in full therein when the resolution has been passed by the board of county commissioners in the manner provided by law and it is published and copies of said code are filed and marked as set forth in K.S.A. 12-3304. Any county proposing to adopt or incorporate the provisions of any code under the provisions of this act shall give notice thereof by publication once in the official county newspaper. Such notice shall identify the code or provisions proposed to be adopted and that area of the county in which the same will be applied and fix a time for the holding of a public hearing before the board of county commissioners upon the same. Any section, article, chapter, part or portion of such code not incorporated shall be clearly and specifically described by the incorporating resolutions and declared to be omitted and any provisions changing or adding to the incorporated provisions shall be stated in full and published as a part of the resolution. Instead of incorporation with omissions, the incorporating resolution may designate spe-

cifically the sections, articles, chapters, parts or portions of the code to be incorporated. No such resolution shall be deemed to have incorporated therein any code or part thereof unless the same shall be clearly described in the resolution by name or title, and the resolution contain the name or title of the person, association, agency or other organization which prepared, compiled, published or promulgated the same, the year, edition of the work and the statute number or other sufficiently identifying description. The amendment of any code or the publication of any revision by the person or organization sponsoring the same shall not affect the incorporating resolution but such incorporating resolution shall continue in effect until it is repealed or amended or a later code is incorporated by reference. Any statute or section thereof or any state regulation or portion thereof which has been incorporated by reference and which is amended by the legislature or changed by the issuing state officer, board or agency, shall cease to be effective until and unless incorporated by amendment of the incorporating resolution or the passage of another incorporating resolution. Any part of a code adopted pursuant to the provisions of this section may be made applicable, by resolution, either to all unincorporated portions of the county or to any area of the county outside of but within three (3) miles of the nearest point of the corporate limits of any city. The resolution by which any such codes are adopted shall clearly specify the portions of the code which are applicable to the territory within three (3) miles of the corporate limits of a city and which parts of said code are applicable to the remaining unincorporated portions of the county. The county may itself enforce any such codes or may contract with any city for the enforcement of codes in the territory surrounding such city.

Sec. 20. K.S.A. 19-3701 is hereby amended to read as follows: 19-3701. The term "sanitary code" as used in this act shall mean rules and regulations designed to minimize or control those environments and environmental conditions that may adversely affect the health and well being of the public. Such

environments and environmental conditions may include, but are not restricted to: Sewerage and sewage disposal; water supply; food and food handling; insects and rodents; refuse storage, collection and disposal; and, except with respect to building regulations subject to section 6, housing, trailers and trailer courts.

The term "local health department" as used in this act shall mean any county, city-county, or multi-county health department created or organized by the county commissioners in this state for the purpose of protecting the public health and welfare of the citizens of the county and enforcing public health laws in the county and employing one or more full time sanitation personnel.

Sec. 21. K.S.A. 12-3301, 12-3302, 12-3303 and 19-3701 are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its publication in the statute book.

FINAL L. FT
Attachment ~~XV~~

PROPOSED BILL NO. _____

By Special Committee on Federal and State Affairs

Re: Proposal No. 60

AN ACT concerning boiler safety; requiring inspection of certain boilers; prohibiting certain acts and prescribing penalties therefor; repealing K.S.A. 1976 Supp. 44-912.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known and may be cited as the boiler safety act, and, except as otherwise herein provided, shall apply to all boilers in this state.

Sec. 2. As used in this act, unless the context otherwise requires:

(a) "Boiler" means a closed vessel in which water or other liquid is heated, steam or vapor is generated or steam is superheated, or in which any combination of these functions is accomplished, under pressure or vacuum, for use external to itself, by the direct application of energy from the combustion of fuels or of electric, solar or nuclear energy. The term boiler shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

(b) "Certificate inspection" means an inspection, the report of which is used by the chief inspector to determine whether or not an inspection certificate shall be issued as provided by section 12.

(c) "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding fifteen (15) pounds per square inch guage or a hot water boiler operating at pressures not exceeding one hundred sixty (160) pounds per square inch guage or temperatures not exceeding two hundred fifty degrees (250) Fahrenheit.

(d) "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty (160) pounds per square inch guage or temperatures exceeding two hundred fifty degrees (250) Fahrenheit.

(e) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than fifteen (15) pounds per square inch guage.

(f) "Secretary" means the secretary of human resources.

Sec. 3. (a) The provisions of this act shall not apply to:

(1) Boilers under the control of the United States government;

(2) antique, scale model or other steam boilers which are used exclusively for exhibition purposes;

(3) fire engine boilers brought into the state for temporary use in times of emergency; and

(4) hot water supply boilers which are directly fired with oil, gas or electricity and are equipped with safety relief valves approved by the national board of the American society of mechanical engineers, if none of the following limitations is exceeded:

(A) Heat input of two hundred thousand (200,000) BTU per hour,

(B) water temperature of two hundred degrees (200) Fahrenheit and

(C) nominal water capacity of one hundred twenty (120) gallons.

(b) The provisions of subsections (b) and (c) of section 11 and the provisions of sections 12, 13 and 14 shall not apply to:

(1) Boilers located on farms and used solely for agriculture or horticultural purposes;

(2) heating boilers which are located in private residences or in apartment houses of less than six (6) family units;

(3) steam boilers which are regularly inspected by any state agency;

(4) boilers operated and regularly inspected by railway

companies operating in interstate commerce; and

(5) any boiler in any establishment in which petroleum products are refined or processed in which all boiler and pressure equipment is inspected and rated either by an inspection service regularly maintained within such establishment or provided by a manufacturer, designer or insurer of such equipment, in accordance with the applicable provisions of any published code or codes of rules or recommended practices nationally recognized in the industry of which such establishment is a part as providing suitable standards for the inspection, repair and rating of pressure equipment of the type used in such establishment.

Sec. 4. (a) The secretary shall adopt rules and regulations, consistent with the provisions of this act, for the safe construction, installation, inspection, maintenance and repair of boilers in this state.

(b) Rules and regulations adopted hereunder for construction of new boilers shall be based upon and at all times follow generally accepted nationwide engineering standards, formulae and practices established and pertaining to boiler construction and safety. Such rules and regulations may incorporate by reference specific editions, or portions thereof, of the boiler and pressure vessel code of the American society of mechanical engineers.

(c) Rules and regulations adopted hereunder for the inspection, maintenance and repair of boilers shall be based upon and at all times follow generally accepted nationwide engineering standards. Such rules and regulations may incorporate by reference specific editions, or portions thereof, of the inspection code of the national board of boiler and pressure vessel inspectors and may require the use of such board's "R" stamp for repairs.

(d) All rules and regulations adopted hereunder shall be subject to the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated, except that rules and regulations applying to the construction and installation of new boilers

shall not become effective until twelve (12) months after their adoption by the secretary.

Sec. 5. (a) No new boiler which does not conform to the rules and regulations governing new construction and installation shall be installed and operated in this state unless the boiler is of special design or construction which is not inconsistent with the spirit and safety objectives of such rules and regulations, in which case a special installation and operating permit may be granted by the secretary, at his or her discretion.

(b) The maximum allowable pressure of a boiler carrying the American society of mechanical engineers code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.

(c) The maximum allowable working pressure of a boiler which does not carry the American society of mechanical engineers code symbol shall be computed in accordance with the inspection code of the national board of boiler and pressure vessel inspectors.

(d) This act shall not be construed as in any way preventing the use, sale or reinstallation of a boiler previously installed in this state, provided it has been made to conform to the rules and regulations governing existing installations and provided it has not been found upon inspection to be in an unsafe condition.

Sec. 6. (a) The secretary shall appoint a chief inspector within sixty (60) days after the effective date of this act and at any time thereafter that the office of the chief inspector may become vacant. Such chief inspector shall be a citizen of this state, or, if not available, a citizen of another state, who shall have at the time of appointment not less than five (5) years experience in the construction, installation, inspection, operation, maintenance or repair of high pressure boilers as a mechanical engineer, steam operating engineer, boiler maker or boiler inspector and who shall hold a commission issued by the national board of boiler and pressure vessel inspectors. The

chief inspector shall be in the unclassified civil service and shall receive such compensation as prescribed by the secretary, subject to the approval of the governor.

(b) The chief inspector, if authorized by the secretary, is hereby charged, directed and empowered:

(1) To take action necessary for the enforcement of this act and of the rules and regulations adopted hereunder;

(2) to maintain a complete record of all boilers to which this act applies, which record shall include the name and address of each owner or user and the type, dimensions, maximum allowable working pressure, age and last recorded inspection of each such boiler;

(3) to publish and make available copies of rules and regulations adopted hereunder to any person requesting them;

(4) to issue, or to suspend or revoke for cause, inspection certificates as provided in section 12; and

(5) to cause the prosecution of all violators of the provisions of this act or of the rules and regulations adopted hereunder.

Sec. 7. The secretary shall employ deputy inspectors who shall be responsible to the chief inspector. Each deputy inspector shall have at the time of appointment not less than three (3) years experience in the construction, installation, inspection, operation, maintenance or repair of high pressure boilers as a mechanical engineer, steam operating engineer, boilermaker or boiler inspector and shall hold a commission issued by the national board of boiler and pressure vessel inspectors. Deputy inspectors shall be in the unclassified civil service and shall receive such compensation as prescribed by the secretary, subject to the approval of the governor.

Sec. 8. (a) In addition to the deputy inspectors authorized by section 7, the secretary, upon the request of any company licensed to insure and insuring boilers in this state, shall issue to any inspectors of such insurance company certificates of competency as special inspectors, provided that each such inspec-

tor shall hold a commission issued by the national board of boiler and pressure vessel inspectors.

(b) Special inspectors shall receive no salary from, nor shall any of their expenses be paid by, the state, and the continuance of their certificates of competency shall be conditioned upon their continuing in the employ of the boiler insurance company duly authorized as aforesaid and upon their maintenance of the standards imposed by this act and by rules and regulations adopted hereunder.

(c) Special inspectors shall inspect all boilers insured by their respective companies and, when so inspected, the owners and users of such boilers shall be exempt from the payment to the state of the inspection fees provided for in subsection (a) of section 14.

Sec. 9. (a) A special inspector's certificate of competency may be suspended by the secretary, after due investigation, for the incompetence or untrustworthiness of the holder thereof or for wilful falsification of any matter or statement contained in such inspector's application or in a report of any inspection made by such inspector. Written notice of any such suspension shall be given by the secretary within not more than ten (10) days thereof to the inspector and the inspector's employer.

(b) A person whose certificate of competency has been suspended shall be entitled to apply, after ninety (90) days from the date of such suspension, for reinstatement of such certificate of competency.

(c) If the secretary has reason to believe that an inspector is no longer qualified to hold a certificate of competency, the secretary, upon not less than fifteen (15) days written notice to the inspector and his or her employer, shall hold a hearing as provided in section 16 at which such inspector and his or her employer shall have an opportunity to be heard. If, as a result of such hearing, the secretary finds that such inspector is no longer qualified to hold his or her certificate of competency, the secretary shall thereupon revoke such certificate of

competency.

Sec. 10. If a certificate of competency is lost or destroyed, a new certificate of competency shall be issued in its place without another examination.

Sec. 11. (a) The secretary, the chief inspector or any deputy inspector shall have free access, during reasonable hours, to any premises in the state where a boiler is being installed or is being constructed for use in this state, for the purpose of ascertaining whether such boiler is being constructed and installed in accordance with the provisions of this act and rules and regulations adopted hereunder.

(b) Each boiler used or proposed to be used within this state, except for boilers exempt under section 3 (owners and users may request to waive this exemption), shall be thoroughly inspected as to construction, installation and condition as follows:

(1) Power boilers and high pressure, high temperature water boilers shall receive an annual certificate inspection which shall be an internal inspection, where construction permits, or as complete an inspection as possible, where construction does not permit internal inspection. Such boilers shall also be externally inspected while under pressure, if possible.

(2) steam heating boilers shall receive an annual certificate inspection with an internal inspection every three (3) years where construction permits.

(3) All other boilers subject to this section, except those provided for in subdivision (4) of this subsection, shall receive an annual certificate inspection with an internal inspection at the discretion of the inspector.

(4) Boilers utilizing nuclear energy shall be inspected and reported in such form and with such appropriate information as the secretary shall designate.

(5) A grace period of two (2) months beyond the periods specified in subdivisions (1), (2) and (3) of this subsection may elapse between certificate inspections.

(6) The secretary may provide, by rules and regulations, for longer periods between certificate inspections.

(c) The inspections herein required shall be made by the chief inspector, by a deputy inspector or by a special inspector provided for in this act.

(d) If, at the discretion of the inspector, a hydrostatic test shall be deemed necessary, it shall be made by the owner or user of the boiler.

(e) All boilers, other than cast iron sectional boilers, to be installed in this state after the effective date of the first rules and regulations adopted hereunder applying to the construction and installation of new boilers shall be inspected during construction as required by the applicable rules and regulations by an inspector authorized to inspect boilers in this state, or, if constructed outside of the state, by an inspector holding a commission issued by the national board of boiler and pressure vessel inspectors.

Sec. 12. (a) The chief inspector, each deputy inspector and each company employing a special inspector, within thirty (30) days following each certificate inspection made by such inspector, shall file a report of such inspection in the office of the chief inspector upon the appropriate form as promulgated by the national board of boiler and pressure vessel inspectors. The filing of reports of external inspections, other than certificate inspections, shall not be required except when such inspections disclose that the boiler is in a dangerous condition.

(b) If a report filed pursuant to subsection (a) of this section shows that a boiler is found to comply with the rules and regulations adopted hereunder, the owner or user thereof shall pay directly to the chief inspector the certificate fee prescribed by subsection (b) of section 14, and the chief inspector or the chief inspector's duly authorized representative shall issue to such owner or user an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler may be operated. Such inspection certificate

shall be valid for not more than fourteen (14) months from its date. In the case of those boilers covered by subdivision (1), (2) or (3) of subsection (b) of section 11 for which the secretary has established or extended the operating period between required inspections pursuant to the provisions of subdivision 6 of subsection (b) of section 11, the certificate shall be valid for a period of not more than two (2) months beyond the period set by the secretary. Certificates shall be posted under glass, or similarly protected, in the room containing the boiler.

(c) No inspection certificate issued for an insured boiler based upon a report of a special inspector shall be valid after the boiler for which it was issued shall cease to be insured by a company duly authorized by this state to provide such insurance.

(d) The secretary or the secretary's authorized representative may at any time suspend an inspection certificate if the boiler for which it was issued cannot be operated without menace to the public safety or is found not to comply with the rules and regulations adopted hereunder. The suspension of the inspection certificate shall continue in effect until such boiler shall have been made to conform to the rules and regulations, and until said inspection certificate shall have been reinstated.

Sec. 13. (a) From and after July 1, 1978, it shall be unlawful for any person, firm, partnership or corporation to operate in this state a boiler without a valid inspection certificate, and the operation of a boiler without such inspection certificate or at a pressure exceeding that specified in such inspection certificate shall constitute a class C misdemeanor. Each day of such unlawful operation shall be deemed a separate offense.

(b) It shall be unlawful for any person, firm, partnership or corporation to install or operate any boiler in this state or to construct any boiler for use in this state in violation of this act or the rules and regulations adopted hereunder, and any such unlawful installation, operation or construction shall constitute a class C misdemeanor. Each day of unlawful installa-

tion, operation or construction shall be deemed a separate offense.

Sec. 14. (a) The owner or user of a boiler required by this act to be inspected by the chief inspector or a deputy inspector shall pay directly to the chief inspector, upon completion of inspection, inspection fees in accordance with the following schedule:

(1) Power boilers and high pressure, high temperature water boilers:

Certificate Inspections

Boilers of 50 sq. ft. of heating surface or less.....	\$10.00
Boilers over 50 sq. ft. of heating surface and less than 4,000 sq. ft. of heating surface.....	15.00
Boilers of 4,000 sq. ft. of heating surface or more and less than 10,000 sq. ft. of heating surface.....	20.00
Boilers of 10,000 sq. ft. of heating surface or more.....	30.00

External Inspections

Boilers of 50 sq. ft. of heating surface or less.....	\$8.00
Boilers over 50 sq. ft. of heating surface.....	10.00

Not more than the equivalent of the certificate and external inspection fees shall be charged or collected for any and all inspections as above of any boiler in any one year.

(2) Heating boilers:

Certificate Inspections

Heating boilers without a manhole.....	\$8.00
Heating boilers with a manhole.....	12.00
Hot water supply boilers.....	8.00

Not more than one fee shall be charged or collected for any and all inspections as above of any heating boiler in any required inspection period.

(3) Hydrostatic tests:

When it is necessary to make a special trip to witness the application of a hydrostatic test, an additional fee based on the scale of fees applicable to a certificate inspection of the boiler shall be charged.

(4) All other inspections, including shop inspections, special inspections, of secondhand or used boilers made by the chief or deputy inspector shall be charged for at the rate of not less than \$75 for one half day of four hours, and \$125 for one full day of eight hours, plus all expenses, including traveling and hotel.

"Secondhand" shall mean an object which has changed ownership and location after primary use.

(b) The owner or user of a boiler for which an inspection certificate is to be issued pursuant to subsection (b) of section 12 shall pay directly to the chief inspector, before issuance of such certificate, a certificate fee of five dollars (\$5).

(c) The chief inspector shall pay daily to the secretary all moneys received from the fees established hereunder, and the secretary shall remit all such moneys to the state treasurer at least monthly. Upon receipt of such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the state general fund.

Sec. 15. The chief inspector and each deputy inspector shall be required to furnish bond under the provisions of article 41 of chapter 75 of the Kansas Statutes Annotated.

Sec. 16. (a) Any person aggrieved by any act or determination of the secretary or of the chief inspector, performed or made pursuant to the provisions of this act or rules and regulations adopted hereunder, may request a hearing thereon. Such hearing shall be conducted by the secretary. The person requesting the hearing shall be entitled to be present at such hearing and to be represented by counsel. The secretary, within thirty (30) days of such hearing, shall issue an order approving, disapproving or modifying the original act or determination, and shall give written notice of such order to the person who requested the hearing.

(b) Any person aggrieved by an order of the secretary made pursuant to subsection (a) of this section, within thirty (30) days of notice of such order, may appeal such order in the manner

provided by law.

Sec. 17. No city, county or other political subdivision of this state shall have the power to make any laws, ordinances or resolutions providing for the construction, installation, inspection, maintenance and repair of boilers within the limits of such city, county or political subdivision, and any such laws, ordinances or resolutions heretofore made or passed shall be void and of no effect.

Sec. 18. If any provisions of this act or the application thereof to any person or circumstances is held invalid the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and to this end the provisions of this act are severable.

Sec. 19. K.S.A. 1976 Sup. 44-912 is hereby repealed.

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.

COMMITTEE REPORT

TO: Legislative Coordinating Council
FROM: Special Committee on Federal and State Affairs
RE: Proposal No. 60 - Steam Boiler Insurance and Inspections*

Under Proposal No. 60, the Special Committee on Federal and State Affairs was directed to conduct "an examination of the problem areas with regard to steam boiler insurance and inspections associated with the repeal of K.S.A. 44-901 et seq. by 1975 S.B. 531."

Background

From 1953 to 1975, the State of Kansas conducted a state program of boiler inspection through the Department of Labor. The State Labor Commissioner was required by statute (K.S.A. 44-901 to 911) to appoint a State Boiler Inspector who was charged to inspect or cause to be inspected at least annually all steam boilers in the state to determine whether the equipment was in a safe condition and whether it was properly constructed and maintained. The State Labor Commissioner was also authorized to prescribe and enforce standards for steam boilers. However, the State Boiler Inspector was not required to inspect boilers which received regular inspections by a reputable insurance company. The state inspection was waived during the period covered by the insurance policy.

In 1975 the Kansas Legislature, through the enactment of S.B. 531 (now K.S.A. 1976 Supp. 44-912), abolished the state inspection program and established a mandatory insurance program in its place. S.B. 531 requires every person owning a steam boiler to maintain boiler insurance which includes an annual

* _____ Bill _____ accompanies this report.

inspection by the insurance company. It was declared to be a Class C Misdemeanor to fail to maintain the required insurance. The bill also eliminated all state standards with regard to the construction, operation, and maintenance of steam boilers.

As a result of the problems encountered by many owners of steam boilers, H.B. 2837 was introduced during the 1976 Legislature to amend the present act by substituting "liability insurance" for the term "boiler insurance." In light of the broader issue involved, the House Insurance Committee requested an interim study on the matter.

Committee Activity

In addition to review of the previous statute and the 1975 enactment, the Committee heard testimony from representatives of the American Insurance Association, the Hartford Steam Boiler Insurance and Inspection Company, the Uniform Boiler and Pressure Vessel Laws Society, the Boilermakers International Union, the Department of Human Resources, the Division of Architectural Services, the State Insurance Department, and interested individuals.

Several conferees expressed the concern that, since no state standards are in existence, there is no way to determine the safety or adequacy of steam boiler construction, operation, or maintenance in Kansas. These conferees felt that the safety of the public is directly threatened by the operation of defective boilers. It was also noted that, since there are no statutes or regulations regarding boiler construction or installation, Kansas could become a dumping ground for inferior or defective boilers which do not meet the standards established in other states. Forty-five states have some form of boiler or pressure vessel

law which also establishes minimum standards. It was stated that the paramount concern must be the safety of the public and that the re-enactment of a state boiler inspection program would be the most efficient way to protect the public safety.

Other testimony indicated that the mandatory insurance requirement established by S.B. 531 was causing financial hardships on many small businesses, such as dry cleaning shops, which operate small steam boilers. Prior to the enactment of S.B. 531, many small businesses relied on the state inspector to assure the safety of their boilers. The state inspection fees under the old law ranged from \$9 to \$75. Testimony indicated that the annual premiums for boiler insurance, at present, range from \$150 upwards, depending on the number and size of the insured boilers. It was stated, however, that most insurance companies make no separate charge for their inspections.

Conclusions and Recommendations

The Committee concludes that it is in the best interests of the public safety and convenience to re-establish a state program of boiler inspections and to delete the mandatory insurance requirement enacted in 1975. The Committee believes that the mandatory insurance requirement places an unnecessary burden on many small businesses and that the lack of adequate standards and enforcement provisions creates a situation detrimental to the public safety. Abolishment of the previous state inspection program resulted in a general fund reduction of only some \$25,000. This is a relatively small price to pay to assure a high level of boiler safety in Kansas. The boiler inspection program proposed in the recommended bill is

designed to become self-supporting through the assessment of inspection fees and, thus, should not require a large general fund appropriation. Therefore, the Committee recommends that the 1977 Legislature take favorable action on _____ Bill _____.

The major provisions of the the bill are as follows:

1. The Secretary of Human Resources would be directed to establish a state program of steam boiler inspections and to adopt rules and regulations for the safe construction, installation, inspection, maintenance, and repair of steam boilers in the state.
2. The Secretary would be required to appoint a Chief Inspector to administer the Boiler Safety Act. Specific occupational and professional requirements are established for the position of Chief Inspector, who would be in the unclassified civil service. Deputy inspectors are also authorized by the bill.
3. Special inspectors, employed by insurance companies licensed to operate in the state, could be used to inspect boilers insured by their respective companies. Boilers inspected by special inspectors would be exempt from state inspection.
4. All steam boilers in the state, (excluding certain boilers such as antique or fire engine boilers, refinery boilers, railway boilers, farm boilers, and private residence heating boilers) would be required to undergo an annual inspection, conducted either by a state inspector or by a special inspector. A state inspection certificate would be issued for those boilers which meet the standards established by the Secretary of Human Resources.
5. After July 1, 1978, it would be unlawful for any person to operate a steam boiler in Kansas without a valid inspection certificate. Violation of the act would constitute a class C misdemeanor.
6. Certificate inspection fees for boilers inspected by state inspectors would range from \$8 to \$30. Other inspections, including shop inspections or special inspections, made by state inspectors would be charged at the rate of \$75 for four hours. A certificate fee of \$5 would also be required for the issuance of a valid inspection certificate.

7. No city, county, or other political subdivision would be permitted to pass any laws, ordinances, or resolutions establishing standards for the construction, installation, inspection, maintenance, or repair of steam boilers.

Respectfully submitted,

_____, 1976

Representative Lloyd Buzzi,
Chairman
Special Committee on Federal
and State Affairs

STATE OF KANSAS



Attachment XVI

OFFICE OF THE GOVERNOR

State Capitol

Topeka

ROBERT F. BENNETT

Governor

August 26, 1976

The Honorable Duane S. McGill
Speaker of the House
State Capitol
Topeka, Kansas

The Honorable Ross O. Doyen
President of the Senate
State Capitol
Topeka, Kansas

Dear Mr. Speaker and Mr. President:

In my message to the 1976 Legislature I stated "realizing that the imposition of the death penalty raises both passion and prejudice in its consideration and realizing even more that as your governor I would be intimately involved in the execution of its provisions, which would be odious to me personally, I continue to believe that this state should reimpose the death penalty for limited crimes where obvious premeditation exists and where no other effective deterrent can be provided."

After the presentation of that message, while both houses of the Legislature were in agreement as to the basic concept of imposing the death penalty, they were divided as to the crimes which might give rise to such a penalty. Since the adjournment of the 1976 Legislature the United States Supreme Court in the cases of Gregg v. Georgia, Proffitt v. Florida, and Jurek v. Texas has found the death penalties of those states constitutional. The decision of the United States Supreme Court in this regard has considerably clarified the situation and has offered the opportunity for the development of laws relating to the death penalty which may operate as a deterrent and may be fairly imposed.

The Honorable Duane S. McGill
The Honorable Ross O. Doyen
August 26, 1976
Page 2

In view of the court's decision and my continued advocacy for the imposition of the death penalty for certain crimes under certain circumstances, I am submitting to you my proposal for a death penalty bill which, hopefully, will be considered by the 1977 Legislature. I am hopeful that you will assign this bill to study in the interim and that the Legislature will enact death penalty legislation patterned after my recommendations.

I propose that the death penalty be available as a penalty for the crimes of first degree murder, aggravated kidnapping, treason and air piracy.

At present, these four crimes are all class A felonies punishable by life imprisonment. These crimes are the most serious crimes which can be committed against any person and the state. I strongly recommend that they be classified as capital crimes.

Often, murders are committed during the commission of another felony. Thus, I propose that the death penalty be available as a penalty imposed when a murder is committed during the commission of a robbery, burglary, rape, or arson. It is imperative that the death penalty be provided for in those cases to serve as a possible deterrent.

The proposal for the imposition of the death penalty will require changes in our Code of Criminal Procedure in order for it to meet constitutional muster. I am proposing that a bifurcated trial procedure be enacted into law by the Legislature. This procedure should have a trial phase and a sentencing phase. My proposal envisions the jury conducting a sentencing hearing after the finding of guilt, wherein the jury would consider certain statutory aggravating circumstances as required by the evidence and any mitigating circumstances which the defendant might present. The statutory aggravating circumstances as outlined in the new Oklahoma law will serve as an excellent model in this regard and I strongly recommend them. They include whether:

1. The defendant was previously convicted of a felony involving a use or threat of violence to the person;
2. The defendant knowingly created a great risk of death to more than one person;
3. The person committed the murder for remuneration or the promise of remuneration or employed another to

The Honorable Duane S. McGill
The Honorable Ross O. Doyen
August 26, 1976
Page 3

commit the murder for remuneration or the promise of remuneration;

4. The murder was especially heinous, atrocious, or cruel;
5. The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;
6. The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony; or
7. There exists a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.

Most important, the jury must find by a unanimous vote and beyond a reasonable doubt that one or more statutory aggravating circumstances exists and this recommendation for the imposition of the death penalty must also be unanimous.

The jury must designate in writing which one or more statutory aggravating circumstances it found beyond a reasonable doubt and submit them to the judge with a recommendation for the imposition of the death penalty. The jury's recommendation would be strictly advisory and the judge would have the final sentencing authority. However, the jury's recommendation must be adhered to by the judge unless the judge finds that the evidence relied upon by the jury is insufficient to sustain the recommendation. If the judge finds that the evidence sustaining the statutory aggravating circumstances as found by the jury is insufficient, he must sentence the defendant to life imprisonment.

If the judge agrees with the jury's recommendation and imposes the death penalty, the judge must designate his findings in writing and on the record as to why he is imposing the death penalty.

I am proposing that the necessary legislative changes be sought to allow any person convicted of a capital crime for which the death penalty has been imposed, an appeal to the Kansas Supreme

The Honorable Duane S. McGill
The Honorable Ross O. Doyen
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Page 4

Court as a matter of right. I propose that this appeal be expedited to the high Court, bypassing the newly created court of appeals. Because of the seriousness of the matter and for the effective administration of justice, the appeal should reach the Supreme Court within 90 days of the imposition of the death penalty. The legislation should require the Supreme Court to consider all trial errors plus specific questions in determining whether the sentence is appropriate. Those questions are:

1. Was the sentence imposed under the influence of passion, prejudice or arbitrariness?
2. Does the evidence support the finding that the death penalty should be imposed?
3. Is the sentence excessive or disproportionate to the crime?
4. Is the imposition of the death penalty appropriate in comparison to other capital cases the court has previously considered?

In summary, I am basically proposing the following:

1. The crimes of first degree murder, aggravated kidnapping, treason and air piracy should be punishable by death. The death penalty also should be available for imposition when a murder is committed during the commission of a robbery, burglary, rape or arson.
2. That a bifurcated trial procedure be established in Kansas through legislative changes in our Code of Criminal Procedure. This procedure should be composed of a trial phase and a sentencing phase.
3. That in the sentencing phase of the bifurcated trial procedure the judge should be required to instruct the jury on statutory aggravating circumstance or circumstances that may have existed at the time of the crime, and that the defendant be allowed to present evidence as to mitigating circumstances.

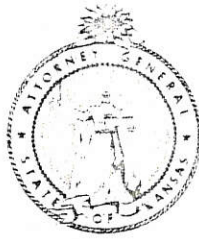
The Honorable Duane S. McGill
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August 26, 1976
Page 5

4. That the jury must find, by unanimous vote and beyond a reasonable doubt, that one or more statutory aggravating circumstances exists before recommending imposition of the death penalty. That the jury's recommendation for imposition of the death penalty be unanimous. The jury's finding should be in writing for the judge's consideration.
5. That the jury's recommendation be advisory to the judge; however, the judge must sentence the defendant to death unless he finds that the evidence to support the recommendation of the imposition of the death penalty is insufficient. If he finds the evidence insufficient, he must sentence the defendant to life imprisonment and not subject to parole consideration for 15 years as is provided in present law.
6. That any defendant sentenced to death have as a matter of right an expedited mandatory appeal to the Supreme Court. Legislation should specifically call for the Supreme Court to consider all trial errors and whether there was:
 - (a) any passion, prejudice or arbitrariness;
 - (b) whether the evidence supports the imposition of death;
 - (c) whether it is excessive or disproportionate;
 - (d) and compare it to other similar capital cases which have come before the court to insure similar results.

Very sincerely,

Robert F. Bennett
Governor of Kansas

RFB:pc



Attachment XVIII

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

November 8, 1976

Honorable Lloyd Buzzi
Kansas House of Representatives
Chairman, Federal and State Affairs Committee
State Capitol Building
Topeka, Kansas 66612

Dear Mr. Chairman:

Enclosed please find a draft from this office of a proposed death penalty bill. This is offered after careful consideration and review of existing Kansas law and recent Supreme Court decisions.

Mr. Roger Theis of my staff, who is scheduled to appear on my behalf, will review this carefully drawn draft on Wednesday, November 10th at 11:00 a.m. with you and your committee. As you know, I have long supported the reinstatement of the death penalty in Kansas and believe the enclosed proposal will assist law enforcement in their most important and critical responsibilities and at the same time meet the constitutional requirements as set forth by the United States Supreme Court.

Your consideration of this matter is appreciated.

Very truly yours,

Curt Schneider
CURT T. SCHNEIDER
Attorney General

CTS:TWR:en
Enclosure

cc: Senator Neil Arasmith
Senator Arden Booth
Senator James Parrish
Senator Ed Reilly
Representative Earl Ward

Representative Fred Harris
Representative Joseph Mikesic
Representative Tom Slattery
Representative J. L. Rodrock
Representative Ken Marshall

AN ACT relating to sentencing procedures in capital felonies
Be it enacted by the Legislature of the State of Kansas

Section 1. Separate proceedings on issue of penalty -
Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by K.S.A. 21-4501. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special jury of twelve persons to determine the question of the penalty to be imposed. If the trial jury has been waived, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted by the court. In the proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence, and shall include matters relating to any of the aggravating or mitigating circumstances enumerated hereafter. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the admission of any evidence obtained in violation of the Constitutions of the United States or the State of Kansas. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

Sec. 2. Instructions of the Court in jury proceedings - At the conclusion of the evidentiary portion of the proceedings, the court shall provide instructions to the jury orally and in writing to guide its deliberations. The court's instructions shall include those aggravating and mitigating circumstances as demonstrated by the evidence and all other matters necessary to the proper consideration of the penalty decision.

Sec. 3. Jury deliberations - After hearing the evidence and argument of the parties, and having received the instructions of the court, the jury shall retire to deliberate whether a sentence of life imprisonment or death should be imposed upon the defendant. In determining the question of sentence, the jury shall initially determine whether any aggravating circumstances have been established beyond a reasonable doubt by the state. If the jury, by unanimous vote, finds the existence of one or more aggravating circumstances, it shall then determine whether any mitigating circumstances have been demonstrated and whether such circumstances, if present, outweigh the aggravating circumstances. Based upon these considerations, the jury shall determine whether a sentence of death or life imprisonment should be imposed. A death sentence shall require the unanimous consent of all jurors and shall be evidenced in writing, signed by the foreman of the jury, designating the statutory aggravating circumstance or circumstances which it found beyond a reasonable doubt. Should the jury, after a reasonable period for deliberation, be unable to reach a verdict, the jury shall be discharged and shall be deemed to have rendered a verdict of life imprisonment. In non-jury cases, the

court shall follow the requirements of this section in determining the sentence to be imposed.

Sec. 4. Trial court review of sufficiency of jury's verdict - Notwithstanding the verdict of the jury concerning the sentence to be imposed, the trial court shall review the sentence in all cases to ascertain whether it is supported by the evidence. If the court should determine that the sentence is not supported by the evidence, it shall be authorized to modify the sentence to life imprisonment or death. However, whenever the court enters a judgment modifying the sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

Sec. 5. Review of judgment and sentence - A judgment of conviction resulting in a death sentence shall be subject to automatic review in the Supreme Court of Kansas. The review shall be expedited in every manner consistent with the proper presentation of the appeal. It shall be the duty of the court reporter to transcribe the entirety of the trial and sentencing proceedings in the case and to prepare a certified record thereof within sixty (60) days of the rendition of sentence by the court. For good cause shown, the trial court may allow an additional period of thirty (30) days in which the transcript shall be completed. Upon completion of the transcript, the clerk of the trial court shall certify the entire record and transmit the same to the Clerk of the Supreme Court together with a notice setting forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, and a narrative statement

of the offense, the judgment, and the punishment prescribed. The briefs of the parties shall be filed in accordance with the Rules of the Supreme Court and the appeal shall be given priority for hearing over all other types of cases.

The Supreme Court of Kansas shall consider the question of punishment as well as any errors asserted in the appeal and shall be authorized to notice unassigned errors appearing of record if the ends of justice would be served thereby.

Regarding the sentence, the court shall determine:

(a) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, and

(b) Whether the evidence supports the findings that an aggravating circumstance or circumstances existed and that any mitigating circumstances were insufficient to outweigh the aggravating circumstances and

(c) Whether the death sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Similar cases shall include, in addition to those in which a death sentence has been imposed for the particular offense, those in which a defendant has received a sentence of life imprisonment.

The court shall be authorized to enter such orders as are necessary to effect a proper and complete disposition of the appeal. In its decision, the court shall include a reference to the similar cases which it took into consideration.

Sec. 6. Aggravating circumstances - Aggravating circumstances shall be limited to the following:

(a) The offense of first degree murder was committed by a person with a prior record of conviction for first or second degree murder, aggravated kidnapping, aggravated robbery, voluntary manslaughter, or aggravated battery.

(b) The offense of first degree murder was committed by a person who knowingly created a great risk of death to more than one person.

(c) The killing of a human being occurred while the offender was engaged in the commission of, or the attempted commission of, any robbery, burglary, kidnapping, arson, or rape.

(d) The offender committed the offense of first degree murder for himself or another for the purpose of receiving money or any other thing of monetary value or authorized or employed another person to commit the offense of first degree murder.

(e) The offense of first degree murder was committed against a public officer or employee during or because of the exercise of his official duties or against a former public officer or employee because of the exercise of his official duties.

(f) The offense of first degree murder was committed in order to avoid or prevent a lawful arrest or prosecution.

(g) The offense of first degree murder was committed in an especially heinous, atrocious, or cruel manner.

(h) The offense of first degree murder was committed by a person serving a sentence of imprisonment for a felony offense.

Evidence in aggravation of the offense shall be limited to those circumstances revealed to the defendant by the state prior to trial.

Sec. 7. Mitigating circumstances - Mitigating circumstances shall include the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme distress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

Sec. 8. Death sentence constitutionality - In the event the death penalty or any provision of this act authorizing the death penalty is held to be unconstitutional by the Kansas Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death shall cause such person to be brought before the court, and the court shall sentence such person to imprisonment for life.

Sec. 9. Severability - The provisions of this act are severable and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

K.S.A. 21-3401 is hereby amended as follows:

Murder in the first degree is the killing of a human being committed maliciously, willfully, deliberately and with premeditation or committed in the perpetration or attempt to perpetrate any felony.

Murder in the first degree is a class A felony *for which the penalty shall be death or imprisonment for life.*

K.S.A. 21-4501 is hereby amended as follows:

For the purpose of sentencing, the following classes of felonies and terms of imprisonment authorized for each class are established:

(a) Class A, the sentence for which shall be death or imprisonment for life *as provided by law.* ~~If there is a jury trial the jury shall determine which punishment shall be inflicted. If there is a plea of guilty or if a jury trial is waived the court shall determine which punishment shall be inflicted and in so doing shall hear evidence;~~

K.S.A. 21-3421 is hereby amended as follows:

Aggravated kidnapping is kidnapping, as defined in section 21-3420, when bodily harm is inflicted upon the person kidnapped.

Aggravated kidnapping is a class A felony *for which the penalty shall be imprisonment for life.*

K.S.A. 21-3433 is hereby amended as follows:

Aircraft piracy is the willful or unauthorized seizure in this state of any aircraft containing a pilot and one or more persons by the use of force or any other means with the intent to exercise control over the aircraft.

Aircraft piracy is a class A felony *for which the penalty shall be imprisonment for life.*

K.S.A. 21-3801 is hereby amended as follows:

(1) Treason is levying war against the state, adhering to its enemies, or giving them aid and comfort.

(2) No person shall be convicted of treason unless on the evidence of two (2) witnesses to the overt act or confession in open court.

(3) Treason is a class A felony *for which the penalty shall be imprisonment for life.*

V. IGNATIUS J. STRECKER, D.D., S.T.D.
PRESIDENT

CATHOLIC SOCIAL SERVICE
OF THE

LOUIS FINOCCHARIO, A.C.S.W.
DIRECTOR

ARCHDIOCESE OF KANSAS CITY IN KANSAS

415 NORTH 15TH STREET
KANSAS CITY, KANSAS 66102
AREA CODE 913, 371-3055

11-10-76
Attachment X

STATEMENT TO THE SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

Re: Reinstitution of the Death Penalty in Kansas

November 10, 1976

I am Sister Dolores Brinkel, program developer in jail-prison ministry for Catholic Charities--Catholic Social Services of the Archdiocese of Kansas City in Kansas.

Catholic Charities was extremely pleased last year when death penalty legislation was defeated in the Kansas Legislature. Today, I wish to re-enforce the decision of the 1976 Legislature by speaking against the killing of offenders by the State.

In 1974, the United States Catholic Conference, composed of all the Roman Catholic Bishops of the United States, publicly opposed the death penalty. The bishops of Kansas support that position.

Three weeks ago in Detroit, 1,400 Catholic delegates, representing their respective dioceses, voted in two different instances to oppose the death penalty.

Members of Catholic Charities of the Kansas City Archdiocese voted at a membership meeting in August 1976 "to support the United States Catholic Conference in opposition to the death penalty. Human life is inviolate at every stage of its being. This principle flows from the nature of a human being as a being of moral worth." A resolution stating the same position was adopted by the First Congress of the National Conference of Catholic Charities in October 1976.

I offer you three basic reasons for opposing the death penalty:
1) studies show it does not deter crime; 2) it discriminates against the poor and minorities; 3) it violates the ideal of human dignity, as the taking of a life is morally unacceptable, and it is irrevocable, forclosing rehabilitation, clemency or forgiveness.

I.

A former U. S. Attorney General, Ramsey Clark, once asked why anyone should assume capital punishment would deter crime.

Might I quote from Dr. Thorstein Sellin, the renowned criminologist of the University of Pennsylvania, who made an exhaustive study of capital punishment in the United States and Europe and as a result came to the following conclusion: "Anyone who carefully examines the (pertinent) data is bound to arrive at the conclusion that the death penalty, as we use it, exercises no influence on the extent of fluctuating rates of capital crimes. It has failed as a deterrent."



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WYANDOTTE COUNTY
JOHNSON COUNTY
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AND THE ARCHDIOCESE

Page two

Certainly, those who are so overwhelmed by emotion or passion that they would kill, would not pause to consider the consequences. Those who plan the act would be aware of the possible penalty, but they never intend to be its victim, for just as they plan crime, they also carefully plan to avoid arrest and conviction. Dr. Karl Menninger maintains these same points. It is a dubious moral principle that some human beings should be killed in order to frighten others into keeping the law.

II.

The death penalty discriminates against the poor and minorities. The Legal Defense Fund of the National Association for the Advancement of Colored People says that, in July 1976, 52 per cent of those on Death Row were black; 43 per cent were white.

Studies indicate that a disproportion of poor people of whatever race have been executed. Bishop Patrick F. Flores, of San Antonio, charges that justice in the United States is a prostitute who sells herself to the highest bidder. A more sophisticated case has been made by Charles L. Black, Jr., the distinguished Yale legal scholar, in his book, Capital Punishment: The Inevitability of Caprice and Mistake. Black argues that the American criminal justice system, from arrest through sentencing to execution, is so liable to error, caprice, arbitrariness, prejudice and uncontrolled discretion that in capital cases it is incapable of standards sufficiently rigid to justify the terrible decision between life and death.

III.

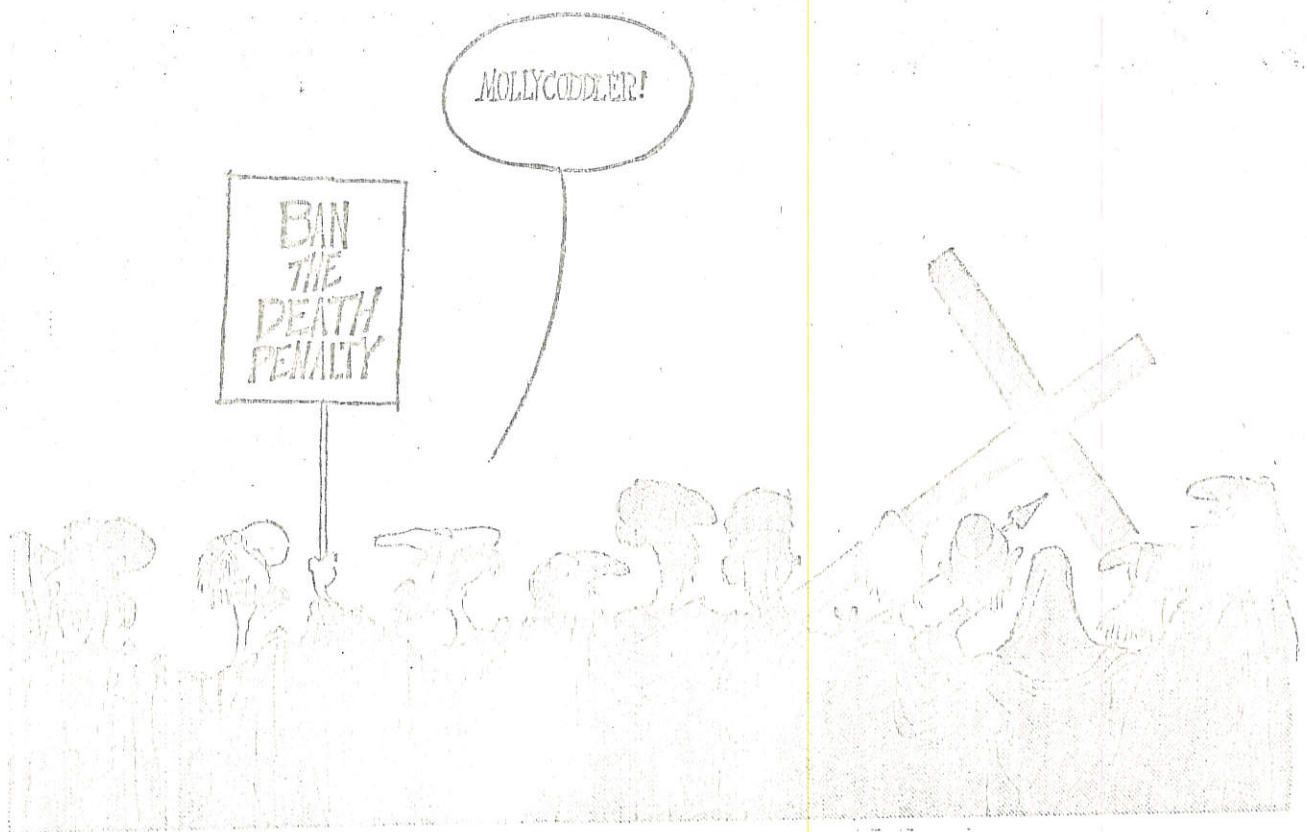
Most importantly, capital punishment violates the ideal of human dignity. The state's killing an offender is a violent response to violence, which does not enhance society's reverence for life. The Christian tradition is one of reverence for human life, combined with a loving and forgiving attitude toward the offender. For the state to assume that those who commit heinous crimes are beyond redemption is to assume a power that belongs to God.

To defend the death penalty by saying that the Bible nowhere specifically forbids it makes as much sense as to defend slavery, which the Bible also does not forbid. The Old Testament, in fact, includes a number of actions as punishable by death: murder, slave procurement, witchcraft, sodomy, adultery, being a rebellious son or unchaste bride. (Exodus, Leviticus, Deuteronomy). There are no New Testament passages sanctioning the death penalty. The Roman Catholic Bishops of Canada, who recently appealed to their Parliament not to reinstitute the death penalty, said: "We consider it an illegitimate use of the Bible, especially the Old Testament, to quote texts in order to argue, in our time, for the retention of the death penalty. . . Each such Old Testament text must be weighed against any passages in the New Testament where Jesus constantly rejects the normal human tendency to redress injury by injury and calls instead for generosity. He established a norm that violence and hostility are not corrected by counter-measures of violence and hostility." By contrast, through capital punishment

Page three

the state obviously repudiates the humanity of the offender and despairs at the possibility of his rehabilitation and reconciliation with the community.

Basically, Catholic Charities--Catholic Social Services speaks against the death penalty because we are for the preservation of all human life -- life in the unborn, life in the aged and hopelessly ill, life in the person who kills or seriously harms another person. The death penalty frustrates the Christian commitment to seek the redemption and reconciliation of the wrongdoer. It is counter to the Christian crusade for life. And it violates the fundamental commitment to a decent and humane society.



KANSAS CITY STAR
January 31, 1975

SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS
STATE OF KANSAS LEGISLATURE

November 10, 1976

Evolving Standards of Decency That Mark a Maturing Society
A Statement on Proposal No. 64--Death Penalty

Chairman Buzzi and Members of the Special Committee on Federal and
State Affairs:

I am Maynard Shelly, of 624 Westchester Lane, Newton, Kansas, a minister and writer for the Mennonite Church. I have asked for this opportunity to appear before the Committee to present the concerns of the Mennonite churches of Kansas (Western District Conference of the General Conference Mennonite Church) and to give you the statement on the death penalty which the representatives of our denomination adopted at their annual meeting on October 23, less than three weeks ago. (This statement opposing capital punishment is appended to my testimony.) The Western District Conference has forty-two congregations and has 11,525 members in Kansas.

The death penalty is a deterrent.

The death penalty is a deterrent to the efficient working of the criminal justice system.

The death penalty is a deterrent to the goal of rehabilitating offenders and the necessary goal of penal reform.

The death penalty is a deterrent to our common goal as a people of this State to achieve a peaceful society.

Because the death penalty is this kind of a deterrent, we oppose it. Mr. Justice Frankfurter of the Supreme Court said: "I'm strongly against capital punishment....When life is at hazard in a trial, it sensationalizes the whole thing almost unwittingly; the effect on juries, the Bar, the public, the Judiciary, I regard as very bad.... [There is a] social loss due to the inherent sensationalism of a trial for life" (cited by Justice Marshall in Furman v. Georgia, 33 L Ed 2d, p. 423).

Mr. Justice Marshall quotes studies to show that the death penalty has a corrupting effect on our prison system. Its very existence "inevitably sabotages a social or institutional program of reformation" and "bedevils the administration of criminal justice all the way down the line and is the stumbling block in the path of general reform and of the treatment of crime and criminals" (Furman v. Georgia, 33 L Ed2d, p. 423).

With the death penalty as the keystone of our criminal justice system, we cannot expect our citizens to live nonviolent and peaceful lives. If the State sets an example of violence and disrespect for the humanity and dignity of any of its citizens, it should not

be surprised if its citizens choose ways of violence and disrespect for the rights of others.

The use of the word in this sense, I confess, is a rhetorical flourish, but I hope it serves to express our concern. We are convinced that capital punishment rather than serving to deter the evil forces in the body of our society instead deters the forces for good--those positive forces that all of our institutions including government seek to nurture.

But is the death penalty really a deterrent to the commission of violent crimes? The United Nations committee that studied capital punishment found that it "is generally agreed between retentionists and abolitionists...that the data which now exist show no correlation between the existence of capital punishment and lower rates of capital crime" (cited by Justice Marshall, Furman v. Georgia, 33 L Ed 2d, p. 414).

According to Marshall, however, the "question to be considered is not simply whether capital punishment is a deterrent but whether it is a better deterrent than life imprisonment" (Furman v. Georgia, 33 L Ed 2d, p. 411).

Mr. Justice Brennan in his dissent to Gregg v. Georgia concluded that the death penalty "serves no penal purpose more effectively than a less severe punishment" (49 L Ed 2d, p. 906).

Evolving standards of decency will abolish the death penalty.

Much has been made of the fact that certain public opinion polls find a majority of the public supporting the use of the death penalty.

Yet the information on the effect of the death penalty is not generally available and the experience of the death penalty is not a part of the life of the American people largely because executions are no longer public but carried out in the dead of night in semi-secrecy. (We do not favor public executions, even so, for we are opposed to all executions, public or semi-secret, because all executions, but particularly public executions could only serve to further brutalize the feelings of society.)

We believe with Justice Marshall "that the American people are largely unaware of the information critical to a judgment on the morality of the death penalty, and...if they were better informed they would consider it shocking, unjust, and unacceptable" (Gregg v. Georgia, 49 L Ed 2d, p. 907).

In public opinion polls, the American people are responding to a hypothetical situation. They are not personally involved. It is much different when persons, even those who support the death penalty in theory, come to apply it in real life and death situations.

Juries selected to hear trials for capital offenses have always been composed of people who support capital punishment. Prosecuting attorneys, as a class, have supported the death penalty. Yet among this group of persons with a bias toward the death penalty, there is a discernible trend away from the use of the death penalty. Juries have often failed to convict when a guilty verdict would mean a death sentence. Prosecuting attorneys have asked for the death sentence less frequently by going to trial on a charge for a lesser offense, either because of conscience or because juries have become increasingly resistant to assent to death sentences.

"As the [U. S. Supreme] Court noted in McGautha v. California... there was in this country a 'rebellion against the common-law rule imposing a mandatory death sentence on all convicted murderers.' Initially, that rebellion resulted in legislative definition that distinguished between degrees of murder, retaining the mandatory death sentences 'only for murder in the first degree....But even in clear cases of first degree murder, juries continued to take the law into their own hands: if they felt that death was an inappropriate punishment,' they simply refused to convict of the capital offense" (cited by Justice Brennan, Furman v. Georgia, 33 L Ed 2d, p. 383).

Another informed opinion trend against the use of the death penalty comes from the judges who have provided stays of execution, from the medical profession which has recommended transfers of persons convicted (or in danger of being convicted) of a capital offense to treatment in an institution for the mentally ill, and from governors who have regularly commuted death sentences to life imprisonment. Governor Milton Shapp of Pennsylvania, for example, is among those governors who have made it a matter of policy that none would be executed during their terms.

That the number of executions in the United States decreased from a high of 199 in 1935 to only one in 1966 and only two in 1967 indicates a strong and growing sentiment against capital punishment from among the juries and other informed persons who are personally involved in the potential use of the death penalty.

Thus, we detect a strong tide carrying us away from the use of

of the death penalty which we feel indicates, in the words of Chief Justice Earl Warren, "evolving standards of decency that mark the progress of a maturing society." We rejoice in these trends and ask that you celebrate our maturing society by refraining from writing a death penalty law.

Equal rights under the law for men as well as women.

We also note that among the persons responsible for prosecuting, judging, sentencing, and communting persons involved in capital offenses a trend that rarely supports the death penalty for women. Since 1930, only 32 women have been executed as compared to 3,827 men.

"It is difficult to understand why women have received such favored treatment," says Justice Marshall, "since the purposes allegedly served by capital punishment seemingly are equally applicable to both sexes" (Furman v. Georgia, 33 L Ed 2d, p. 421).

Such a serious and flagrant case of sex discrimination should go unnoticed no longer. But we can only applaud the decisions of our juries, prosecuting attorneys, judges, and governors for granting to so many women the dignity and respect for their rights that they deserve, not because they are women, but because they are human.

We only ask that equal respect be granted to men offenders has already been almost unanimously granted to women.

Jesus Christ against the death penalty.

The weight of opinion of those people who have studied the death penalty as a moral issue is all but unanimous in its opposition to capital punishment. We have examined statements from the following religious groups: Baptists, Society of Friends, Church of the Brethren, Lutheran, Christian Church (Disciples of Christ), Methodist, Episcopal, United Church of Christ, Presbyterian, Mennonite, the American Jewish Committee, the Vatican, and others, and all are equally opposed to the death penalty.

We are aware that the Old Testament has various texts invoking death for a wide variety of crimes: Murder, striking or cursing one's parents, slave procurement, fatal attack by an ox, witchcraft, sodomy, sacrifice to any God other than Jahweh, adultery, criminal assault in the city, a rebellious son, and an unchaste bride. We regard these experiences as part of the evolving standards of decency in early Hebrew society in which God was at work. We need not reckon these expressions as the final voice of God on this issue. Even the famed word of Exodus 21:24 of an "eye for eye, tooth for tooth, hand for hand, foot for foot" dare not be seen as the ultimate biblical teaching, but again as as an evolving standard leading from the lower stage of unlimited vengeance to limited retribution which will later give way to a fuller respect for the sacredness of life and the dignity of persons.

The highest word of the Old Testament on the matter of the death penalty is the word of "Thou shalt not kill" of the Ten Commandments (Exodus 20:13) which is a commandment that applies to institutions (governments) as well as to individuals.

The New Testament's word on the death penalty is in the life and example of Jesus Christ. While Jesus did not speak directly to the issue of capital punishment, the import of all His words are all in the direction of increasing respect for the dignity and sacredness of human life.

One event in the life of Jesus reflects His opposition to the use of the death penalty. This is about the woman taken in adultery. Her guilt was assumed and according to the Old Testament law she should have been executed. "It is of interest not only that Jesus brought about her release, but that the legalists threw him into the situation to entrap him," says Charles S. Milligan, a professor of Christian ethics. "There would have been no point in questioning Jesus about the execution had he not impressed them as the sort of person who might disapprove of capital punishment" ("A Protestant View of the Death Penalty" in The Death Penalty in America, edited by Hugo Adam Bedau, p. 177). (See also John 8:1-11.)

Evolving concepts of what cruel and unusual means.

The "cruel and unusual punishment" clause of the Eighth Amendment begs for a continuation of a further moral dialogue. And the U.S. Supreme Court has so eloquently laid the foundation for this dialogue in its previous interpretations of this clause. The Court has spoken words which would be of credit to any moral theologian.

The Court has ruled that three specific types of punishment are "cruel and unusual": twelve years in chains at hard and painful labor, expatriation, and imprisonment for 90 days for narcotics addiction (cited by Justice Brennan in Furman v. Georgia, 33 L Ed 2d, p. 374).

The specific dialogue on the matter of expatriation as cruel and unusual is most instructive. "Expatriation thus inherently entails 'a total destruction of the individual's status in organized society....In short, the expatriate has lost the right to have rights.' Yet, demonstrably, expatriation is not 'a fate worse than death.' Although death, like expatriation, destroys the individual's 'political existence' and his 'status in organized society,' it does more, for unlike expatriation, death also destroys 'his very existence.' There is, too, at least a possibility that the expatriate will in the future regain 'the right to have rights.' Death forecloses that possibility" (Justice Brennan, Furman v. Georgia, 33 L Ed 2d, p. 378).

Brothers and sisters, sons and daughters, and the death penalty.

We hope that the Mennonite Church in its statement on the death penalty (which is attached hereto) will contribute to this vigorous moral dialogue. We have called this statement: "Our Brothers and Sisters, Our Sons and Daughters, and the Death Penalty" because we feel that we dare not discuss the matter of the death penalty in the abstract, as though it were to be applied only to some faceless and distant being. The death penalty deals with real persons, persons who could be and are our brothers and sisters, our sons and daughters.

If we can see them as such, we believe that we will have reached a new stage in the "evolving standards of decency that mark a maturing society"--the day when we will no longer use the death penalty either in reality or as a symbol. For us, that day has come today.

OUR BROTHERS AND SISTERS, OUR SONS AND DAUGHTERS, AND THE DEATH PENALTY

A statement adopted by the Western District Conference of the General Conference Mennonite Church on October 23, 1976.

Preamble

Mennonites have opposed capital punishment throughout their 450 year history. Felix Manz, one of the founders of our church, was executed by drowning in Zurich, Switzerland, January 1527, because he witnessed for love and freedom in his community and because he opposed the use of the death penalty.

Our stand against capital punishment goes back to Jesus Christ, the best known of all the world's victims of capital punishment. Given the opportunity to approve the death sentence proposed for a woman taken in adultery, Jesus refused to endorse it (Jn. 8:1-11). Paul, an apostle of Christ, actively sought release and pardon for Onesimus, the runaway slave, who under Roman law was liable to capital punishment (Philem. 10-20).

The teachings and spirit of Jesus allow no acts of killing and violence. Jesus confirmed His teachings by accepting suffering and death on the cross rather than bringing harm to any person. The good news of Jesus Christ witnesses against the death penalty, for it calls all persons to a life of forgiveness, love, service, and peace (Jn. 15:12-17). Jesus came to seek the redemption of all persons (Jn. 3:17).

As Mennonite congregations and institutions, we have been working to remove the causes of violence through ministries that cope with the personal and social ills of people in our world. Evangelism, peace education, mental health, healing, and service witness of God's peace to a troubled world. We have worked at home

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and overseas on problems of poverty and for a sharing of the resources of God's world.

In October 1961 at Kansas City, Kansas, the Western District Conference adopted a statement which said that in the light of the teaching and example of Jesus Christ and His "concern for moral and spiritual redemption of all men," our Conference stands "in opposition to capital punishment, for Christ is Lord-- Lord of the Scriptures and of our lives and of nations. He came not to destroy or condemn, but to save. We are commissioned to a similar service (2 Cor. 5: 16-21)."

In July 1965, our congregations, as part of the General Conference Mennonite Church, adopted at Estes Park, Colorado, "A Christian Declaration on Capital Punishment." We said: "Since Christ through His redemptive work has fulfilled the requirement of the death penalty, and has given the church a ministry of reconciliation, and in view of the injustice and ineffectiveness of capital punishment as a means for the achievement of the purpose of government, we express our conviction that its use should be discontinued."

And within two years following the Estes Park statement, the use of capital punishment ceased in the United States. Executions had been gradually declining from a high of 199 in 1935 to less than fifty in 1961, to two in 1967. The last person to die by capital punishment was executed in Colorado on June 2, 1967.

The Supreme Court in Furman v Georgia ruled on June 29, 1972, in a five-to-four decision that "the imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments [of the U. S. Constitution]." Two of the Supreme Court justices noted at the time that death penalty laws were "arbitrarily" and "freakishly" applied--usually being dealt out to poor, friendless, and non-white persons. This would have seemed to have ended the use of capital punishment ex-

cept that the Court left an opening and did not prohibit capital punishment if it could be administered fairly and justly.

In an attempt to meet this guideline, thirty-four states and the federal government adopted new death penalty laws, most of them making capital punishment mandatory for persons convicted of certain crimes. In decisions handed down on July 2, 1976, the Supreme Court, on rather narrow legal grounds, struck down some of these death penalty laws and allowed others to stand.

Colorado, Missouri, Nebraska, Oklahoma, and Texas are among the states that had renewed their death penalty laws. The Texas law was one of those tested before the Supreme Court and upheld. Oklahoma rewrote its capital punishment law in a special session of the legislature after the Court announced its decision.

At the time of the Court's decision, Colorado had three persons under sentence of death; Nebraska, five; Oklahoma, thirty-three; and Texas, forty-two. Though Missouri has a death penalty law, no one has so far been sentenced under that statute. Kansas, at the moment, has no capital punishment law, though strong effort to restore such a law are sure to be mounted during the next session of its legislature.

Our Commitment

At Estes Park, Colorado, in July 1965, we, with the other congregations of the General Conference Mennonite Church, ended our declaration on capital punishment with the affirmation that "we need to be more faithful in serving persons in prison and in laboring for the reforming of prison procedures; for the rehabilitation of released prisoners; and for the improvement of the economic, social, and religious conditions which contribute to the making of juvenile offen-

ders and to the spirit of crime."

And in the past decade, we, as Mennonites in Kansas, Oklahoma, Nebraska, Colorado, and Texas, have become increasingly involved in the rehabilitation of prisoners and have thereby gained credibility in a crusade for more humane treatment for offenders. Our involvement in the founding of the Inter-Faith Offender Concerns Committee in Kansas and our support of the Committee of Concern's offender ministries in Oklahoma show that we support our words with our deeds and resources.

Thus, we affirm once again our opposition to capital punishment. Death is a judgment that should be left to God alone.

We commit ourselves to the rehabilitation of offenders without the use or threat of the death penalty. We will set an example of compassion and make our communities better and safer places to live. As the death penalty robs the person marked for death of human dignity, it detracts from the worth of each person in our country. Murder and other acts of violence are possible only when persons forget their own humanity and that of others. When another person is seen as an object or a thing, any brutality is possible.

All effective measures must be taken to reduce and eliminate those crimes and acts of violence which grow out of the hate, fear, and mistrust that so many persons find in themselves and, unfortunately, find reflected too often in the people around them. The threat and use of the death penalty make murder more, rather than less, likely. Its use raises the level of distrust, fear, and hate which are already too strong in the lives of those prone to violence.

We will treat offenders as human beings in spite of their evil acts, affirming that as persons whom God loves and for whom Christ died, they are our brothers and sisters, our sons and daughters, and deserve an example of humanity from us.

We will act humanely and treat all persons as human. We ask our governments to do the same. We will not allow ourselves to be the means of dehumanizing others by calling them murderers and criminals as a prelude and justification for treating them brutally.

We will continue and expand programs of friendship and service to persons who have been sentenced to prisons. We are aware of the problems and difficulties of rehabilitation within our present penal systems, but we will give ourselves to "proclaim release to the captives...to set at liberty those who are oppressed" (Lk. 4:18) in every possible way.

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SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

STATE OF KANSAS LEGISLATURE

November 10, 1976

A Statement on Proposal No. 64--Death Penalty

Chairman Buzzi and Members of the Special Committee on Federal and State Affairs:

I am Roy Harden, McPherson, Kansas, an ex-convict currently on parole and have been for the past twenty months. Prior to being released on parole, I had served five years, ten months, and twenty-three days in a Kansas institution. That all came about as a result of a conviction of a murder charge of a murder that never took place.

My first intentions were to prepare a speech based on the findings and statements of well-known authorities and throw a number of facts and figures at you. But after some thought and consideration about that approach, I am convinced that you are probably already aware of far more facts and figures than I could ever prepare on a short notice to present to you.

So, with that in mind, much of what I shall attempt to share with you shall be based on a combination of factual findings,

my personal feelings, as well as the feelings of some who have devoted much time and effort into studies in this area.

To give you a little more detail about the charge of which I was convicted: it involved the death of my first wife who was in her eighth month of pregnancy. To spare you the details of a painful experience, I'll just say that my wife's death was totally accidental, but due to negligence, stupidity, and apparent inconsideration on my part. At one time, I had what I would now consider as an acute drinking problem and on this particular evening I had managed to reach my usual state of intoxication. My wife and I had a disagreement about my leaving home and just as I had done in the past with some measure of success, as I felt, I got a gun to do nothing more than frighten her with to end the disagreement.

Well, as stated, I was successful, as it did end the disagreement and frightened my wife to the point that she felt the need to leave the apartment. In her efforts to leave, she either slipped and fell on the icy, snowy surface or tripped over a tri-prong rotary barbecue grill that we usually kept outside the apartment. Why she fell, I'm not sure, but at any rate, upon falling, she called my name, screamed, or made some sound. I was on my way back to the nightstand to put the revolver up and hearing the sound I went outside and found her on the ground. With the gun still in my hand, I reached down, grabbed her hands and started to pull her up. In the process of pulling her up, the gun discharged, striking her in the area of the left eye--causing an almost instant death.

I have not shared this with you to evoke sympathy or to get you to feel sorry for me, but rather to illustrate the point that even

though the death of my wife was accidental, the prosecuting attorney sought a conviction of first degree murder. Had he been successful in his attempt and had the death penalty been in use, there was a very good chance that I would not be able to stand here before you today and say that we really need to examine what authority we feel we have to take the life of another human being. Fortunately for me, if you can imagine that, a jury returned a verdict of second degree murder which gave the state a maximum penalty of 20 years.

What I am trying to say to you is that had that prosecuting attorney been persuasive enough, I very well could have been convicted of first degree murder and suffered the consequences that the penalty section of the law dictated. I guess the question that must be asked--and answered--is: "what are we really concerned about or trying to accomplish by capital punishment?"

We need not closely examine capital punishment to decide that its end results are no different and are exactly the same as that of murder committed in anger, heat of passion, or otherwise. So, what, may I ask, makes the taking of a human life different because the state does it than if done by someone else? I submit to you that there is no difference; the end result is the same.

Many who have studied the topic suggest that a possible majority of those offenses in which we have associated with capital offenses are committed irrationally, uncontrollably, or in such a manner that the offender does not have control of his actions. Be that the case, then what do we really hope to accomplish by taking the life of an individual who commits a capital offense?

I am presently a student of psychology and I am convinced that

some people are disordered enough, according to the norms, to not be able to function in society but also I am convinced that we need to devote efforts toward treatment and cure rather than execution. If one's behavior has been such that he cannot be allowed to re-enter society, perhaps that individual can be a source of information to help us better understand the problem, its causes, and its cures to salvage future lives that fall prey to the many dysfunctions that can produce a varied sort of inappropriate behaviors--stemming from taking candy to taking lives.

Murder is one of the most common capital offenses but here again there is much evidence to suggest that a vast number, if not the majority, of murders committed are among families or loved ones and the act itself is committed during a heat of passion or some other irrational state of mind. Do we really need to think about taking the life of such a person or finding a means to treat such behavior?

I am currently working as a county probation officer. I readily admit that I am not able to "solve all the problems of the world" but I feel I have been able to make some small contributions. Had the prosecuting attorney in my case been successful in getting a conviction of first degree murder, where would I be today? I submit to you that finding an answer is far better than getting rid of a person who displays the behavior of which we are trying to free ourselves.

As I'm certain you are aware, there is little or no supporting evidence for the position that capital punishment deters crime. Many studies have illustrated that at one time, areas employing the death penalty had, in fact, higher rate of capital offenses than

Statement on the Death Penalty by Roy Harden, page five

areas without the death penalty.

I am convinced that most of us would agree that capital punishment does not contribute in a positive way to the prevention of crime, so what we really need to take a hard, long look at is why we feel the need to have such a device when it does not accomplish anything at all constructive and possibly adds to the moral decay of our society.

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PRESENTATION OF LLOYD R. SALISBURY, CHIEF COURT SERVICES
Leavenworth County, Kansas

TO: Chairman of the Special Committee on Federal and State Affairs
RE: Enactment of Death Penalty Legislation in State of Kansas

Mr. Chairman and Members of the Special Committee of Federal and State Affairs:

I appreciate your invitation to allow me to contribute to your deliberations on a most serious issue--the death penalty. I come to you without profound legal background in constitutional law or without extensive research background on the death penalty and its effect. However, I do have extensive practical experience in probation and parole work in my position as Chief of Court Services serving six courts in Leavenworth County. We handle 600 cases a year, juveniles and adults, from age 8 to 85 years. As Chief of this activity I am fully cognizant of the problem of changing the behavior pattern of a criminal, particularly the hard core type.

In the geographical area in which I work we find an extremely high ratio of 10 civilians for every inmate in an institution. Since my office is in the Court House I have occasion to see numerous cases of our most violent inmates being tried for many cruel offenses including murder. I also was personally acquainted with a fine young state parole officer, Paul Webber, who was murdered last month by one of the parolees under his supervision. In addition I have held classes and talked with inmates at the Kansas State Penitentiary, the US Penitentiary, US Army Disciplinary Barracks and the Women's Correctional Institution.

With this background and experience I would like to now address myself to the problem of the death penalty. It appears there are two major questions to be faced: First, can a proper law be enacted in this state which will meet the Supreme Court criteria guaranteeing equal justice to all accused regardless of their position, wealth or political connection? Second, can the death penalty provide a valuable role in preventing or deterring homicide and

violent crimes?

In addressing the constitutional requirement for equitable justice it appears vital that the proposed legislation should have built-in safeguards so that no single responsible official in the chain of judicial process should be allowed to distort or interfere with justice. In this regard we should recognize that laws are not only made by people, but are also interpreted and possibly manipulated by those who execute them. It was this lack of human objectivity which the Supreme Court found wanting. There are numerous glaring cases of inequity which are, I am sure, are well known to you. I therefore propose that the entire judicial process from the time of arrest, to arraignment, trial, conviction and sentencing have built-in safeguards for capitol cases. These should include but not limited to the following: Police reports to be reviewed and signed by the chief of police in all cases. In the district attorney's or county attorney's office an independent prosecutor should be brought in to be a partner in the prosecution process. In this way no single prosecutor could personally exert undue influence over the case.

Lastly, not less than two and preferably three judges should sit on the case in order that the judicial proceedings are carefully and objectively handled. In case of appeal, at least three judges should be required to review the appeal at each level. Finally, no single political figure such as the governor, should have the right to order stay of execution once the due process of law has been completed. This in no way is intended to detract from the reputation of present fine governor of Kansas.

Before leaving the subject of judicial process we must carefully address ourselves to the sticky question of insanity and incompetency pleas which has interfered with the fair execution of most death penalty laws. We find numerous instances in manipulations of the Court by expert testimony of psychiatrists and psychologists using imperfect and oftentimes prejudiced opinions to influence the decision as to whether a person guilty of homicide is insane or competent at the time of the offense. If the court is

convinced of the insanity of the accused, either temporary or permanent, he is usually placed in an institution for the criminally insane. However the problem does not stop here. In many cases of record we find that determinations are made later that the accused after treatment and incarceration is declared no longer dangerous. He is then released and society may again suffer from his depredations. Let us consider the nationally publicized case involving the death of some 26 migrant workers who were murdered in California by a demented foreman. This individual had some years before been hospitalized and treated for mental illness. He was released by the psychiatrist as safe to be in society. His family had later felt he was dangerous and should be locked up again; however their views were disregarded; the psychiatrist was wrong. Result-- 26 people are dead. We therefore must conclude that the escape hatch of insanity or incompetency must be tightened, or if legally possible, eliminated. Certainly society must guarantee protection to its citizens from those whose minds are so warped or deranged that they will kill again with or without reason.

Before leaving this subject one should consider the fact that there is a murder committed every 26 minutes in our country. 50% of these murders are committed with alcohol as a factor which effected the mind of the killer. It is also a known fact that many persons who drink alcohol go into what is commonly called "alcoholic blackouts." I have worked with hundreds of these people and am convinced that those in alcoholic blackouts have no capability of remembering or determining their actions. The law is quite clear if these persons should commit homicide while in blackout. There is a rule of constructive responsibility which requires them to be held responsible for taking the alcohol in the first place although they themselves might not be fully aware of the ultimate consequences of their following blackout. In these cases the law would most certainly convict them regardless of this blackout condition and the possibility that these persons are temporarily insane. Perhaps we may have to write new laws and face the reality that it may be better to close all loopholes on insanity pleas in capitol cases even to the point of prohibiting this as a defense or bar to

trial.

All of what I have said before has a direct bearing on the deterrent or preventive effect of the death penalty. If the judicial process is objective and swift and leaves no manipulative escape hatches there can be little question that the deterrent will be there. This does not mean that murder committed in moments of passion may not continue but it will, in my view, cut back the most serious types of homicide. It will further save the State from the awesome problem of incarcerating the most dangerous killers over extended periods of time.

So far as prevention is concerned, it goes without saying that a truly mad killer once executed will kill no more. It would therefore appear that prior studies on deterrent effects have been clouded by the failure of capital punishment to be implemented in a simple, direct and expedient manner. Without this there would indeed be a question of deterrent value.

Now turning to a consideration of the types of crimes which should require the death penalty. First priority should go to those crimes where law enforcement officers, corrections officers and parole and probation officers who are carrying out the mandate of their positions are killed in line of duty. This particularly applies in the present era when officers are shackled with regulations that practically prohibit them from protecting themselves unless they are in mortal fear of their own safety. In effect, the policeman who lives through an encounter under this type of restriction is the one who tangles with the criminal who is a poor shot. We are in effect playing Russian roulette with the lives of those public officers that are charged with the security of the state. High priority should also be given to crimes where premeditation, felonious intent, particularly kidnapping or rape are associated with the homicide. The category of crimes to be made capital will, no doubt, be controversial but should be faced and not be overly restrictive if it is to have an effect on slowing the ever increasing violent crime rate.

In conclusion, Gentlemen, I endorse the reenactment of the death penalty in the State of Kansas with the aforementioned

stipulations that the necessary safeguards be established throughout the entire judicial process so that every accused citizen receives equal treatment and, if convicted , will suffer prompt and speedy execution, free from any political, criminal or monetary influence. It will furthermore give our officers of the law a forceful and legal shield which will reinforce the thin veneer which now stands between them and the violent criminals they face while executing their dangerous duties.

One closing reminder--We in our country don't hesitate to send our finest young citizens to war when the Republic is threatened. The byword there is "kill or be killed." Yet we become supersensitive when we consider what sanctions we impose when growing legions of violent criminals make murder a commonplace occurrence. The time is here for us to bring this serious problem into perspective and "Bite the Bullet."

KANSAS SHERIFFS' ASSOCIATION

JAMES FOUNTAIN, PRESIDENT
Sheriff of Reno County
HUTCHINSON, KANSAS

BERT CANTWELL, VICE PRESIDENT
Sheriff of Wyandotte County
KANSAS CITY, KANSAS

MARION S. WEESE, SECRETARY TREASURER
Sheriff of Barton County
GREAT BEND, KANSAS

Attachment XXIII

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November 9, 1976

The Kansas Sheriffs Association unanimously supports capital punishment.

Law enforcement officers are the strongest advocates of capital punishment.

They must witness the effects of killers actions and this no doubt causes their strong support of capital punishment.

The people in Kansas strongly support capital punishment as well as more severe penalties for those committing violent crimes and crimes using firearms in their perpetration.

Clearly our citizenry is fed up with lawlessness and violence.

With capital punishment, one innocent victim's life might be spared. Is that life as valuable as a murderer's life.

Great concern is shown for the imposition of capital punishment on murderers. The killers of the Clutter family in Western Kansas showed no mercy in blowing off the heads of the Clutter children as well as their parents. Why should they be able to murder in cold blood without paying the supreme penalty.

It is impossible to prove statistically that the death penalty deters criminals. However, there are cases where victims have related to law enforcement officers that criminals have talked other criminals out of murdering a victim because they could be hanged.

I would submit that an innocent victim's life is just as valuable as a murderer's. We should be concerned with the victim and his family.

Have you ever talked to a murdered victim's family. I have and I can assure you they are not opposed to capital punishment.

Previously testifying before committees in the legislature, I have told them of the inmate at Lansing who had a license to kill. He killed three fellow inmates at three separate occasions. He was severely punished by three life sentences. Finally, he took his own life because he lived in constant fear of retaliation from the other inmates.

Your favorable consideration of a capital punishment statute will be greatly appreciated by all law enforcement.

Respectfully yours,

Robert E. Tilton

Robert E. Tilton
Legislative Counsel