

Approved: 2/3/94  
Date

## MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on January 26, 1994 in Room 313-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department  
Lynne Holt, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee: David Harper, Wichita  
Sue Norton, Kansas City, Kansas  
Archbishop James P. Keleher, Kansas City, Kansas  
K. C. Groves, First V.P., Kansas NAACP  
David Gottlieb, Lawrence  
Pedro Irigonegarary, Attorney, Topeka  
Dr. Charles Merrifield, Wichita  
Ben Coates  
Alma Weber  
Gregory Ruff, Leavenworth  
Dr. Paul Kindling  
Ron Wurtz  
Sandra Lassiter  
Thomas Wathen  
Reverend Ron Eslinger  
Ed Collister, Attorney, Lawrence  
Kurt Thurmaier  
E. Jay Greeno, KACDL, Associated Criminal Defense Lawyers  
Thomas White, PhD, Licensed Medical Social Worker  
Kurt Thurmaier, Lawrence  
E. Jay Greeno, KACDL, Associated Criminal Defense Lawyers

Others attending: See attached list

The Chairperson opened the hearing for the opponents of HB 2578.

David Clinton Harper, State Coordinator-Kansas Coalition Against the Death Penalty, testified opposing HB 2578. The Kansas Coalition Against the Death Penalty is a state-wide consortium of people of faith, academics and professionals, criminal justice administrators and victims family members who, for a multiplicity of reasons oppose the sanction of capital punishment in Kansas, in the United States and globally. (See Attachment #1)

Sue Norton, Kansas City, Kansas, stated that her father and step-mother were shot to death in their rural farmhouse near Tonkawa, Oklahoma. Ms. Norton stated that knowing the offender is going to have to die is comforting to some, but I found it very disturbing. If the offender is executed by legal murder, then we are putting yet again, another family of people in the position of hurt, anger and hate. (See Attachment #2)

Archbishop James P. Keleher, Kansas City, stated it is very clear that something very powerful motivates the desire on the part of many to re-introduce the Death Penalty into our state. There is anxiety and consternation over the issue of violence at both federal and state levels. A few believe the Death Penalty may be a way to curb the wave of violence. The effort to do something realistic to turn this situation around is enthusiastically supported.

The Catholic Bishops of Kansas together with many of their ecumenical partners do not feel that the Death Penalty is the way to do so . . . increased police protection, educational programs geared to teach solid morality and stricter enforcement of our state laws, life imprisonment when the crime deserves it . . . but not the death penalty which is a form of legalized violence. (See Attachment #3)

K. C. Groves, First Vice President, Kansas State NAACP, testified opposing HB 2578 stating the Kansas State Conference of Branches of the National Association for the Advancement of Colored People shall endeavor to improve the political, educational, social and economic status of minority groups; to eliminate racial prejudice; to keep the public aware of the adverse effects of racial discrimination; and to take lawful action to secure. (See Attachment #4)

David J. Gottlieb, University of Kansas School of Law, Lawrence, Kansas, opposed HB 2578 testifying on the cost of the death penalty. The death penalty is an expensive "add-on" to a criminal justice system which produces significant additional costs, and no measurable savings. While the magnitude of the additional costs is impossible to determine with precision, since we cannot know in advance how many cases prosecutors choose to charge as death penalty cases or the means the State will choose to implement defence services for capital cases, if the penalty is charged more than a couple of times a year, the additional costs will measure in the millions of dollars per year. We should expect each case in which the death penalty is imposed after a guilty verdict to costs, at a minimum, hundreds of thousands of dollars more than each similar non-death penalty case. We should also expect to spend millions of tens of millions of dollars per each case that finally results in an execution. We should expect that the state will spend at least tens of millions of dollars before, sometime in the next 10 to 20 years, the State witnesses its first execution. (See Attachment #5)

Pedro L. Irigonegaray, Attorney-at-Law, testified in opposition of HB 2578, stating the prosecution of any case is made more difficult when the stakes are higher; in legal terms the more serious the alleged criminal violation against any particular defendant, the greater the consequences to the defendant are and the more difficult the case is to prosecute. The difficulties are immense for all participants, the victim's family, the defendant, the prosecutor, the defense lawyer, the witnesses, the community and its conscience and the jury. One of the primary complications arising from a death penalty is asking a system already unable to adequately deal with its responsibilities, to triple its burdens.

The goals of advocates of the death penalty simply can not be met by its establishment. The opposite is the truth. The costs are immense throughout the system with no commensurate reduction in crime. At the time of diminishing resources one must explore carefully the manner in which every dollar is spent. (See Attachment #6)

Charles W. Merrifield, Ph D., Kansas Newman College, Wichita, Kansas, opposing the death penalty and reporting on a survey and analyses of data dealing with deterrence. Copies of two charts show the relationship between execution and murder rates. The more executions in a state, the higher the murder rate. In comparing changes in the murder rate for each state over the last 5 years and the last 10 years and comparing the death penalty and non-death penalty and non-death penalty states. For 5 years and for 10 years there were no significant differences between states based on the death penalty.

Dr. Merrifield also provided copies of a study done on "Deterrence or Brutalization? An Impact Assessment of Oklahoma's Return to Capital Punishment. (See Attachments 7 & 7A)

Ben Coates, testified in opposition of HB 2578, stating there are many reasons why he is opposed to the death penalty, being convinced that the state should never be in the position of taking the life of a citizen. The role of the state is to preserve life; to provision its members; to care for its young, its elderly and its disabled.

Mr. Coates stated the U.S. Department of Justice Bureau of Justice Statistics puts out a summary of capital punishment each year. The most recent edition (1991) provides a detailed summary of persons on death row and of those executed. African Americans make up less than 12 percent of the nations population but 40 percent of the death row population, a 333 percent over-representation. The same percentage holds for the actual number of persons executed (85 out of 157), this represents more than three times the expected percentage. When other non-whites are added in the percentage rises to 46% almost four times the expected average. Thus it becomes clear that the penalty is over applied to minorities; one of the powerful arguments why the death penalty was struck down in 1972. The post Furman remedies have not corrected this problem. (See Attachment #8)

Alma Weber opposed HB 2578 stating in the escalation of violence and the devaluation of human life, I hear hatred, pain, fear, and sometimes revenge in the outcries of families of both the victims and the perpetrators -- feelings with which I am very familiar. There is an emotional price one must pay to go through these many procedures. (See Attachment #9)

Lt. Gregory Ruff, Law Enforcement Officer, Leavenworth, Kansas, opposing HB 2578, stated he did not believe in the death penalty and does not support legislation to reintroduce capital punishment in Kansas. The



death penalty is a waste of valuable and limited resources. (See Attachment #10)

Paul Helmut Kindling stated he was against the death penalty. He was born in Germany and lived there during the time of the holocaust. There can be no question that in large part the sentiment for bringing back the death penalty is related to the "revenge factor". This was denied by a proponent yesterday, however, time and time again, "let the punishment fit the crime" was heard. (See Attachment #11)

Ronald E. Wurtz, 3rd Judicial District Public Defender, Topeka, Kansas, testified as a proponent to HB 2578, stating he was speaking as a private citizen and a member of the Kansas Association of Criminal Defense Lawyers. Mr. Wurtz stated he had defended citizens for the past fifteen years who had been charged with murder...some had committed terrible crimes...ones which other states with a death penalty would have sought to kill. The passage of the death penalty would cripple the entire criminal justice system or cost so much that the death penalty would be clearly unwise. The risk of convicting and executing an innocent person is real. The death penalty does not accomplish any reduction in crime, and it may even increase violent crime through its demonstration that the government itself has no respect for life. (See Attachment #12)

Sandra K. Lassiter, Concern Citizens for Equal Justice, testified as a proponent of HB 2578, stated that as a long time educator she was aware that too often, specifically African-American males are given two rooms in life. A special education room and a prison cell. Now, we are looking at two death penalties, an educational death as well as execution. If the victim is white, and the defendant is black, poor, uneducated, uninformed, and have a court-appointed attorney, the chances that selection for execution increases dramatically each year. (See Attachment #13) (Attachment #13A)

Thomas C. Wathen, Retired Officer, Kansas Department of Corrections, testified against HB 2578. (See Attachment #14)

The Reverend Ron Eslinger, Topeka, testified against HB 2578 speaking for the faith communities in Kansas, stating they speak out against the death penalty because it is believed first, it is contrary to God's will; second, it diminishes rather than enhances the value of human life and the social order; third, it would require the investment of great resources in pursuit of death, resources that ought better be invested in life; and fourth, it has not been demonstrated to be an effective means of promoting justice or of deterring crime. (See Attachment #15)

Edward G. Collister, Jr., Attorney at Law, Lawrence, testified against HB 2578, stating his comments were solely directed at the issue of whether or not enacting the death penalty is the wisest use of the money resources the state has available and the consequences that may affect each one of us if concerns about adequate funding or implementation of a death penalty bill are not realized and met. Estimates range in various studies between \$500,000 and \$1,500,000 for each death penalty prosecution. (See Attachment #16)

Kurt Thurmaier, Lawrence, testified in opposition of HB 2578, stated the death penalty is not about deterring other people from these crimes. It is about revenge for people who suffer horrible losses. These criminals should be locked in prison for life, throw away the keys, but don't throw away their lives. Leave their lives to God's judgment. (See Attachment #17)

E. Jay Greeno, Chief Public Defender for Sedgwick Co., Kansas, Wichita, testified in opposition of HB 2578 in the capacity of Vice President of the Kansas Association of Criminal Defense Lawyers, stating that if the death penalty is made law in Kansas, innocent people will be killed. Any process that involves the human factor can never be flawless. No matter how careful courts are, the possibility of perjured testimony, mistaken honest testimony, and human error remain all too real. There is no way of judging how many innocent persons have been executed, but we can be certain that there were some. (See Attachment #18)

Thomas S. White, LMSW, Ph.D., testified opposing HB 2578, stating that Kansans are outraged by the many heinous crimes which have been committed in Kansas during the past year and beyond. Executions are not only unnecessary for public protection, but are essentially terroristic acts. Once a murderer has been sentenced to an appropriate prison term he or she is subject to degrees of security from which escape is virtually impossible. (See Attachment #19)

The following Attachments were distributed to the committee: Against the Death Penalty -- Dr. Delores Craig (See Attachment #20) Pastoral Statement on the Death Penalty -- Kansas Catholic Conference (See Attachment #21) Elaine Mann, League of Women Voters of Kansas (See Attachment #22) Murder Victims Families for Reconciliation (See Attachment #23) A Report by the Death Penalty Information Center (See Attachment #24)

The Chairperson stated there would be committee discussion and possibly final action on HB 2578 on Thursday, January 27.

The meeting adjourned at 3:20 PM and the next meeting will be January 27.

Date: 1/26/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Lauren Ginestra	Senator Praeger's intern	<del>Laurens</del> Lawrence, KS
RALPH & LEONA KREHBIEL		PRETTY PRAIRIE KANSAS 67570
Patricia Voyles	2 victim	Wichita, KS
Tammy Viles	victim	Topoka, KS
DeVaughn Pate	Observer	Topoka, KS
Josh E. White	opposed to death penalty	EP Deroch, KS
Rev. Charles Chapman	Chaplaincy TS11	Topoka KS
Rex Hip	WICHITA Heights H.S. A.P. Government Class	Wichita
Joe Cuen	Wichita Heights H.S. A.P. Government class	Wichita
Carina Siebert	<del>Observer</del>	<sup>67570</sup> Pretty Prairie - KS
Lincoln Krehbiel		Pretty Prairie KS, 67570
Shelley Waters Rickett	KANSAS ASSOCIATION OF Criminal Defense	Lawrence KS.
Eldon Hanvill		Leoti, KS
Kathryn Davis	SW student	Topoka, KS 66604
Mary Will	SW Student	Topoka, KS 66604

Date: 1/26/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Fr. M. Melher, pastor	The United Methodist Church	4346 SE Shawnee Rd Tecumseh, KS 66542
Stan Hordatz	Erie High School student	215 W 4th Erie, KS 66733
Arinpa Jones	Erie High School Student	Erie, KS 66733-1125
Mindy Hordatz	Erie Jr. High Student	215 W. 4th Erie, KS 66733
Rosine Jones	Housewife	403 N. Lincoln Erie, KS 66733
BARNEY HEENEY	RETIRED	1005 E 9th TOPEKA KS 66612
Amy Caughan	Spring Hill Middle Page	19980 Country View Jen, Spring Hill, MO 66062
Sarah Andrews	Spring Hill Middle Student	18565 W. 168th Terr. Olathe, KS 66062
Matt Dougan	Spring Hill Middle Student	606 W Smith Spring Hill, KS 66608
Wayne Andrew	Parent	18565 W. 168th Terr Olathe KS 66062
Rev. Paul L. Nelson	Minister	Topeka, KS. 66612 1117 SE Monroe
Grace E. Wilser	Housewife	Topeka, KS. 66612 1117 SE Monroe
Mel Cathey	BIDS	304 LSOB
[Signature]	Senator Burke's office	Topeka
Donna McDaniel	Sen. Burke's office	Topeka



Date: 1/26/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Rozanne Smith	Southern Hills Memorial Church	511 E. 37th Topeka, KS
Alva Beard	Wichita Heights H.S. Observer	5301 N. Hillside Wichita, KS 67219
Jonathan Schiffel	Wichita Heights H.S.	5301 N. Hillside Wichita 67219
Michelle R. Thompson	Wichita Heights H.S. A.P. Gov. Class - Pro-Death Penalty	4423 N. Edgemoor Ct. Wichita, KS 67220
Marie Dellinger	AP Gov. student From Wichita	4416 E 27 N Wichita KS 67220
Vicki Atkinson	Wichita Heights H.S.	5013 E. 17th Wichita KS. 67208
Volga Rodriguez	Wichita Heights H.S.	7015 E. 35th St. N Wichita, KS - 67226
Jamie Fisher	Wichita Heights HS	2119 Larkspur Wichita, KS 67208
Cory Mills	AP Government Class from Wichita Heights High School	7129 E. 40th Cir N. Wichita, KS 67226
Ron Eslinger	Kansas Religious Leaders Against the Death Penalty	
Russ Frey	Topeka	KUMA
Kira Kilgus	Law Student	Topeka, KS.
Mary Beth Kelly, S.C.		501 Buchanan, Topeka
Gene Fox	SOS	PO Box 7879 OK KS 66201
Gene Schmitt	SOS	PO Box 7879 O.P. KS 66201

Date:

FEDERAL and STATE AFFAIRS COMMITTEE

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Opening Remarks by David Clinton Harper  
State Coordinator-Kansas Coalition Against the  
Death Penalty  
Kansas House of Representatives-Fed. and State Comm.  
H.B.-2578  
January 26, 1994

Mr. Chairman, members of the committee. My name is David Clinton Harper. I am the state coordinator for the Kansas Coalition Against the Death Penalty and it is my privilege to present an opening summary and introduce our conferee's for this afternoons hearing.

The Kansas Coalition Against the Death Penalty, <sup>is</sup> a state-wide consortium of people of faith, academics and professionals, criminal justice administrators and victims family members who, for a multiplicity of reasons oppose the sanction of capital punishment in Kansas, in the United States and globally.

Among our conferee's are religious and community leaders, sociologists and criminal justice experts as well as victim's family members who will briefly offer their poignant stories of living and healing.

Those that will offer their testimony here today, like myself and the members of the coalition believe that society deserves a civilized level of law and peace. They have a right to expect it. Life in parts of this state, and nation,

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Atch #1



has become more ugly and violent. To a great extent it is a cry, a terrible cry of anger and anguish born of frustration and fear in the people. We know and have experienced this pain, we understand it.

Ladies and Gentleman of the committee, we must look beyond the abstract and gain a better understanding of this issue. We need to respond more effectively to the violence in our state. It is our hope and desire that following the testimonies of these conferees each of you will have a better understanding of this issue.

Let me close by saying, that I realize, as a body, the Kansas Legislature must make thousands of judgements each session which are important. Occasionally, we are all confronted with a question that has transcendent significance; one that describes in fundamental ways what we are as a people; one that projects to ourselves, and to the whole world, our most fundamental values-one, even, that helps configure our souls.

The decisions made on this issue, in this day, not only affects us but will be a legacy for our children. As a father and one that tries to show his children the meaning of responsibility and compassion for others, let us be certain of our decision for their sake, and the sake of their children.

Thank you for your attention.

## Testimony of Sue Norton Against the Death Penalty

January 8, 1990 my daddy and step-mother were shot to death in their rural farmhouse, in Tonkawa, Oklahoma. As I cleaned up the pools of blood where my parents had lain, an impression of horror overwhelmed me. The double funeral and the duties of all of the affairs that are involved could not let me forget and get away from it.

I sat through five and one half weeks of preliminary hearing and jury trial. During that time, I came to realize that the hate that society expected me to have COULD consume me, if I let it.

The offender had already spent 30 of his 48 years in prison or some type of lock-up, and each time he was out, went back. This time he was sentenced to death by lethal injection.

Knowing the offender is going to have to die, is comforting to some, but I found it very disturbing. Through much prayer and the help of God, I forgave the man. I had never known the man, but made it my business to get to know him and to figure out why he had chosen to commit yet another crime.

I am in my 3rd year of prison ministry, have not only studied the individual who murdered my parents, but many others also. I have studied the effects of murder on the family members and understand the hate, and hurt that they feel. I also understand that when the offender is executed that the hurt and hate never go away. When you have lived with it so long, it is by then too hard to put to rest.

If the offender is executed by legal murder, then we are putting yet again, another family of people in the position of hurt, anger and hate. Remember that the executed have mommies, daddies, brothers and sisters, also. It seems that we create a never ending circle with the death penalty.

With the death penalty we create a financial problem, spending our state monies on trying to get to the ultimate execution itself. We need to be focusing on trying to prevent crime BEFORE it happens, with parenting the "unparented", and mentoring the parolees back into society in a positive manner, give them self respect, self-esteem and a job position and therefore remove their reason to resort back to crime.

I am not naive enough to think that we can rehabilitate all offenders or prevent all murders, but if we can prevent one, we will have contributed to a safer society. Two wrongs do not make a right, and we were all taught that we should "DO UNTO OTHERS AS WE WOULD WANT TO BE DONE UNTO." Legalized murder only puts the state and me on the level of the offender who murdered my parents.

We, as the "family of murdered victims", will never stop hurting, I miss daddy and Virginia very much. Execution will only add another hurt to the pile of hurts I already have. I know that this individual can never be released into society, but many others will be, and we need to concentrate on them.

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Atch # 2

I BEG YOU -- AS A "DOUBLE MURDER" VICTIM'S FAMILY MEMBER, DO NOT  
LEGALIZE MURDER! Kansas can be a leader in our Nation that helps  
prevent crime, rather than create more murder!

Sue Norton  
Chairperson  
FIFTH AVENUE FOUNDATION

FISA  
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Dear Committee members,

My gratitude to you for this opportunity to share with you the view of the Catholic Bishops of Kansas on this important issue. In my former State I was never afforded such an occasion to express our views and I truly appreciate your kindness.

It is clear to me that something very powerful motivates the desire on the part of many to re-introduce the Death Penalty into our State. At both Federal and State levels there is much anxiety and consternation over the issue of violence in our society. It is thought by not a few that the Death Penalty may be a way to curb the wave of violence. I identify with this concern and personally and enthusiastically support the effort to do something realistic to turn the situation around.

However, the Catholic Bishops of Kansas together with many of their ecumenical partners do not feel that the Death Penalty is the way to do so...increased police protection (which by the way has had a powerful positive impact in KCK)...Educational programs geared to teach solid morality in all our schools, stricter enforcement of our State laws...stiffer gun control measures...swifter justice when criminals are apprehended...even true "LIFE" imprisonment when the crime deserves it...but not the death penalty which as a form of "legalized violence" has done nothing to stem the tide of violence anywhere else in the USA. We do not feel it is the answer; we do not see it as a real inhibitor of violence - nor is there any statistical evidence to support the death penalty as a deterrent.

Together with you we totally empathize with the families of victims of violent and heinous crime. In no way should the perpetrators of such savagery be released from prison after a relatively short period of time. In fact, it would be altogether proper (in my opinion) for such criminals to spend their whole natural life behind bars thus allowing them to repent for their actions and making some partial reparation to those victimized families for the sufferings that they have endured.

One of our past Presidents called for a "Gentler and kinder America"...re-introducing this archaic and brutal form of Capital Punishment not only will do nothing to achieve that goal but could perhaps send a signal of how cheaply we view human life.

Indeed a gentler and kinder society was precisely what the Lord Himself sought to create by His earthly Presence and moral teachings. Whether it was urging others "not to throw the first stone" against one who legally could have been "stoned to death" or when He Himself was sentenced to death and prayed for His executioners, or as He pleaded with His followers to temper justice with mercy --we feel that the very spirit of His Gospel urges us to move away from this method of punishment to more civil ways of

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Atch #3

protecting our society from the kind of violence He Himself suffered towards a more just, righteous, secure and peaceful environment.

Having come from a State where this awful penalty was reintroduced may I suggest that it became a media event for the decade or so that it took to finally exterminate the guilty individual -- who was often a pathetic person of minority status and most often psychologically deranged. Wherever the million dollar plus appeal process has been set in motion the wounds of the victimized families are reopened, the anger of the people has been re-enkindled , and all of this is only ended at the highly publicized, hysterical and gruesome moment when the condemned was finally shot, electrocuted or otherwise dispatched.

I and the other bishops of Kansas are proud to belong to a State that does not employ this form of extermination. We ask that you seriously consider keeping us that way.

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE  
50 t h A N N U A L  
KANSAS STATE CONFERENCE OF BRANCHES

ATCHINSON KANSAS

OCTOBER 23 1993

RESOLUTIONS SUBMITTED AND PASSED

PURPOSES AND AIMS

The Kansas State Conference of Branches of the National Association for the Advancement of Colored People shall endeavor to improve the political, educational, social and economic status of minority groups; to eliminate racial prejudice; to keep the public aware of the adverse effects of racial discrimination; and to take lawful action to secure.

JANUARY 26, 1994

TO  
HOUSE FEDERAL AND STATE  
AFFAIRS COMMITTEE  
TOPEKA, KANSAS  
DEAR SIRs:

WE ARE OPPOSED TO HOUSE BILL 2578, KNOWN AS THE  
DEATH BILL.

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DEATH PENALTY

WHEREAS, the NAACP works for the enactment of legislation to improve the educational, political, and economic status of all suppressed people; and

WHEREAS, we are opposed to the death penalty; and

WHEREAS, one of the most pointed facts about the use of the death penalty in America is racial discrimination. More than 2,000 people lawfully executed in this country since 1930 were Black, not to mention the thousands of victims of lynch mobs. This capricious pattern of discrimination caused by the courts to declare the death penalty in the United States unconstitutional. Furman v. Georgia. Currently, twenty-one years later, hundreds of people have been discriminatorily sentenced to death under new, post-Furman death penalty laws; and

WHEREAS, minorities continue to bear the brunt of capital punishment; they constitute 50% of those executed, and this figure is going up; and

WHEREAS, a second type of discrimination is used in implementation of this system is bigotry by race of the victim. Sixty-eight percent (68%) of those executed since Furman v. Georgia were convicted of killing white people. Although fifty percent (50%) of the homicide victims were black, no whites were executed for killing blacks; and

WHEREAS, detailed studies have shown that this disparity is not by chance but to enforce phyletic sectarianism. When these matters again appear before the courts, it will be a legal necessity that they again render current death penalties unconstitutional; and

WHEREAS, past conditions in Kansas, in concert with the above analysis would bear out the conclusion that the Kansas justice system discriminates against the people of color and is a bastion of conservative racism; and

Resolution

Passed

WHEREAS, in 1987, the Kansas Legislative Research Department estimated that the death penalty would cost in excess of \$11,000,000 above current costs. There would be an overall cost of \$50,000,000 exclusive of building a death row facility at \$8,000,000 per bed; and

WHEREAS, a crime and punishment bill would make minorities the recipients of the grossest outrage from government; and

WHEREAS, as historian Carl Becker said in 1910, "The belief that Kansas was founded for a cause ... lifts the history of Kansas out of the commonplace ... and gives to the temper of the people a certain elevated purpose and quality."

THEREFORE, the 50th Conference of the Kansas State Conference of the NAACP Branches herewith beseeches this body to combat all efforts of the 1994 legislature to reestablish the death penalty in Kansas.

J. C. Grouse  
1st Vice Pres  
Ks State NAACP

EQUAL JUSTICE

Resolution 3

WHEREAS, equal justice and equal access to the justice system is essential to fulfillment of the promise of the United States of a democratic system; and

WHEREAS, equal justice and equal access to the justice system is not possible where minorities, particularly African-Americans, do not have reasonable participation in the enforcement and administration of the law enforcement, judicial and penal systems; and

WHEREAS, employment of minorities in proportionate numbers in all levels of all law enforcement agencies, courts of original and appellate jurisdiction, in administrative agencies and in the penal system is essential and long overdue; and

WHEREAS, inclusion of minorities in proportionate numbers in jury panels in all judicial proceedings is a necessary prerequisite to the functioning of the judicial system in a just, lawful and equitable manner; and

WHEREAS, media coverage of events pertaining to minorities, particularly African-Americans, is biased and derogatory; and

WHEREAS, the mass media must be made aware of, and sensitive to, the bias in its coverage and the injurious effect that its biased coverage has on the administration of a just legal system; and

WHEREAS, the mass media must be made aware of, and sensitive to, the insidious effects which its negative portrayal of minorities, particularly African Americans, has upon the images formed, and impressions made, upon all who see and hear those messages, including persons who make decisions about the administration of justice; and

WHEREAS, conscious and subconscious perceptions and preconceived notions about minorities, particularly African-Americans, affects the quality of justice afforded minorities, particularly African-Americans; and

Resolution 3  
passed

WHEREAS, conscious and subconscious perceptions about their value and worth in this society are formed by minority children, including African-Americans, based (to a substantial degree) upon mass media messages; and

WHEREAS, self-perceptions of minority children affect their participation in and benefitting from the justice system; and

WHEREAS, conscious and subconscious perceptions about minorities, particularly African-Americans, affect the fairness of the jury deliberations and the quality of the judicial process; and

WHEREAS, intense publicity which accompanies criminal charges and criminal trials, adversely affects the opportunity of minorities, particularly African-American, to obtain a just result from the judicial system.

NOW, THEREFORE, the 50th Conference of the Kansas State Conference of the NAACP Branches herewith beseech this body to take all possible steps to encourage and obtain reform of the legal system for the purpose of obtaining equal justice and equal access to the legal system by minorities, particularly African-Americans.

K C Brown  
1st Vice President  
Ks State  
NAACP

## THE COST OF THE DEATH PENALTY

Testimony by Professor David J. Gottlieb  
University of Kansas School of Law

Kansas Legislature  
January, 29, 1994

I am here today to testify on the cost of the death penalty. Seven years ago, when I first researched and testified on this subject, this issue was somewhat controversial. Today, there is no reason it should be. Over the past seven years, the issue of cost has been reviewed in detail by states that employ the death penalty and has been studied carefully by neighboring states that have considered reintroducing capital punishment. Based upon this data and experience, the following assumptions can be made to an extremely high degree of certainty.

1) The death penalty is an expensive "add-on" to a criminal justice system which produces significant additional costs, and no measurable savings. 2) While the magnitude of the additional costs is impossible to determine with precision, since we cannot know in advance how many cases prosecutors choose to charge as death penalty cases or the means the State will choose to implement defense services for capital cases, if the penalty is charged more than a couple of times a year, the additional costs will measure in the millions of dollars per year. 3) We should expect each case in which the death penalty is imposed after a guilty verdict to cost, at a minimum, hundreds of thousands of dollars more than each similar non-death penalty case. We should also expect to spend millions to tens of millions of dollars per each case that finally

results in an execution. 4) We should expect that the State will spend at least tens of millions of dollars before, sometime in the next 10 to 20 years, the State witnesses its first execution.

We should expect these things to occur for the very simple reason that they have occurred everywhere that the penalty has been reintroduced since 1977. Those individuals who tell you that the cost "is a wash" (because of presumed savings) or that "the system to handle capital cases is already in place" are engaged in either fantasy or willful deception. Again, I emphasize that, like the wind in this state, the amount of cost may be difficult to predict, but the fact of the increase is essentially certain. Finally, as we requested in 1987, we urge now that you study this issue and ask the Legislative Research Service to prepare a fiscal note. As you may know, the last such note anticipated increased expenditures of over 11 million dollars per year.

#### I. THE REASON FOR THE HIGH COSTS OF CAPITAL CASES

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

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

At trial, the selection of jurors is likely to become



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

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

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

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

First, capital cases take far more time to litigate before a jury verdict of guilt can be obtained. Because the stakes are life and death, guilty pleas tend to be less common. For similar reasons, the defense contests every potential issue. Preparation for trial is more extensive, with two to five times as many pretrial motions filed. Jury selection takes longer, since the jury must be qualified not only to rule on the question of guilt, but also to decide on the death penalty. The trial itself also takes longer than an ordinary homicide prosecution, with far more extensive use of experts and investigators.<sup>1</sup>

Second, death penalty cases require a second, separate trial on the sentence of death if the jury returns a guilty verdict.

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<sup>1</sup>See, e.g., Garey, The Cost of Taking A Life: Dollars and Sense of the Death Penalty, 18 U.C. Davis L. Rev. 1221, 1245-62 (1985); Gradess, Execution Does Not Pay, Wash. Post, Feb. 28, 1988, at C5, col. 3; New York State Defenders Association, Capital Losses: The Price of the Death Penalty For New York State (1982).

There is no equivalent to this procedure in a regular murder cases. The jury must sit for days, in some cases weeks, to hear evidence concerning whether the defendant should live or die. A host of expert witnesses may be required for this determination. As a result of this second phase, the time taken for the death penalty is further expanded. The most extensive recent study of cost, in North Carolina, found that the impact of the expanded guilt and sentencing proceedings extended the number of days in a capital trial at approximately four times the length of a non-capital trial, with more than four times the number of attorney hours spent in preparation.<sup>2</sup>

Third, if the jury imposes a death sentence, a long appeal process will begin. The process will include an appeal to the Kansas Supreme Court, a petition for certiorari to the Supreme Court of the United States, post-conviction applications in the Kansas State Courts, appeals of those applications, post-conviction applications in the federal courts, appeals of those applications to the United States Court of Appeals for the Tenth Circuit, and a petition for certiorari to the Supreme Court of the United States. The process, which can take up to a decade to accomplish, will involve ten times the cost of ordinary appeals. In fact, the post-conviction stage is often the most expensive of the entire

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<sup>2</sup>Cook and Slawson, The Costs of Processing Murder Cases in North Carolina (Sanford Institute of Public Policy, Duke University) (May, 1993).

process.<sup>3</sup> Obviously, a defense attorney is obliged to pursue every possible legal means to avoid execution of her client. Unlike the normal case, there is no occasion of an attorney to recommend to her client that he not take further appeals.

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

Fifth, executions have so far occurred in fewer than one in 10 cases when a death penalty has been imposed. Thus, these costs will be borne in more than 10 cases for each case that ultimately results in an execution.

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

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<sup>3</sup>Id. at 75-84. See also The Spangenberg Group, A Caseload/Workload Formula for Florida's Office of Capital Collateral Representative (Sponsored by ABA Standing Committee on Legal Aid and Indigent Defendants, Bar Info. Prog.) (Feb. 1987); The Spangenberg Group, Study of Representation in Capital Cases in Virginia (Final Report, Nov. 1988).

greater.

Finally, in no study has there been any documented evidence of any savings produced by the death penalty. The argument made by some capital punishment supporters in 1987 that the presence of the penalty will increase the number of guilty pleas in non-capital cases is not documented by a single study. The other "savings" produced by the penalty, the savings produced by the State's not being required to incarcerate any individual executed, will occur only in a decade, and will, in any event, be entirely hypothetical. Our Department of Corrections will not request or spend any less money on housing or feeding its 6000 inmates because of the possibility that one inmate less may reside in a facility by reason of his execution.

### III. SUMMARY OF OTHER STATE STUDIES

As noted previously, in 1987, the question of whether the death penalty was more expensive than a system of life imprisonment was somewhat controversial, and the estimate of the extent of the cost differential was necessarily tentative.<sup>4</sup> In the ensuing seven years, the issue has been studied in academic reports, fiscal notes in State legislatures, and in newspaper and magazine series. While the studies differ in their accounts of the magnitude of the increase that will occur if we move to a system of capital punishment, they are consistent.

The most important recent study was completed in North

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<sup>4</sup>See U.S. General Accounting Office, Limited Data Available on Costs of Death Sentences (Sept. 1989).

Carolina. The study is a comprehensive report which required several years of effort by the North Carolina Administrative Office of the Courts under a grant from the State Justice Institute.<sup>5</sup> The report exhaustively analyzed data from 1991-92 and found that the average additional cost of a capital trial and sentencing was \$67,000.<sup>6</sup> For appellate and post-conviction costs, the report found amounts of over \$200,000 for a fully-litigated death penalty case. The study thus found the additional cost of litigating a capital case to be over \$300,000 per case. The study then computed hypothetical "savings" of approximately \$160,000 resulting from reduced prison costs/inmate, and arrived at a total figure of \$163,459 of additional costs per capital case. Adding in cases that began as capital but in which the death penalty was not imposed, the study concluded the extra cost per death penalty judgment was over a quarter million dollars. Since fewer than 10% of the cases in which the death penalty is imposed result in executions, the cost per execution was calculated at over \$2 million. It should be noted that these figures occurred in a state that is ruthless in pursuing the death penalty and is has done little in insuring the fairness of its proceedings.

The North Carolina findings have been supported, in broad outline, from at least three other states. In Florida, each

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<sup>5</sup>Cook & Slawson, The costs of Processing Murder Cases in North Carolina (Sanford Institute of Public Policy, Duke University) (May 1993).

<sup>6</sup>Id. at 2, 59.

execution has been calculated to cost the state \$3.2 million,<sup>7</sup> and in Texas, a figure of 2.1 million has been cited. The report is also supported by a recent study in Maryland.<sup>8</sup>

While these figures may seem high, they are dwarfed by the amounts of money spent in Northern and Western states which spend more effort to assure that the decision of who is to die is made fairly and accurately. For example, New Jersey, which has yet to execute a prisoner, spends \$16 million per year on capital punishment.<sup>9</sup>

Two neighboring states have also studied the question in connection with resumption of capital punishment. In Iowa, the legislature's fiscal director concluded that the cost for the State "for the first defendant" taken through the process would be approximately \$2 million for the State. The Iowa study projected trial costs of some \$400,000 per case, and appellate costs of close to \$1,000,000.<sup>10</sup> In Wisconsin, the State did not project a total cost for the penalty. However, it did produce estimates of \$285,000 in defense costs (trial and appeals) per case, a yearly Department of Corrections Budget increase of \$500,000 to staff a

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<sup>7</sup>Drehle, Bottom Line: Life in Prison One-Sixth as Expensive, The Miami Herald, July 10, 1988, at 12A.

<sup>8</sup>The Report of the Governor's Commission on the Death Penalty: An Analysis of Capital Punishment in Maryland: 1978 to 1993 (Nov. 1993).

<sup>9</sup>Benien, No Savings in Lives or Money with Death Penalty, The New York Times, Aug. 7, 1988.

<sup>10</sup>Fiscal Note, Senate File 384, State of Iowa, at 3 (April 9, 1991); Fiscal Note, House File 19, State of Iowa (March 4, 1993).



death row, and a capital request of \$1.4 million from the Department to construct a death row.<sup>11</sup>

#### IV. AN ESTIMATE ON THE COST OF THE DEATH PENALTY IN KANSAS

As noted, the cost of the penalty will turn, to some degree, on the number of cases actually filed. Obviously, the more cases pursued, the more the cost, the fewer cases the lower the cost (and the lower the likelihood that the State would actually see a resumption of executions). Under HB 2587, every first degree murder case is a potential capital case prior to arraignment. Under SB 473, only cases charged as premeditated murder can be brought as death penalty cases. Last year, there were 59 murder cases paid for by the Board of Indigent Defense Services, 37 of which were premeditated murder cases. Thus, under the House Bill a number close to 60 would be the maximum number of cases possible; under the Senate Bill, the number would be 37. The actual numbers of death penalty prosecutions under either of these bills is far more difficult to determine. In Oklahoma, estimates are that approximately 50% of first-degree murder cases were charged as death penalty cases in the first few years after the penalty was reintroduced.<sup>12</sup> If we have a similar experience, and half of the cases now charged as murder cases are charged as death penalty cases, we could expect from 18 to 30 prosecutions, depending on

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<sup>11</sup>Bob Lang, Legislative Fiscal Bureau, State of Wisconsin, Fiscal Note, October 13, 1993.

<sup>12</sup>Telephone interview with Robert Ravitz, Executive Director, Public Defender of Oklahoma County, Oklahoma, January 24, 1994.

which bill passes. If our prosecutors are less aggressive, and only one eligible case in five is charged as a death penalty case, the numbers could range from 7 to 12, depending on the bill.

I do not believe there is any way to predict with precision the number of cases per year that prosecutors will choose to bring as death penalty cases. My guess is that, given the public revulsion with violent crime that is spurring support of the death penalty, there will be far more pressure on prosecutors to charge the penalty than there currently is on them to charge the "Hard 40" life sentence. I believe, therefore, that we will experience more death penalty prosecutions than we currently experience "Hard 40" prosecutions, but that we will have fewer cases than the total number of murder prosecutions.

#### A. Trial Costs

The Board of Indigent Defense Services has produced per case estimates of defense costs. Including attorney time and expert costs, the Public Defender estimates per-case defense costs of approximately \$100,000 per case, an increase per case of over \$85,000. The defender's estimated increase in attorney hours and expert costs assumes that a capital trial will be approximately four times as long as a non-capital murder prosecution, and that attorney compensation rates will be required to be higher.

The Board of Indigent Defense Services figures are consistent with other recent estimates of defense costs. For example, Iowa recently considered death penalty legislation. The fiscal note in that State predicts actual costs of \$165,000 per case, and

additional costs of over \$120,000 per case for defense services at trial.<sup>13</sup> In Wisconsin, the Office of the Public Defender estimated trial costs of \$134,000 per case when that office submitted a fiscal note concerning death penalty legislation considered in that case. The six-figure amounts for defense trial expenses are consistent with other figures that have been reported for Northern death penalty states.<sup>14</sup>

Even states that have been ruthless about implementing the death penalty and have done everything possible to reduce defense costs have incurred substantial additional costs in paying for death penalty cases. North Carolina's extensive study reported defense costs of approximately \$40,000 per trial engaged in by the public defender's office, an increase of close to \$30,000 for defense costs at trial in capital cases.<sup>15</sup> The figures are also comparable to those reported in a recent Maryland study. Thus, even if the State chooses to fund defense services in the most economical means possible, through a new public defender's office, it must expect additional defense expenses per case of tens of thousands of dollars.

#### B. Prosecution Costs

Since prosecution costs are borne locally, it is more

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<sup>13</sup>Iowa Legislature, House File 19, Fiscal Note (Dennis Prouty, Fiscal Director) (March 4, 1993).

<sup>14</sup>Even as long as ten years ago, New Jersey budgeted \$100,000 per case for defense costs for each capital case. Telephone interview with Tom Smith, Assistant Public Defender, Trenton, N.J. (Jan. 13, 1986).

<sup>15</sup>See Cook and Slawson, supra note 2, at 67-68.

difficult to construct precise estimates on such costs. However, anecdotal evidence suggests they will be substantial. Just as the defense must file more pretrial motions, so must the prosecution. The prosecutor, like the defense attorney, must prepare for and present a trial that is several times as long as the typical trial. Although the State now spends far more money on prosecution than on indigent defense costs, the operating assumption in recent fiscal notes is that the increase in costs for the prosecution will be similar to that for the defense. Thus, it should be anticipated that localities may spend an additional \$40,000 to \$100,000 per case for each capital case brought.

In other states, these additional costs have produced severe burdens on local governments. Sierra County California authorities were required to cut police services in 1988 in order to fund death penalty prosecutions. The County Auditor said that if death penalty expenses kept piling up the county would soon be broke.<sup>16</sup> In Mississippi, two counties recently conducted a border battle to avoid responsibility for a capital murder trial. Facing a \$100,000 trial, each county wanted the other to be the venue for prosecution. The losing county is now determining how to raise taxes to pay for the prosecution.<sup>17</sup>

### C. Judicial Costs

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<sup>16</sup>Magagnini, Sierra County Robs Police to Pay Lawyers, The Sacramento Bee, March 28, 1988.

<sup>17</sup>Maxwell Murder Trial May Up Kemper Taxes, Meridian (Miss.) Star, July 21, 1992; see Death Penalty Information Center, Millions Misspent: What Politicians Don't Say About the High Cost of the Death Penalty (Wash. D.C. 1992).

Death penalty cases also result in increased judicial costs. There are at least three kinds of additional costs that may be incurred: jury costs, security costs, and the cost of additional judges, if such are needed. The juror costs result from the additional time involve in selecting a jury, the disproportionate time spent in prosecuting a capital case, the additional time spent in the sentencing, and the larger panels typically required for voir dire of jurors. While this cost has not recently been measured, in 1987, the Legislative Research Service predicted an increase of \$729,750 per year in increased juror costs. That figure was based upon a higher number of trials than I expect we will experience and undoubtedly can be revised downward if we have fewer trials. However, for each trial, there will be several thousand dollars of additional expenses.

In addition, there will surely be additional costs for security borne by the counties. The costs of security have occasionally been difficult for rural counties even in non-capital litigation. For capital cases, they will increase dramatically.

Finally, the increase in trial time will eventually require increased judicial resources. Whether the "cost" is borne by all of us in reduced access to the justice system, because of the press of capital litigation, or by expenses of hiring new judges, costs there will be. The recent study in North Carolina found courtroom costs to amount to 32% of total costs for death penalty prosecutions.<sup>18</sup>

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<sup>18</sup>Cook and Slawson, supra note 2, at 66.

#### D. Total Trial Costs

As I have said before, the total added costs per year at the trial stage will turn on the number of cases. However, it would be a mistake to believe it is possible to litigate these cases at trial for less than an additional \$100,000 to \$200,000 per case. The recent North Carolina study posited additional expenses of \$67,402 for each capital trial going to the sentencing jury, and \$185,428 for each death sentence imposed.<sup>19</sup>

#### E. Appellate Defense Costs

The Appellate Defender Office has prepared estimates for appeals expenses in Death Penalty Cases. The office uses an estimate of seven possible appeals per year. The estimate also attempts to account for some post-conviction costs. The Defender Office prediction is for total additional expenses of up to \$1,669,000 per year, or a figure of close to \$240,00 per case. If appeals were to be prepared by a new appellate office rather than by appointing counsel, the office would require the hiring of four attorneys, one secretary and a paralegal. While the ADO has not calculated the cost of this new office, it would obviously run hundreds of thousands of dollars a year in personnel costs alone.

These figures are generally consistent with or even below figures from some neighboring states. In Wisconsin, the public defender office estimated a cost of \$151,900 per case for

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<sup>19</sup>Id. at 69.



appeals.<sup>20</sup> In Iowa, the cost was put at up to \$500,000 for the defense.<sup>21</sup> The recently-completed study in North Carolina, one of the least generous states in the country in funding appellate and post-conviction remedies, reported per case appellate and post conviction costs of \$216,387 and \$293,393 in two cases studied.<sup>22</sup> In Ohio, which has yet to execute a prisoner, the State spends 3.5 million dollars a year to fund a Capital Litigation Unit with some 45 employees, whose primary responsibility is to litigate appeals and state post-conviction proceedings.<sup>23</sup> In Oklahoma, the state has hired more attorneys to litigate capital appeals and post-conviction cases than to litigate all other criminal appeals.<sup>24</sup> As a result of the lack of resources in Oklahoma to litigate non-capital cases, Oklahoma criminal defendants have secured writs of habeas corpus against the delays in processing their appeals.

#### F. Prosecution Appellate Costs

As with trial level costs, there is no reason to believe that

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<sup>20</sup>Legislative Fiscal Bureau, State of Wisconsin, Joint Committee on Finance, Fiscal Note at 12 (Copy attached).

<sup>21</sup>Dennis Prouty, Fiscal Director, State of Iowa, Fiscal Note, Senate Bill 384 (April 10, 1991), at 16.

<sup>22</sup>These figures include both defense, prosecution and judicial costs, as far as I can determine. See Cook & Slawson, supra note 2, at 82-83.

<sup>23</sup>National Legal Aid and Defender Association, Cornerstone Vol. 15, No. 3 (Fall, 1993) at 19 (Job Announcement for Director of Unit).

<sup>24</sup>Telephone interview with Randy Bauman, Chief Attorney, Capital Post Conviction Division, Oklahoma Appellate Defender & Acting Director, Death Penalty Resource Center, Norman, Oklahoma, January 24, 1994.

the increases in prosecution cost for appeals will be any less than the increase for the defense. Thus, the State should be prepared to spend hundred of thousands of dollars more per year for appellate and post-conviction costs if the death penalty is implemented and if it is charged more than a couple of times per year.

#### G. Prison Costs

Last, but not least, the state may be required to fund increased costs to set up and staff a death row. In 1987, the State Department of Corrections estimated that the cost of renovation and staffing of a death row, which would commence a year or two after the capital punishment legislation became effective, would be \$922,682 per year.<sup>25</sup> While here again, the more limited death penalty legislation introduced may permit a scaling-down of the Department's plans, there is every reason to believe the Department will find it necessary to house at least a few individuals in a death row over a period of time. Since the cost of cell construction in this country is from \$75,000 to 100,000 per bed, even a small death row should be expected to cost in the hundreds of thousands of dollars to build and maintain.

#### H. Summary

In sum, a review of this information should demonstrate that, for as few as a dozen capital prosecutions per year, the State should expect to spend several million dollars in additional defense, prosecution, judicial, and prison costs. Those of you who

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<sup>25</sup>Kansas Fiscal Note, at 7.

are inclined to support death penalty legislation must understand that the law will not be free. You will have decided to spend scarce resources on a penalty that has never been shown to be effective in reducing crime. And unless you increase taxes to pay for this legislation, your decision to support capital punishment will surely drain resources from spending on programs that are effective in combatting crime.

**TESTIMONY ON THE DEATH PENALTY**  
**BEFORE THE COMMITTEE OF STATE AND FEDERAL AFFAIRS**

**GIVEN BY PEDRO L. IRIGONEGARAY**  
**IRIGONEGARAY & ASSOCIATES**  
**1535 S.W. 29th Street**  
**P.O. Box 5795**  
**TOPEKA, KANSAS 66605-0795**  
**(913) 267-6115**

*F&S A*  
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The prosecution of any case is made more difficult when the stakes are higher; in legal terms the more serious the alleged criminal violation against any particular defendant, the greater the consequences to the defendant are and the more difficult the case is to prosecute. And it should so be.

The difficulties of a murder case are immense. The difficulties are immense for all participants, the victim's family, the defendant, the prosecutor, the defense lawyer, the witnessess, the community and its conscience and the jury.

To add to the already over-burdened system, one of the primary complications arising from a death penalty is asking a system already unable to adequately deal with its responsibilities, to triple its burdens.

The goals of advocates of the death penalty simply can not be met by its establishment. The opposite is the truth. The costs are immense throughout the system with no commensurate reduction in crime. At a time of diminishing resources one must explore carefully the manner in which every dollar is spent. To fabricate a myth that the death penalty is an acceptable method to combat crime is ludicrous. There is no legitimate evidence to support it. If, therefore, we are serious about fighting crime and reducing the homicide rate, then let's together consider where we get the most benefit for our dollars and not where we get the greatest political mileage. In simpler terms, if we want the state to be in the business of revenge, so

be it; however, if we wish to curtail crime and effectively diminish the threat on the street, then we must find avenues of proven result and not paths of known failure.

Prosecutors need to intelligently place resources, which are already budgetarily seriously hampered, and apply them judiciously to each case that may come into their offices. The system, absent an immense infusion of additional money, will not be able to come remotely close to implementing a system with the reasonable and constitutional application of due process involving a death penalty.

Our prosecutors resources are so limited with today's responsibilities that the immense task being suggested would cause chaos.

The cost of implementing the death penalty is defined by the process. First, mandatory death sentences have been ruled unconstitutional. (Woodson v. North Carolina, 428 U.S. 280, 304 (1976)). The Court must consider the defendant's individual characteristics. Consequently, the defendant's whole life needs to be investigated and explained to a jury. This is a constitutional requirement as a precondition to the death sentence imposition.

The legal review of a death sentence must, by constitutional implication, be more significant. More significant, equals more expensive. Again, more expensive without the commensurate benefit we are all searching for, the reduction of violence in our streets.



In 1987, the Miami Herald suggested the cost per execution to be \$3.1 million. For Texas, it is \$2 million, and in Kansas in 1987 and 1989 the evidence showed a cost of at least \$11.5 million per year above current operating costs excluding the past convictions. Past conviction costs would represent an estimated \$1.7 to \$3 million per year.

In Kansas, all district and county attorneys are elected officials. As elected officials they must represent us in the legal process on behalf of the people whenever criminal conduct is charged against a person. In cases where capital punishment may apply, it is up to the prosecutor to determine whether or not such application is appropriate.

Public pressure may therefore create an undue influence in a dramatic case on the prosecutor to request the death penalty for his or her own political survival.

As a prosecutor, I also know by ~~not~~ seeking the death sentence, I can exclude from the jury all those who strongly oppose it; therefore, giving me the edge on a conviction. Not really a judicious approach, but one that has been practiced as admitted by Bob Wilson, Dekalb County District Attorney, in Georgia ("The Death of Fairness - The Arbitrary and Capricious Imposition of The Death Penalty in the 1980s," Ronald J. Tobak, Esq., the Defender, May/June 1986).

Additionally race issues must be considered. If the alleged murderer is black and the victim white, the chances that

the prosecution will seek the death penalty initially are many times greater than if the reverse was true. (Bienen, Of Rare Crime and Punishment, N.Y. Times, June 21, 1987).

Our imperfect system has killed, and will continue to kill innocent people if the death sentence is adopted in Kansas. In Bedan and Radelet, Miscarriages of Justice In Potentially Capital Cases, 40 Stan. L. Rev. 21, 36 (1987), one finds suggested information regarding this immense injustice. For example, in this century 350 people have been erroneously convicted in the United States of crimes particularly punishable by death; 116 were punished to death, and 23 were actually executed. Kansas did not escape error having sentenced to death an innocent man; fortunately not executed.

In conclusion, I suggest that to establish a death sentence in Kansas would require expenditures we can simply not afford. Further, it would not reduce the level of crime, it would not reduce the level of violence and it could not be implemented with our present system. Furthermore, the inherent problems in providing due process, in capital cases, coupled with human error and human misconduct, makes the likelihood of justice denied all the greater.

If we seek a comprehensive method to reduce the devastating effect of crime in our streets, we must address the root causes not the <sup>ap</sup>symptom~~ology~~. By the time the Kansas judicial process gets involved it's already too late.

If you as a public servants feel compelled to spend more money to fight crime, then you have a moral obligation to spend the money wisely. Spend it on programs of proven value, education, immunization, and caring for those that may someday, without the above, do the killing. The control of weapons used primarily for the destruction of human life, such as handguns and assault weapons, coupled with programs like Head Start and others, is the only way that significant change will occur in our streets.

Do not add to the problem, be part of the solution.  
Stop the insanity, stop the killing.

Testimony of Charles W. Merrifield, Ph.D.  
Kansas Newman College  
Wichita, KS 67213

January 26, 1994

I am here to report on a survey which I supervised and to report on my analyses of data dealing with deterrence. I understand that yesterday you were told that 80 to 90% of Kansans are for the death penalty. Last Thursday a statistics class at Kansas Newman took up a class project. Students were to each telephone interview 7 to 8 persons in the Wichita - Sedgwick County area on questions about crime. Among the questions was one question concerning preferred penalties for first degree murder. This question was a multiple choice question with 4 possible answers ranging from execution to 20 years, 40 years, or life without parole. The question was structured in such a manner to avoid the bias of a "yes - no" question on the death penalty. The surveys were turned in last night. With 195 voters interviewed, we found that 51% of respondents chose the execution answer with a 7% margin of error. While the results were more for the death penalty than I have found in the past, it is not a reliable majority with such a large margin of error. Fifty-one percent is clearly not 80 to 90%.

I would like to say a few quick words about deterrence. Representative Packer stated yesterday, "Figures don't lie, but liars figure", in an attempt at impugning our credibility. Allow me to offer figures that are freely available. First, the FBI's Uniform Crime Reports are widely available. I have provided copies of two charts which show the relationship between

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executions and murder rates. The more executions in a state, the higher the murder rate. You can also, as I have done, compare changes in the murder rate for each state over the last 5 years and the last 10 years and compare the death penalty and nondeath penalty states. For 5 years and for 10 years there were no significant differences between states based on the death penalty.

To conclude, let me draw your attention to a report on the impact of Oklahoma's first execution in 25 years that occurred in 1991. Professor Cochran from the University of Oklahoma has provided a prepublication copy of an article that will appear in the next issue of Criminology (Volume 32, Number 1, 1994, Pages 501-527). Dr. Cochran and his colleagues examined the homicide reports in the state of Oklahoma each week for over a year before the execution and each week for over a year after the homicide. With a very sophisticated analysis, looking at several different classes of homicide, Cochran found no deterrent effect from the execution, but, instead found a brutalizing effect whereby it was found that one additional person was murdered every three weeks as a result of the execution.

I hope I have demonstrated two things: First, there is no ground swell of demand for the death penalty, at least in the south-central part of the state, and, second, capital punishment does not have a deterrent effect.

Comparisons of Changes in FBI Murder Rates  
over Five and Ten Years

1992 Murder Rates Minus 1987 Murder Rates

Average Murder Rate Change For Capital Punishment States= 0.79  
Average Murder Rate Change For Noncapital Pun. States= -0.2  
t-test= 1.55, probability of occurring by chance= 0.13,  
nonsignificant

1992 Murder Rates Minus 1982 Murder Rates

Average Murder Rate Change For Capital Punishment States= -0.46  
Average Murder Rate Change For Noncapital Pun. States= -0.33  
t-test= -0.17, probability of occurring by chance= 0.87,  
nonsignificant

FIGURE 1.  
 RANK ORDER OF MURDER RATES PER 100,000 INHABITANTS OF THE 50 STATES  
 ACCORDING TO THE UNIFORM CRIME REPORTS - 1992  
 AND NUMBER OF EXECUTIONS IN 1992  
 Correlation = .28, chance probability = .049

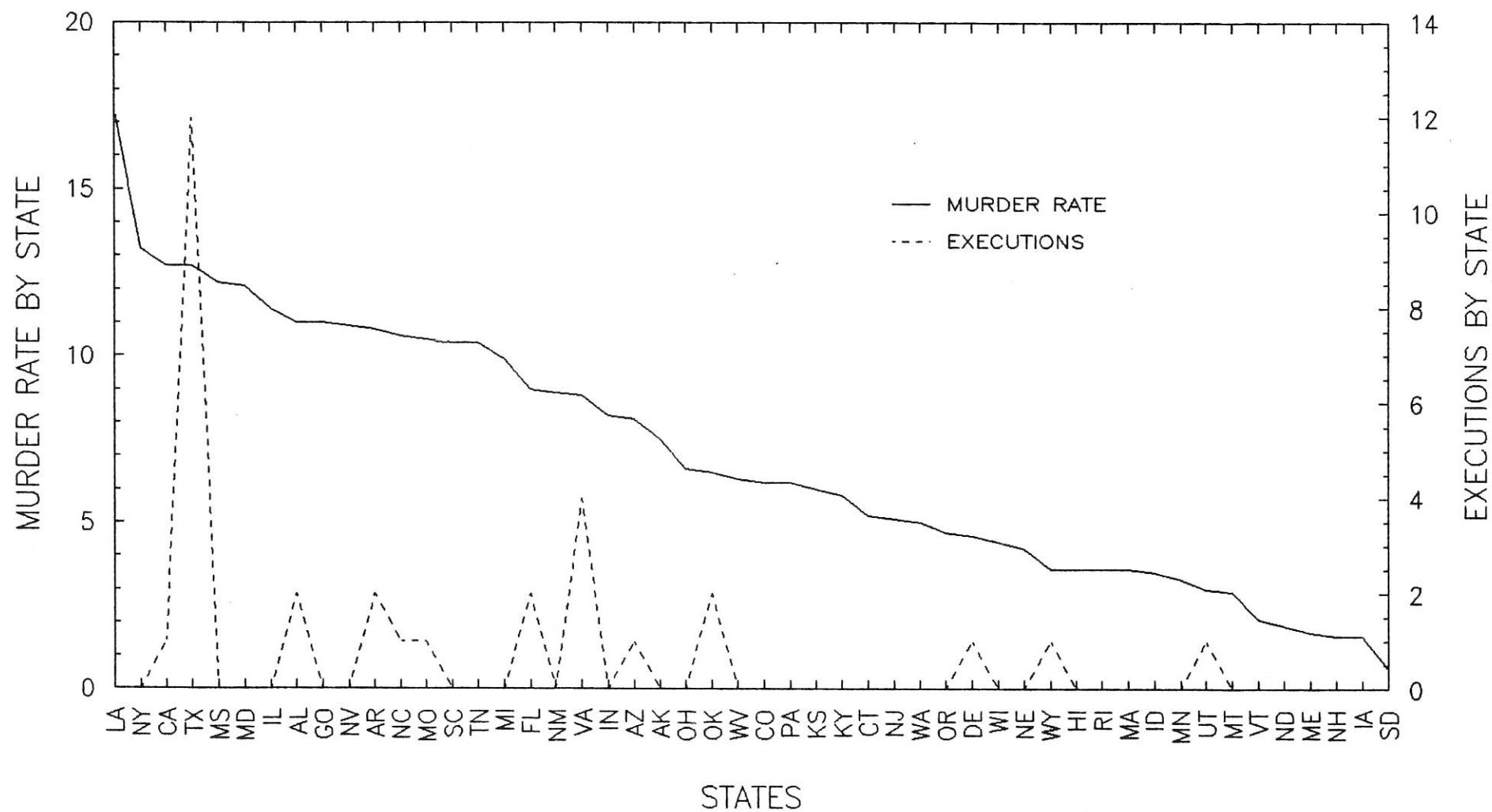
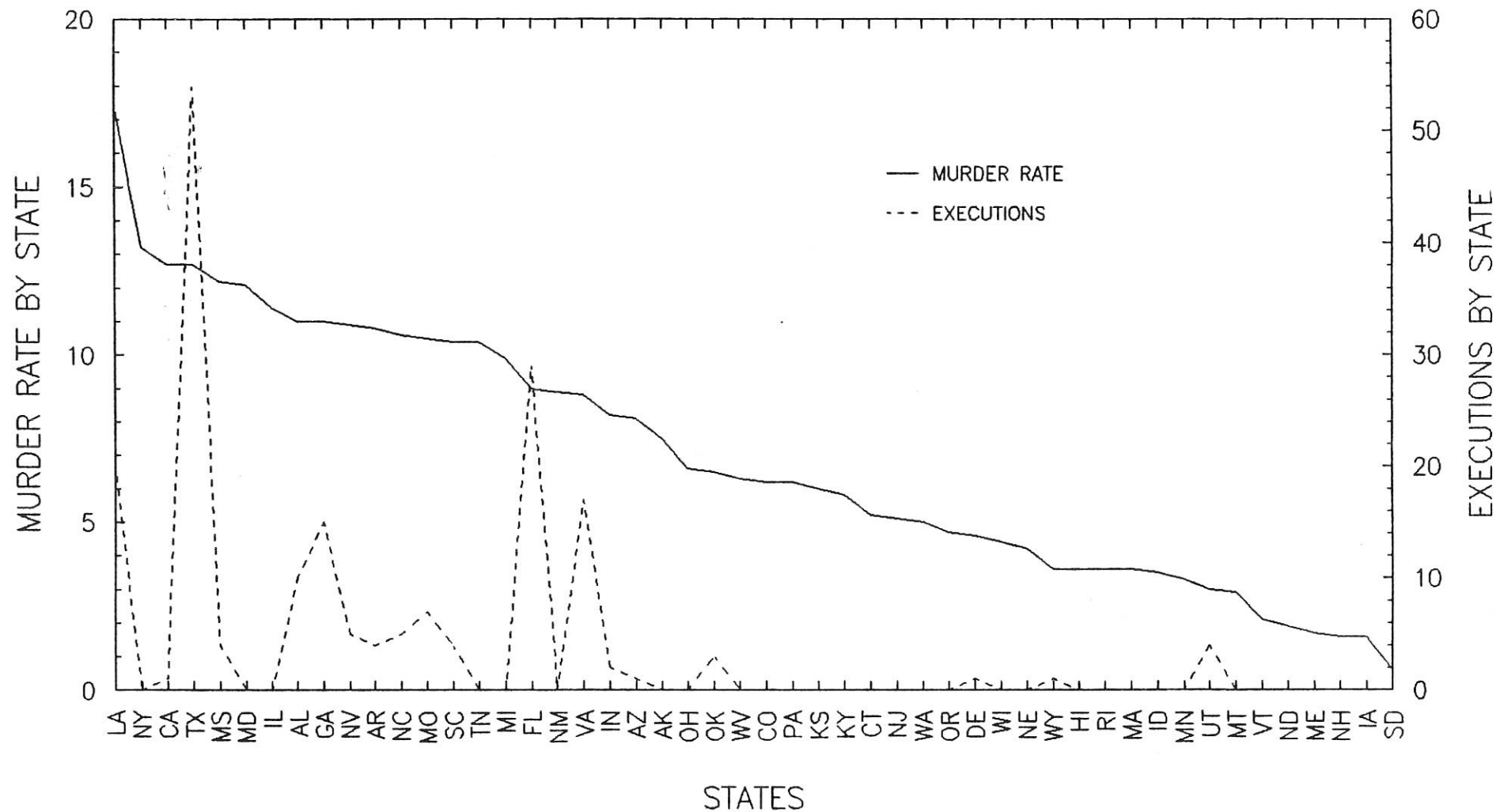




FIGURE 2.  
 RANK ORDER OF MURDER RATES PER 100,000 INHABITANTS OF THE 50 STATES  
 ACCORDING TO THE UNIFORM CRIME REPORTS - 1992  
 AND NUMBER OF EXECUTIONS SINCE 1977  
 Correlation = .45, chance probability = .001



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## DETERRENCE OR BRUTALIZATION? AN IMPACT ASSESSMENT OF OKLAHOMA'S RETURN TO CAPITAL PUNISHMENT\*

JOHN K. COCHRAN  
University of Oklahoma

MITCHELL B. CHAMLIN  
University of Cincinnati

MARK SETH  
University of Oklahoma

*On September 10, 1990 Charles Troy Coleman was put to death by lethal injection at the Oklahoma State Penitentiary. Coleman's execution was the first in the state in more than 25 years, generating significant media coverage and providing a unique opportunity to assess the impact of the state's return to executing capital offenders. Interrupted time-series analyses are performed with weekly data from the UCR Supplemental Homicide Reports for the state for the period January 1989 through December 1991. Analyses are performed for the total level of criminal homicides and homicides disaggregated into two types of murder—felony murder and stranger homicides—testing hypotheses that predict opposing impacts for each type of homicide. As predicted, no evidence of a deterrent or a brutalization effect is found for criminal homicides in general. Similarly, the predicted deterrent effect of the execution on the level of felony murders is not observed. Evidence of the predicted brutalization effect on the level of stranger homicides is observed, however. Supplementary analyses on further offense disaggregations continue to support these initial findings and permit a more coherent interpretation of the results.*

On September 10, 1990 Charles Troy Coleman, a white male convicted of first-degree murder and sentenced to death, was executed by lethal

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injection at the Oklahoma State Penitentiary in McAlester, Oklahoma. Coleman's execution is significant because it represents the state's first execution since James French was put to death in the electric chair 25 years earlier. This execution also is relevant because it provides an opportunity to examine the possible deterrent or brutalization effects, if any, of such a symbolically meaningful and highly publicized event.<sup>1</sup>

With weekly time-series data on the number and type of criminal homicide incidents in the state for more than one year before and after the execution, the quasi-experimental qualities of this naturally occurring "experiment" (Campbell, 1969) permit us to assess the impact of the execution on the subsequent incidence of homicide. Unlike previous studies of the impact of the reintroduction of executions, this study disaggregates criminal homicides into two types of murder highly likely to be affected by capital sentencing (felony murder and stranger homicides) and makes opposing predictions about the impact of the Coleman execution on each.

### THE IMPACT OF EXECUTIONS: DETERRENCE OR BRUTALIZATION?

Many advocates of capital punishment claim that the death penalty protects society by deterring potential murderers. Opponents of the death penalty, on the other hand, often argue that there is no body of convincing evidence for any deterrent effect of the death penalty; some even suggest that highly publicized executions actually brutalize society by legitimating lethal violence, leading to unintended increases in the level of criminal homicide (Bowers and Pierce, 1980; King, 1978).

#### THE DETERRENCE ARGUMENT

The deterrence argument assumes that most behavior, including criminal behavior, results from rational actors' assessing the costs and benefits of various alternative courses of action and voluntarily opting for that alternative which provides the greatest ratio of benefits to costs. If the behavioral outcome is criminal, it is because the ratio of benefits to costs for crime exceeds those for the alternative courses of action. Thus, in the case of murder, the deterrence argument assumes that potential killers exercise rational judgment in deciding whether to kill.

The assumption that murderers exercise rational judgment and are sensitive to objective costs and benefits is open to question. We know, for instance, that most murders are acts of passion involving persons who know one another and are driven by rage, jealousy, and/or frustration; that

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1. Please contact the lead author for data on the amount and nature of media attention (local, statewide, and national) given to the Coleman execution.

alcohol and drugs facilitate many criminal homicides; that many killings are the end result of "situated transactions" involving affronts to honor and attempts to save face; and that often the primary difference between an aggravated assault and a criminal homicide is partially a function of the lethality of the weapon employed and/or the quality of the emergency medical services available in the community (Doerner, 1988; Luckenbill, 1977; Wolfgang, 1958). These observations hardly support the image of rationality assumed by deterrence theorists.

On the other hand, murder cases with many of these characteristics (e.g., among family members or between friends or acquaintances, while under the influence of alcohol or drugs, and/or undertaken to save face or otherwise in the heat of passion) are the least likely to receive a death sentence (Peterson and Bailey, 1991). Felony-murders are most likely to result in death sentences (Peterson and Bailey, 1991). In felony murders, the offenders enter their offense situation with at least a tacit understanding that lethal force may be necessary to further the commission of their felonious plans. Thus, under these conditions, it is most reasonable to accept the assumption that such offenders are rational actors who choose purposefully to use lethal force. Hence felony murders may be more likely than most other killings to involve rational actors sensitive to the objective costs and benefits of their crimes. The potential offenders in these felony-murder situations perhaps are most likely to be deterred by the threat of capital punishment (Peterson and Bailey, 1991).<sup>2</sup>

For even the most rationally oriented of potential offenders, however, the deterrent effect (if any) of capital punishment requires that potential offenders be somewhat aware of information relevant to the calculus of the utility ratio for murder (i.e., benefits to costs). Because it is essentially impossible for the lay public either to know or accurately estimate the proportion of capital murders for which executions have been carried out (a necessary indicator of the probability or certainty of punishment crucial in the rational calculation of costs), it is unlikely that the death penalty could deter even "deterable" potential offenders. In all likelihood, only those executions receiving significant media coverage are likely to have any deterrent potential (Bailey, 1990; Phillips, 1980; Stack, 1987, 1990).

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2. Stack (1990) suggests that several perspectives other than deterrence also predict a decline or "death dip" in criminal homicide after a highly publicized execution; these are social condemnation/normative validation and victim mobilization (see Stack, 1990 for a discussion of each). To these we add the possible moral educative effects of execution.

## THE BRUTALIZATION ARGUMENT

The brutalization thesis raises a compelling argument for a much different effect of highly publicized executions. Rather than decreasing the incidence of criminal homicide, executions actually may increase the level of postexecution homicides (Bowers and Pierce, 1980; Decker and Kohfeld, 1990; King, 1978). This brutalization effect, it is argued, is the consequence of the "beastly example" that an execution presents (Becarria, 1764:50). Ostensibly, executions devalue human life and "demonstrate that it is correct and appropriate to kill those who have gravely offended us" (Bowers and Pierce, 1980:456). The lesson taught by execution may be the legitimacy of lethal vengeance, not of deterrence.

Death penalty advocates who believe in the deterrent effects of capital punishment presume that potential offenders identify with the executed. Alternatively, it is possible that these potential offenders identify with the state (i.e., the executioner) and see in their prospective victims characteristics of deservedness similar to those of the executed. If this is true, then executions may inspire or stimulate criminal homicides rather than deterring them.

If we accept the argument that any observed brutalization effect of executions stems from potential killers' identification with the executioner, it may be that any inhibitions against the use of lethal violence to solve problems created by "unworthy" others are relaxed by the execution example. Once freed from their inhibitions, potential killers may become more willing to initiate their own "executions." Such a brutalization effect is most likely to occur in those "situated transactions" (Luckenbill, 1977) where inhibitions against the use of violence are already absent or considerably relaxed, such as situations that involve affronts by strangers. Because social ties and hence social controls possibly are much weaker among strangers, such affronts, particularly if they follow an execution, could result in somebody's being killed.<sup>3</sup>

Thus the deterrence and the brutalization theses make opposite predictions about the impact of widely publicized executions. Deterrence theory predicts that executions decrease the level of criminal homicide; the brutalization thesis argues that executions stimulate increases in criminal homicides. Both of these theories can be and have been tested simultaneously against the null hypothesis of no impact of executions.

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3. In addition to this "executioner identification" explanation for an expected brutalization effect of the death penalty, others have suggested imitation (Berkowitz and McCauley, 1971), death wish (Diamond, 1975; Solomon, 1975; West, 1975), dehumanization (Bonger, 1916), and the subculture of violence (Gastil, 1971).

DETERRENCE OF BRUTALIZATION? THE  
EMPIRICAL EVIDENCE

The deterrent impact of capital punishment is perhaps one of the most frequently studied phenomena in criminology. The great majority of works on the subject consistently fail to find more than chance-only associations between the use of capital punishment and the level of criminal homicide. A small minority of these studies, however, report evidence of a deterrent effect (Ehrlich, 1975, 1977; Layson, 1985; Phillips, 1980; Stack, 1987, 1990); a handful of others find support for the brutalization thesis (Bailey, 1983; Bowers, 1988; Bowers and Pierce, 1980; Decker and Kohfeld, 1990; King, 1978). Nevertheless, the most consistent finding in the extant research is that the death penalty has no significant measurable impact whatever.

Because this body of research overwhelmingly fails to support the deterrence hypothesis, some abolitionists have expressed dismay that many pro-retentionists have yet to yield on this key element of the death penalty debate. Some death penalty supporters, however, are reluctant to regard this body of evidence as definitive. This reluctance is due in part to valid criticisms about the quality of the data and research designs used in the past. Yet even with the use of the highly sophisticated time-series designs currently in vogue (analyses that also tend not to support the deterrence argument), staunch advocates of the deterrent effect of capital punishment remain unconvinced.

Early research on the death penalty employed very simple comparative designs examining differences in the levels of criminal homicide in abolitionist and in retentionist jurisdictions (Schuessler, 1952; Sellin, 1959, 1967; Vold, 1932). Although these studies found that the retentionist jurisdictions had higher levels of criminal homicide than the abolitionist jurisdictions (findings consistent with the brutalization hypothesis), problems of temporal ordering and the lack of statistical controls for potential sources of spuriousness posed serious challenges to these studies.

The criticisms of these early works led to the development of much more sophisticated research designs employing multivariate and time-series analyses (Bailey, 1975, 1977, 1980, 1990; Black and Orsagh, 1978; Bowers and Pierce, 1980; Decker and Kohfeld, 1990; Ehrlich, 1975, 1977; Forst, 1977; Layson, 1985; Peterson and Bailey, 1988, 1991). The most recent of these have focused on the impact of execution publicity (Bailey, 1990; Bailey and Peterson, 1989; Bowers, 1988; King, 1978; McFarland, 1983; Peterson and Bailey, 1991; Phillips, 1980; Stack, 1987, 1990). Again most of these studies tend to reveal little support for the deterrence hypothesis.



Nonetheless, several analyses have found evidence of a significant deterrent effect of the death penalty.<sup>4</sup> Ehrlich (1975, 1977), Layson (1985), Phillips (1980), and Stack (1987, 1990) each report a statistically significant deterrent effect of executions. On the other hand, King (1978), Bowers (1988), Bowers and Pierce (1980), and Decker and Kohfeld (1990) each find evidence of a brutalization effect. As to the impact of execution publicity, the findings are equally mixed. Phillips (1980) and Stack (1987, 1990) each find evidence of a deterrent/death dip effect; King (1978) and Bowers (1988) find evidence of a brutalization effect. Bailey (1990), Bailey and Peterson (1989), and Peterson and Bailey (1991) find little evidence for any form of impact. Hence disagreement about the impact (if any) of executions and/or execution publicity is understandable.

This study adds to the extant literature by examining the impact of one very symbolic and highly publicized execution: Oklahoma's reintroduction of the death penalty with the execution of Charles Troy Coleman.<sup>5</sup> This was not the first to exploit the quasi-experimental value of specific executions (also see Lester, 1980; McFarland, 1983; Savitz, 1958). Whereas Lester (1980) found that Utah's execution of Gary Gilmore led to a marginally significant reduction in the nation's level of homicide for the two-week period following the execution, both Savitz (1958) and McFarland (1983) failed to observe any deterrent effect for the highly publicized executions they examined. Moreover, Lester (1980) and McFarland (1983) also examined the impact of the reintroduction of executions after the long moratorium in the late 1960s and early 1970s: Gilmore's 1977 execution in Utah (studied by both Lester and McFarland) and the three other cases (studied by McFarland): (1) John Spenkelink, Florida 1979; (2) Jesse Bishop, Nevada 1979; and (3) Steven Judy, Indiana 1981). Yet none of these studies has considered the issue of offense aggregation

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4. Ehrlich (1975), Layson (1985), Phillips (1980), and Stack (1987) each report a significant deterrent effect, but others have discredited their works. For instance, Bowers and Pierce (1975) and Klein et al. (1978) both refuted Ehrlich's (1975) findings with further analyses of his data. Likewise, Bowers (1988) found evidence of a brutalization effect in a reexamination of Phillip's (1980) data, Bailey and Peterson (1989) refuted Stack's (1987) findings, and Fox (1986; Fox and Radelet, 1990) offered a blistering critique of Layson's (1985) study.

5. Although the Coleman execution was the only execution in Oklahoma during the period examined (1989-1991), executions took place in other states that are contiguous with Oklahoma. Texas had 13 executions during these years, Missouri had six, and Arkansas had two. Possibly these other executions had some impact on homicides in Oklahoma. These executions, however, were distributed rather evenly over the period in question. Hence, it is exceedingly unlikely that they might confound the effects of the Coleman execution on homicides in Oklahoma. Moreover, Bailey (1983) makes a convincing argument against an investigation of the extralocal effects of other executions.



DETERRENCE OR BRUTALIZATION?

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DETERRENCE OR BRUTALIZATION?

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bias in the measurement of criminal homicide (Bailey, 1983; Chamlin et al., 1992; Peterson and Bailey, 1991).

Chamlin and his colleagues (1992) argue, with regard to macrosocial deterrence research in general, that the measure of the dependent variable (i.e., the level or rate of crime as reported in official statistics such as the Uniform Crime Reports) tends to be confounded by excessive heterogeneity in the official crime categories. That is, the compilation of official counts of crime tends to include many disparate types of behaviors in their offense categories. This offense aggregation bias has been identified specifically as a problem in the examination of the impact of executions (Bailey, 1983; Peterson and Bailey, 1991). Official measures of criminal homicide include both murder and voluntary manslaughter. Likewise, they lump together first- and second-degree murder; within the former, they mix capital with noncapital murders. This aggregation of different behaviors may mask strong deterrent and/or brutalization effects and perhaps explains why null findings are so common in death penalty research.

In this study we address the problem of offense aggregation bias by disaggregating the measure of criminal homicides in the *UCR Supplemental Homicide Reports* into two forms of criminal homicide: felony murder and stranger homicides. These two types of murder are not mutually exclusive, nor do they exhaust all forms of murder. They are, however, two of the more common forms of murder and are highly likely to be affected by capital sentencing in the state of Oklahoma. Moreover, the theoretical arguments and subsequent research from the deterrence and brutalization perspectives reviewed above make opposing predictions about the impact of highly publicized executions on each type. We predict that highly publicized executions produce a deterrent effect on felony murder but exert a brutalization effect on stranger homicides. Mixing these two different forms of criminal homicide conflates these opposing effects and possibly accounts for the common observation that executions have no measurable impact on the level of criminal homicide in general.

In sum, we test the following hypotheses concerning the impact, if any, of the Coleman execution on the level of homicides in the state. First, we expect the execution to decrease the level of felony-murders (a deterrent effect). Second, we expect the execution to increase the level of stranger homicides (a brutalization effect). Finally, however, given the mix of behaviors included in the count of total homicides, we do not expect the Coleman execution to have any impact on the level of aggregate criminal homicide.

## DATA AND METHODS

Our study uses autoregressive integrated moving average (ARIMA)

techniques to assess the impact of the Coleman execution on the number of total, felony, and stranger homicides in Oklahoma. These data were produced weekly; they cover the years 1989 through 1991. By restricting our data to weekly time-series data on specific types of criminal homicides in Oklahoma we avoid problems of offense, spatial, and temporal aggregation biases (Chamlin et al., 1992; Decker and Kohfeld, 1990; Greenberg et al., 1981; Peterson and Bailey, 1991). Each of the homicide time series was obtained from the *Supplementary Homicide Reports (SHR)* of the *Oklahoma Uniform Crime Reports*; the official codes and designations used in the *SHR* are employed in our disaggregations of criminal homicides. The *Supplementary Homicide Reports* data cover 97% (672/693) of the criminal homicide incidents in the state for this period as reported in the *Uniform Crime Reports*. Figures 1-3 plot the weekly counts of total, felony, and stranger homicides over the period examined; Table 1 presents descriptive statistics on these data. These will be discussed below.

Table 1. Descriptive Statistics for Weekly Homicides, 1989-1991, by Intervention Period and Type

<u>Total Series (156 weeks)</u>			
	Total Homicides	Felony Homicides	Stranger Homicides
Mean	4.31	0.69	0.57
S.D.	2.22	0.82	0.86
N	672	108	88
<u>Pre-Intervention Series (88 weeks)</u>			
	Total Homicides	Felony Homicides	Stranger Homicides
Mean	4.20	0.73	0.42
S.D.	2.19	0.77	0.66
N	361	64	36
<u>Postintervention Series (68 weeks)</u>			
	Total Homicides	Felony Homicides	Stranger Homicides
Mean	4.44	0.65	0.76
S.D.	2.27	0.89	1.04
N	311	44	52
<u>Difference in Means: Pre- and Postintervention</u>			
Diff.	0.24	-0.08	0.34*

\*  $p < .05$ .

#### INTERRUPTED TIME-SERIES ANALYSIS

Three basic steps are involved in developing a model to assess the causal impact of an intervention on a time series by using an ARIMA approach.

In the first step, the dependent series (in this case, each homicide incident series) is transformed into a new set of observations that are distributed independently and normally with a mean of 0 and a constant variance (i.e., a white noise process). In the language of ARIMA modeling, this procedure is known as "prewhitening." In the second step, an appropriate transfer function is selected to estimate the impact of the intervention (i.e., the Coleman execution) on the prewhitened dependent series. In the third and final step, the final model is subjected to a number of diagnostic checks. If it is found to be inadequate, a new model is estimated. This procedure continues until a statistically adequate model is constructed.

#### PREWHITENING THE HOMICIDE SERIES AND IDENTIFYING THE UNIVARIATE ARIMA MODELS

Almost invariably, two raw time series (e.g., the weekly homicide incident series and the intervention series) are correlated spuriously because of common sources of trend, drift, and autocorrelation (Granger and Newbold, 1986). Hence, before estimating the impact of the intervention series on the homicide incident series, it is necessary to remove within each homicide incident series the variation that can be explained by prior observations in that series (i.e., prewhitening). Prewhitening entails identifying and estimating an appropriate univariate ARIMA model for each series, and inverting and applying these ARIMA models to their respective raw series. If these univariate ARIMA models are satisfactory, the residuals within each series should be uncorrelated (i.e., "white noise").

Variance stationarity is a requisite precondition of ARIMA models. Thus an initial task of prewhitening is to examine a plot of the raw time series to determine whether its variance is constant throughout its length—that is, whether the series is stationary in its variance. A series that is not stationary in its variance may be made so by a natural log transformation of its observations.

Once it is concluded that a time series is stationary in its variance, or is made so by a log transformation of the data, the next task is to ensure that the series is stationary in its level. That is, it is necessary to remove the effects of "trend" or "drift" from the series. If a systematic increase or decrease is present in the values of the observations throughout the length of the series, the series is said to be "trending." Trend can be removed by including the arithmetic mean of the series as a constant ( $\Theta_0$ ) in the Univariate ARIMA model. If the observations of the time series appear to move upwards and downwards for discrete intervals of time, the series is said to be "drifting." This pattern is produced when effects of prior

observations accumulate over time, and is known as an "integrated" process. The influence of an integrated process can be removed by subtracting the value of prior observations in the series from the current observation (i.e., differencing the time series).

A time series that is stationary in both its variance and its level still can contain systematic associations among its observations. Two additional processes, the autoregressive process ( $\delta$ ) and the moving average process ( $\Theta$ ) can account for the remaining correlations among the observations. The presence of an autoregressive process indicates that the current observation of a stationary series is influenced by the infinite sum of the exponentially weighted past observations. That is, the current observation in the series is affected by prior observations at a decreasing rate. Thus the effect of past observations becomes negligible rather quickly. In contrast, the presence of a moving average process indicates that the current observation of a stationary series is influenced by a finite number of past observations. Thus the effect of any prior observation is of limited duration and disappears completely after a specified period of time.

Finally, the current observation of a time series also can be affected by a corresponding observation from a preceding cycle or period. In short, a "seasonal" relationship may exist among the observations in the series. The length of this cycle depends on the length of time between observations. For example, monthly data are characterized by a seasonal cycle of 12 observations, whereas weekly data are characterized by a seasonal cycle of 52 observations. For each of the three processes discussed above (the integrated process, the autoregressive process, and the moving average process), there may be a corresponding seasonal process which also must be taken into account in univariate ARIMA modeling.

In sum, the general form of the univariate ARIMA model is  $(p, d, q) (P, D, Q)$ ; where  $p$  = the order of the autoregressive process,  $d$  = the degree of differencing,  $q$  = the order of the moving-average process,  $P$  = the order of the seasonal autoregressive process,  $D$  = the degree of seasonal differencing, and  $Q$  = the order of the seasonal moving-average process. In addition to the specification of a parameter for the constant, if a trend is present, the final univariate ARIMA model may include any of the six processes described above.

Identification and specification of an appropriate univariate model for a time series that is stationary in its variance are based on an examination of the autocorrelation function (ACF) and the partial autocorrelation function (PACF). The former is a measure of the correlation between observations of a series at time  $t$  and preceding time lags; the latter is a measure of the correlation between time-series observations  $k$  units apart after the correlation at intermediate lags has been controlled or partialled out.



Inspection of the ACF and the PACF shows whether the series is stationary in its level (i.e., requires differencing) and/or is contaminated by autocorrelation (i.e., requires the specification of autoregressive or moving-average parameters). As is common with ARIMA time-series analyses, competing models are estimated and assessed according to the researcher's interpretations of the ACFs and PACFs. The final model selected is that in which there no longer exist any systematic correlations among the observations (i.e., the model residuals are white noise).

#### IMPACT ASSESSMENT: SELECTING THE APPROPRIATE TRANSFER FUNCTION

Once the raw time series has been reduced to a white noise process, the impact of the intervention series can be assessed. That is, the intervention series ( $I_t$  coded 0 for the weeks preceding the execution and 1 for the week of the execution and beyond) is added to the model, and a transfer function (i.e., a measure of association between the intervention and the prewhitened series) is estimated.

Ideally, the selection of the appropriate transfer function should be rooted in theory. More often than not, however, one cannot anticipate the appropriate functional form of the impact of the intervention. Fortunately, an appropriate transfer function can be derived empirically. One may choose from a variety of functional forms to estimate the effect of an intervention on the series of interest; in practice, however, the selection may be restricted to one of three common patterns of impact, each of which is determined by an alternative transfer function (McCleary and Hay, 1980: 168-171). These are (1) an abrupt, permanent change in the level of the series estimated by a zero-order transfer function ( $w_0 I_t$ ); "permanent" is defined here as the length of the series under investigation; (2) a gradual, permanent shift in the level of the series estimated by a first-order transfer function  $[(w_0/(1-\delta, B)) I_t]$ ; and (3) an abrupt but temporary shift in the level of the series estimated by applying a first order transfer function to a differenced intervention series—that is, a pulse function  $[(w_0/(1-\delta, B)) (1-B) I_t]$ .

By successively estimating each of these transfer functions and subjecting the results to a number of diagnostic tests, one can determine the most accurate model. To be sure, it is possible to fit, in somewhat mechanical fashion, higher-order transfer functions to the data, but typically the results of such "dredging expeditions" are uninterpretable. Moreover, previous research consistently reveals that most, if not all, social science interventions can be represented effectively by the lower-order processes delineated above (see Hilton, 1984; Loftin et al., 1983; McCleary and Hay, 1980).

## RESULTS

A visual examination of the plots presented in Figures 1-3 reveals no clear evidence of any impact of the Coleman execution on either the total or the felony homicide series. Yet a slight brutalization effect of the Coleman execution seems to be suggested by the higher spikes evident in the postintervention portion of the stranger homicide series reported in Figure 3. In addition, a comparison of pre- and postintervention means reported in Table 1 shows a statistically significant increase in the level of stranger homicides after the Coleman execution (diff. = .34;  $t = 1.874$ ). None of the other differences are statistically significant. These findings suggest that the impact of the Coleman execution may be restricted to a brutalization effect for stranger homicides. We employ various ARIMA intervention models to test whether these mean differences withstand a more sophisticated analytic technique.

We begin by estimating zero-order transfer function intervention models. To reiterate, this type of model tests whether the Coleman execution produced an abrupt, permanent change in the level of the murder series examined. Findings from these models are presented in Table 2.

As an inspection of Table 2 makes clear, the Coleman execution had no appreciable impact on the level of total or felony homicide incidents in Oklahoma; none of the  $t$ -statistics for the zero-order transfer function ( $w_n$ ) attain an absolute value of 2.0 or more (i.e., the  $t$ -value necessary to make the parameter estimate statistically significant at the .05 level). In keeping with the predictions of the brutalization hypothesis, however, the reintroduction of executions in Oklahoma produced a small but significant increase in the level of stranger murders ( $w_n = .344$ ,  $t = 2.526$ ). Specifically, after Coleman's execution the state of Oklahoma experienced an abrupt, permanent increase of approximately one stranger murder every three weeks.

It is possible that any change in the level of homicides due to the Coleman execution is modeled more appropriately by a gradual pattern of impact than by an abrupt pattern. To evaluate this alternative functional form, we respecified the intervention models presented in Table 2, replacing the zero-order intervention components with first-order transfer functions. The results of these analyses are presented in Table 3.

In addition to specifying a parameter to measure the degree of change in the process level of each homicide series ( $w_n$ ), the first-order transfer function also includes a parameter that estimates the amount of time required for this change to be realized ( $\delta_1$ ). When  $\delta_1$  is small, the asymptotic impact of the intervention is realized within a few observation periods. When  $\delta_1$  is large, however, the level of the dependent series changes relatively slowly. While the value of  $w_n$  is unbounded,  $\delta_1$  is constrained

Table 2. Zero-Order Intervention Models by Type of Homicide

Homicide	Final Model	Parameter Estimates
Total	$Y_t = w_0 I_t + \Theta_0$	$w_0 = .236 \quad t = .659$ $\Theta_0 = 4.204 \quad t = 17.742$ $Q = 48.32 \quad df = 36$ $p > .08$
Felony	$Y_t = w_0 I_t + \Theta_0$	$w_0 = -.080 \quad t = -.602$ $\Theta_0 = .727 \quad t = 8.263$ $Q = 31.26 \quad df = 36$ $p > .60$
Stranger	$Y_t = w_0 I_t + \Theta_0$	$w_0 = .344 \quad t = 2.526$ $\Theta_0 = .420 \quad t = 4.674$ $Q = 34.54 \quad df = 36$ $p > .50$

Notes:  $\Theta_0$  = Constant

$w_0$  = Zero-order input parameter of a transfer function

$Q$  = Box-Jenkins test statistic for the null hypothesis that the models' residuals are distributed as white noise

$I_t$  = Intervention series

within the bounds of system stability (i.e.,  $\delta_1 \leq \pm 1$ ). If the value of  $\delta_1$  is greater than  $\pm 1$ , the intervention model is unstable and must be respecified. (For a more detailed discussion of this issue see McCleary and Hay, 1980:154-160.)

In line with the initial findings, these models reveal that the Coleman execution had no appreciable impact on total or felony homicides. There is some evidence to suggest that the Coleman execution produced a gradual, permanent change in the level of stranger homicide incidents ( $w_0 = .721, t = 2.884; \delta_1 = -.815, t = 2.512$ ). Even so, the 95% confidence interval about the estimate of  $\delta_1$  lies beyond the bounds of system stability ( $-1.45$

$-\delta_1 \leq -.18$ ). Hence we can safely reject the hypothesis that Oklahoma's reintroduction of capital punishment resulted in a gradual, permanent increase in the level of stranger murders.

Finally, we explored the possibility that the Coleman execution produced an abrupt, temporary shift in the level of each of the homicide incident series under investigation (see Table 4). As one might anticipate on the basis of the findings produced from the first two model specifications, we found no evidence of other deterrent or brutalization effects of the Coleman execution on the level of total or felony homicides. The results

Table 3. First-Order Intervention Models by Type of Homicide

Homicide	Final Model	Parameter Estimates
Total	$Y_t = w_0 I_t + \Theta_0$ $1 - \delta_1 B$	$w_0 = -.042 \quad t = -.089$ $\delta_1 = -1.026 \quad t = -4.582$ $\Theta = 4.316 \quad t = 20.904$ $Q = 47.80 \quad df = 36$ $p > .09$
Felony	$Y_t = w_0 I_t + \Theta_0$ $1 - \delta_1 B$	$w_0 = .276 \quad t = .330$ $\delta_1 = -.358 \quad t = -.428$ $\Theta = .724 \quad t = 8.135$ $Q = 30.97 \quad df = 36$ $p > .70$
Stranger	$Y_t = w_0 I_t + \Theta_0$ $1 - \delta_1 B$	$w_0 = .721 \quad t = 2.844$ $\delta_1 = -.815 \quad t = -2.512$ $\Theta = .396 \quad t = 4.447$ $Q = 32.71 \quad df = 36$ $p > .62$

Notes:  $\Theta_0$  = Constant $w_0$  = Zero-order input parameter of a transfer function $\delta_1$  = First-order output parameter of a transfer function $Q$  = Box-Jenkins test statistic for the null hypothesis that the models' residuals are distributed as white noise $B$  = Backward shift operator where  $B(Y_t) = Y_{t-1}$  $I_t$  = Intervention series

for stranger homicides, however, are less clear. Although the parameter estimate for  $\delta_1$  is statistically significant ( $\delta_1 = .710$ ,  $t = 6.432$ ) and supports the brutalization hypothesis, the higher end of the 95% confidence interval about the coefficient lies extremely close to the limits of system stability ( $.494 \leq \delta_1 \leq .926$ ). Hence we conclude that the "best" model for stranger homicides is probably the zero-order transfer function (i.e., an abrupt, permanent change).

In sum, Oklahoma's return to the death penalty with the highly publicized execution of Charles Troy Coleman, after a 25-year hiatus, does not produce any significant deterrent effect on the level of criminal homicides. Rather, it seems that the reactivation of capital punishment produces an abrupt and permanent increase in the likelihood that citizens of Oklahoma will die at the hands of a stranger.

Table 4. First-Order Intervention Models Applied to Pulse Functions by Type of Homicide

Homicide	Final Model	Parameter Estimates
Total	$Y_t = w_0(1-B)I_t + \Theta_0$ $1 - \delta_1 B$	$w_0 = 4.375 \quad t = 2.010$ $\delta_1 = .420 \quad t = 1.107$ $\Theta = 4.261 \quad t = 23.655$
	$Q = 52.00 \quad df = 36$	$p > .04$
Felony	$Y_t = w_0(1-B)I_t + \Theta_0$ $1 - \delta_1 B$	$w_0 = .609 \quad t = .825$ $\delta_1 = -.677 \quad t = 1.228$ $\Theta = .678 \quad t = 9.836$
	$Q = 31.34 \quad df = 36$	$p > .68$
Stranger	$Y_t = w_0(1-B)I_t + \Theta_0$ $1 - \delta_1 B$	$w_0 = 2.624 \quad t = 3.732$ $\delta_1 = .710 \quad t = 6.432$ $\Theta = .516 \quad t = 7.590$
	$Q = 22.44 \quad df = 36$	$p > .96$

Notes:  $\Theta_0$  = Constant $w_0$  = Zero-order input parameter of a transfer function $\delta_1$  = First-order output parameter of a transfer function $Q$  = Box-Jenkins test statistic for the null hypothesis that the models' residuals are distributed as white noise $B$  = Backward shift operator where  $B(Y_t) = Y_{t-1}$  $I_t$  = Intervention series

## SUPPLEMENTARY ANALYSES

We emphasize the preliminary nature of our findings. It is possible that these findings, especially the null effects of the Coleman execution on total and felony homicides, might be tainted by model specification error. Hence we performed a number of additional analyses. First, one might contend that the onset of execution publicity, rather than the date of the execution, is the more appropriate point at which to assess the impact of Oklahoma's return to executions. Therefore we reestimated our equations employing the last week in August 1990 as the onset of the intervention. The results from these analyses are virtually identical to those reported in the body of the paper.

Second, it is possible that time aggregation bias might account for some

of our null findings (Chamlin et al., 1992). In an effort to assess the influence of this potential source of bias in the parameter estimates, we aggregated the data to months and reexamined the models. Because the sample size ( $n$ ) precludes the use of ARIMA techniques to model the data, we used Cochran Orcutt procedures to account for autocorrelation among the error terms and included monthly unemployment rates as a control variable in the analyses. Once again we found evidence of a brutalization effect for stranger homicides and null effects for both total and felony homicides.

Third, we reexamined the weekly data, using Cochran Orcutt procedures to determine the extent to which our initial findings were sensitive to our decision to use ARIMA techniques to model the data. As anticipated, we found a statistically significant brutalization effect for stranger homicides and null effects for total and felony homicides. These results are not reported here, but are available on request.

Finally, our failure to find a significant deterrent effect for the Coleman execution on felony homicides may reflect, in part, the fact that in Oklahoma not all felony homicides are death-eligible. Moreover, insofar as some categories of death-eligible, felony homicide, particularly robbery, are more likely than others to be influenced by a state's return to executions (Peterson and Bailey, 1991), still further disaggregation may be warranted. Similarly, the findings for stranger homicides, though consistent with our theoretical arguments, require additional elaboration. To reiterate, we interpret the initial results for stranger homicides as indicating that a return to the implementation of the death penalty weakens socially based inhibitions against the use of deadly force to settle disputes and thereby "frees" the offender to kill in response to some perceived wrong. If this is the case, one should expect brutalization effects to be most pronounced in expressive/conflictive offender-victim interactions. Alternatively, in more instrumental encounters involving strangers, such as some forms of felony homicide, rational decision-making processes might have a greater influence on an offender's behavior.

Therefore, in an attempt to explicate the processes that underlie our initial findings, we performed a number of supplementary impact assessments of Oklahoma's return to capital punishment on disaggregated measures of felony and stranger homicides. The results of these analyses are presented in Table 5.

Death-eligible homicides (rape, arson, robbery with a weapon, first-degree burglary, kidnaping, and escape) account for approximately 88% of the total felony homicides in Oklahoma during the period under investigation. Approximately 74% of these are armed robberies. Thus we examined the effect of the Coleman execution on both death-eligible felony murders and armed robbery homicides; we continued to find no support for the deterrence hypothesis. Regardless of functional form, the

Table 5. Disaggregated Analyses of Felony and Stranger Homicides by Type of Intervention

Homicide Type	Zero-Order Intervention	First-Order Intervention	Pulse Function
Felony			
Death-Eligible	$W_o = -.123$ $t = -.752$	$W_o = -.014$ $t = -.260$ $\delta_1 = .925$ $t = 2.744$	$W_o = -.092$ $t = -.404$ $\delta_1 = 1.011$ $t = 20.372$
Robbery	$W_o = -.057$ $t = .492$	$W_o = -.104$ $t = .335$ $\delta_1 = -.644$ $t = -.150$	$W_o = .865$ $t = 1.429$ $\delta_1 = .727$ $t = 2.655$
Stranger Felony	$W_o = .166$ $t = 1.828$	$W_o = .268$ $t = .906$ $\delta_1 = -.567$ $t = -.351$	$W_o = 1.145$ $t = 2.650$ $\delta_1 = .792$ $t = 6.960$
Robbery	$W_o = .120$ $t = 1.511$	$W_o = .212$ $t = 1.034$ $\delta_1 = -.661$ $t = -.482$	$W_o = .007$ $t = .234$ $\delta_1 = 1.057$ $t = 14.372$
Nonfelony	$W_o = .237$ $t = 2.545$	$W_o = .564$ $t = 3.420$ $\delta_1 = -.926$ $t = -11.726$	$W_o = 1.544$ $t = 2.884$ $\delta_1 = .593$ $t = 3.032$
Argument	$W_o = .208$ $t = 3.265$	$W_o = .468$ $t = 4.174$ $\delta_1 = -.946$ $t = -22.520$	$W_o = 8.56$ $t = 2.342$ $\delta_1 = .641$ $t = 2.989$

Notes:  $W_o$  = Zero-order output parameter of a transfer function  
 $\delta_1$  = First-order output parameter of a transfer function

impact assessments revealed no significant effects for either of these disaggregated series of felony homicides.

As might be expected, felony and stranger homicides are not mutually exclusive categories. In fact, felony homicides account for approximately 67% of stranger homicides, while stranger homicides account for approximately 70% of felony homicides. In view of this overlap, it becomes necessary to examine more carefully the effects of Oklahoma's return to the



death penalty on disaggregated measures of stranger homicides so that we may understand more fully the processes that produce our divergent findings for these two forms of murder. Therefore we investigated the effects of the Coleman execution on four additional stranger homicide incident series. In the first two, felony and robbery, the offender may be more likely to employ rational decisionmaking processes. The remaining two, nonfelonies and those involving arguments, are more likely to involve situations where conflictive, expressive factors may influence the offender's behavior.

In brief, we find no evidence of a deterrent effect for either stranger felonies or stranger robberies. At first glance it may appear that the Coleman execution increases the level of stranger felonies. Yet, the parameter estimate associated with the zero-order transfer function for stranger felonies approaches, but fails to reach, statistical significance ( $w_0 = .166$ ,  $t = 1.828$ ). Although both parameter estimates associated with the pulse function are statistically significant, the confidence intervals about the first-order parameter estimate exceed the bounds of system stability ( $.569 < \delta_1 < 1.012$ ). Hence we are forced to conclude that there is no brutalization effect for stranger felonies.

In keeping with our preliminary analyses for stranger homicides, we find again that the Coleman execution produces an abrupt, permanent increase in both the nonfelony ( $w_0 = .237$ ,  $t = 2.545$ ) and the argument ( $w_0 = .208$ ,  $t = 3.265$ ) subcategories. Although the pulse function also yields statistically significant parameter estimates, the confidence intervals about the coefficient exceed ( $.222 < \delta_1 < 1.06$ ) or approach ( $.209 < \delta_1 < .977$ ) the bounds of system stability for the stranger nonfelony and the stranger argument series, respectively. Therefore we conclude that the zero-order transfer function is the most appropriate model for each of these forms of stranger homicide.

We also explored the possibility that the reported brutalization effect for argument-related stranger homicides reflects processes which operate at a higher level of offense aggregation. We derived null effects, however, from our analyses of the effect of the Coleman execution on the argument homicide incident series and on the total nonfelony homicide incident series. Thus it would appear that the impact of the Coleman execution on argument-related stranger homicides cannot be explained by its influence on either argument-related homicides per se or the total nonfelony homicide incident series. Moreover, we examined all of the models in Table 5, using the onset of execution publicity rather than the date of the execution as the point of intervention. Again, our findings are identical to those reported in Table 5. The results of these additional analyses also are available on request.

In sum, the supplementary analyses add credence to our interpretation

of the initial findings. Further disaggregations of felony homicides continue to produce null findings, thus supporting the conclusion that there are no observable deterrent effects. Similarly, the disaggregation of stranger homicides into those which may be deterrable (stranger-felony and stranger-robbery) and those in which brutalizing effects are most likely to occur (stranger-nonfelony and stranger-argument) yields results that are consistent with our explanation for the effects of the Coleman execution on the original stranger homicide series. We find no evidence of a deterrent effect for either the stranger-felony or the stranger-robbery homicide series. For stranger-nonfelony and stranger-argument homicides, however, which are more likely to involve offender-victim interactions characterized by affronts to honor and by weakened social constraints against the use of deadly force, we find significant and lasting increases in the level of homicide after Coleman's execution.

Taken together, the preliminary and the supplementary analyses suggest the following conclusion: the reintroduction of capital punishment, at least in Oklahoma, seemingly has produced a brutalizing effect in situations where the relational distance between offender-victim pairs minimizes socially derived inhibitions against killing and where the dynamics of the encounter are likely to enhance the perpetrator's perception of being wronged (i.e., nonfelony and argument-related stranger homicides).

## CONCLUSION

Both the deterrence and the brutalization hypotheses, albeit for different reasons, predict that the return to capital punishment will produce a change in the level of criminal homicides in the jurisdiction of interest. The former perspective assumes that potential offenders, including those who may be contemplating murder, rationally weigh the costs and benefits when deciding whether to engage in illegal behavior. Therefore, insofar as the gains associated with criminal homicide do not increase, the reimplementation of the death penalty is expected to influence some potential offenders to refrain from murder. Alternatively, the brutalization perspective suggests that state-sponsored killing, regardless of its political legitimacy, is likely to have a dehumanizing effect on the populace. As a result, the return to capital punishment is expected to weaken socially based inhibitions against the use of deadly force to settle disputes, thereby encouraging some segments of the population to kill in response to perceived wrongs and/or affronts to honor. Exploiting the quasi-experimental qualities of Oklahoma's first execution in more than 25 years, this study employs interrupted time series analyses to assess the relative efficacy of these two competing theoretical orientations.

We argue that deterrence and brutalization processes are more likely to

affect some types of criminal homicide than others. Specifically, we expect the deterrent effect of executions to be most evident in situations where the offender may anticipate the need for lethal force for the successful completion of another crime (Peterson and Bailey, 1991). Thus one would predict finding a deterrent effect primarily for felony murders, especially those which are death-eligible. Alternatively, one might expect a brutalization effect to be most pronounced in situations where the relational distance between offenders and victims already minimizes socially derived strictures against killing. That is, during stranger-related interactions involving affronts to honor, the example set by the state is most likely to facilitate the use of deadly force to settle disputes.

Contrary to the predictions of the deterrence hypothesis, we find no evidence that Oklahoma's reintroduction of execution produced a statistically significant decrease in the level of criminal homicides during the period under investigation. Regardless of the functional form specified for the model, the analyses show that the execution of Charles Troy Coleman had no effect on either total, total felony, stranger-felony, death-eligible felony, or robbery-felony homicides. Thus our findings are consistent with a growing body of research that typically fails to find a significant deterrent effect for the exercise of the death penalty (Peterson and Bailey, 1991).

Our preliminary analyses, however, provide some evidence of a brutalization effect on stranger homicides. This interesting finding is observed in each of the three functional forms modeled, though the most appropriate model appears to be the zero-order transfer function. This functional form shows that the Coleman execution produced an abrupt and lasting increase in the level of stranger homicides in Oklahoma. Specifically, the results show that Coleman's execution led to an increase of approximately one additional stranger-related homicide incident per month ( $.344 \times 4 = 1.376$  stranger-related homicides per month).

We interpret these findings for stranger-related homicides as an indication that a return to the exercise of the death penalty weakens socially based inhibitions against the use of lethal force to settle disputes and thereby allows the offender to kill strangers who threaten the offender's sense of self or honor. Admittedly, this explanation could be viewed with some skepticism. After all, stranger-related homicide is a rather heterogeneous category encompassing various sorts of events, including felony murders. In recognition of this limitation, we further disaggregated the stranger homicide incident series and performed a number of supplementary intervention analyses.

In brief, we find that the Coleman execution produced null effects on

both stranger-felony and stranger-robbery homicides. These results, however, should not be particularly surprising given that these two subcategories of stranger-related homicides are likely to be affected by instrumental concerns, as well as by the actors' social distance. More important, these supplementary analyses also reveal that the Coleman execution produced an abrupt and lasting increase in the level of both nonfelony and argument-related stranger homicides. Thus, in line with our initial speculation, it appears that the return to the death penalty, at least in Oklahoma, produces a brutalization effect in situations where prohibitions against killing are weakest and where the offender perceives having been wronged (i.e., nonfelony and argument-related stranger homicides).

Certainly one must be exceedingly careful about the inferences one draws from examining the relatively short-term effects of a single execution in one jurisdiction. Nonetheless, two observations seem noteworthy. First, when data are available, future research on the effects of capital punishment and execution publicity on criminal homicide should examine further disaggregations of criminal homicides. As suggested by our analyses of different subcategories of homicides, executions simultaneously might produce both deterrent and brutalizing effects (inhibiting some while inspiring others), thereby producing null effects when substantively interesting associations in fact may be present. Second, further theoretical development of the brutalization thesis is needed. On the basis of previous works (Bowers and Pierce, 1980; King, 1978), we began with a rather facile hypothesis concerning the brutalization effects of capital punishment on stranger homicides. Although we found support for our speculations, we must continue to explicate the links between the implementation of the death penalty and changes in the level of both total and disaggregated measures of stranger homicides.

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John K. Cochran is Associate Professor of Sociology and Research Associate with the center for the Study of Crime, Delinquency, and Social Control at the University of Oklahoma. He is a consultant for the Oklahoma Department of Corrections, where he is currently involved in a study of race relations and racial discrimination in the DOC system. His current research interests include a macrosocial examination of assaults on police officers and a study of police response time.

Mitchell B. Chamlin is Assistant Professor of Criminal Justice at the University of Cincinnati. Drawing on utilitarian and conflict models, he is concerned primarily with the impact of structural conditions on changes in the capacities of localities to engage in crime control processes, as well as with modeling changes in the level of criminal behavior. Currently he is involved in macrosocial longitudinal research examining assaults on police officers.

Mark Seth received his MA in Sociology at the University of Oklahoma. He is currently involved in an examination of the role of extralegal factors in police response times to calls for service.



Figure 1. Total Homicide Incidents

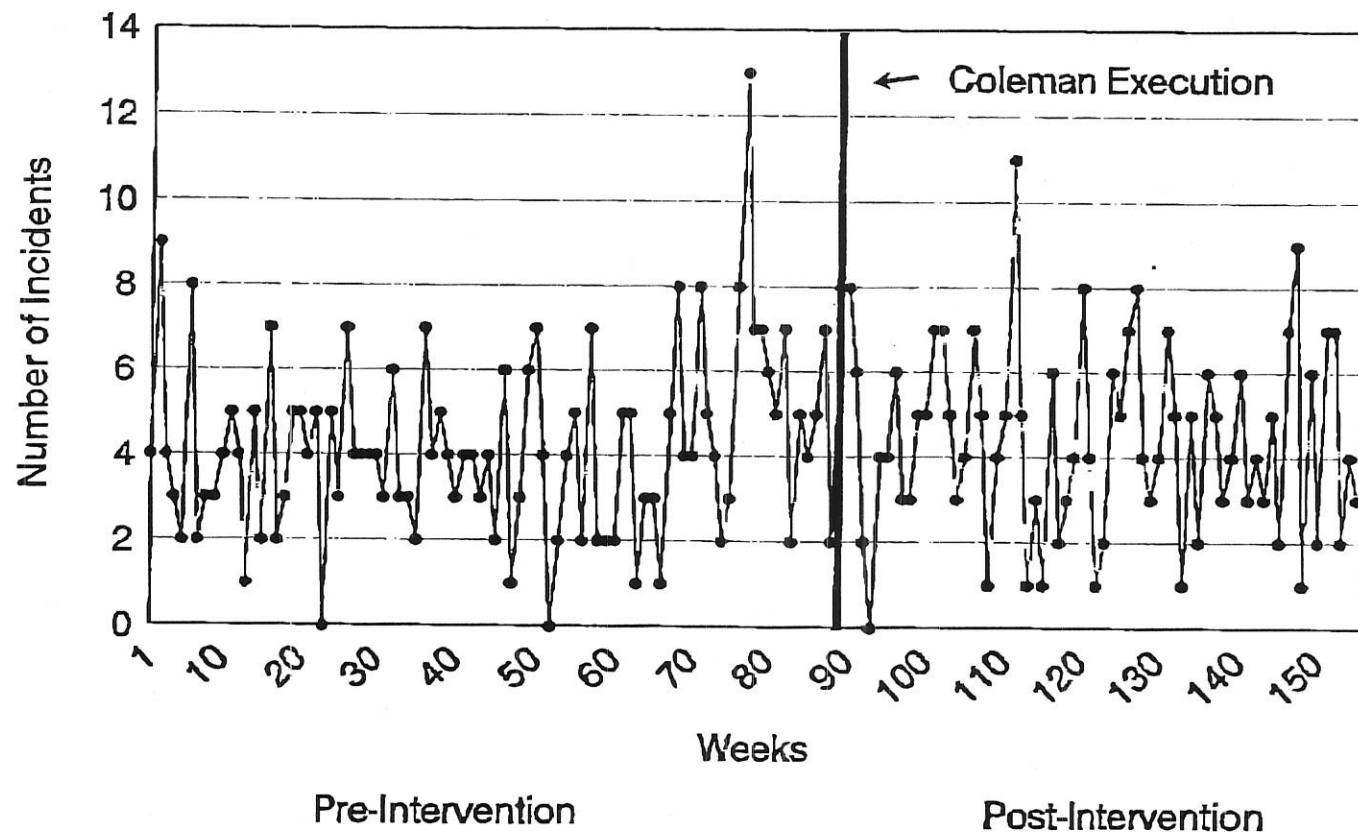
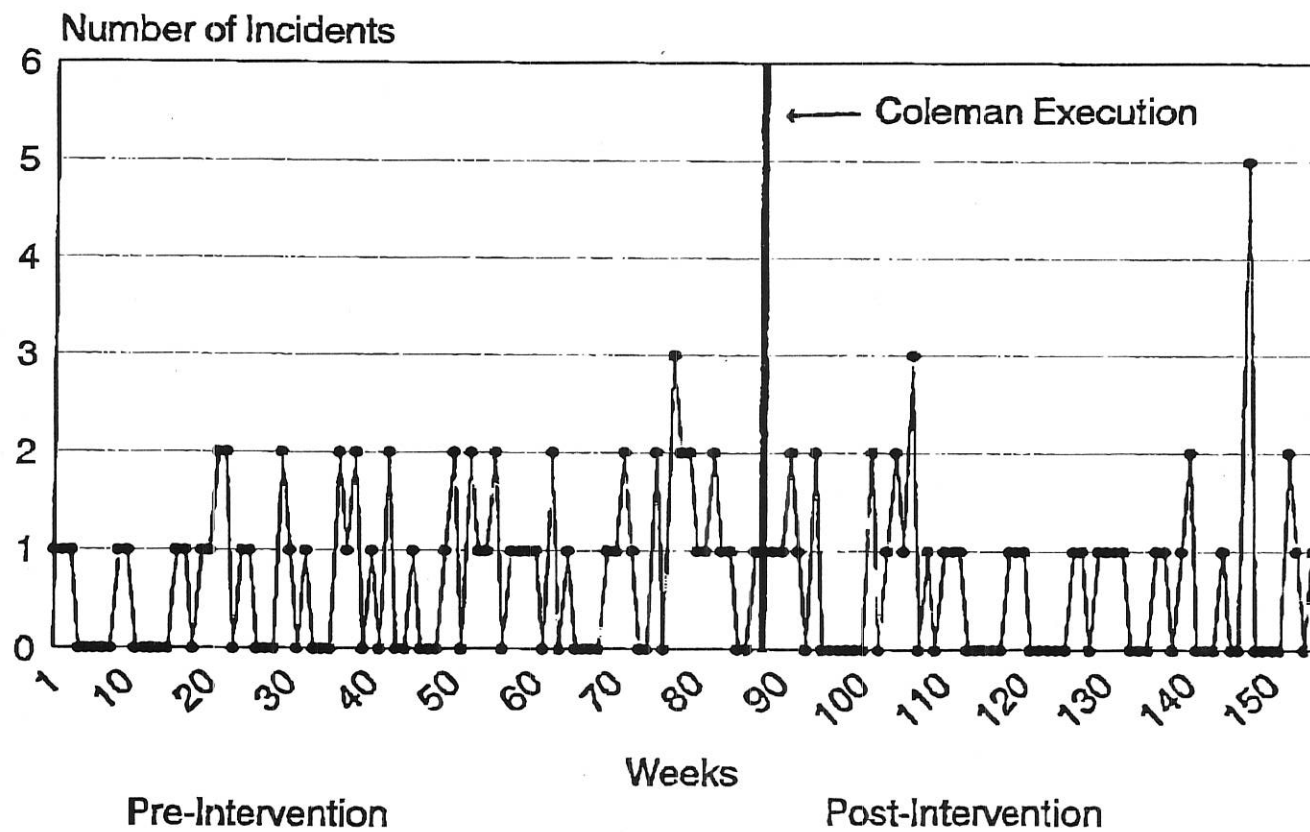
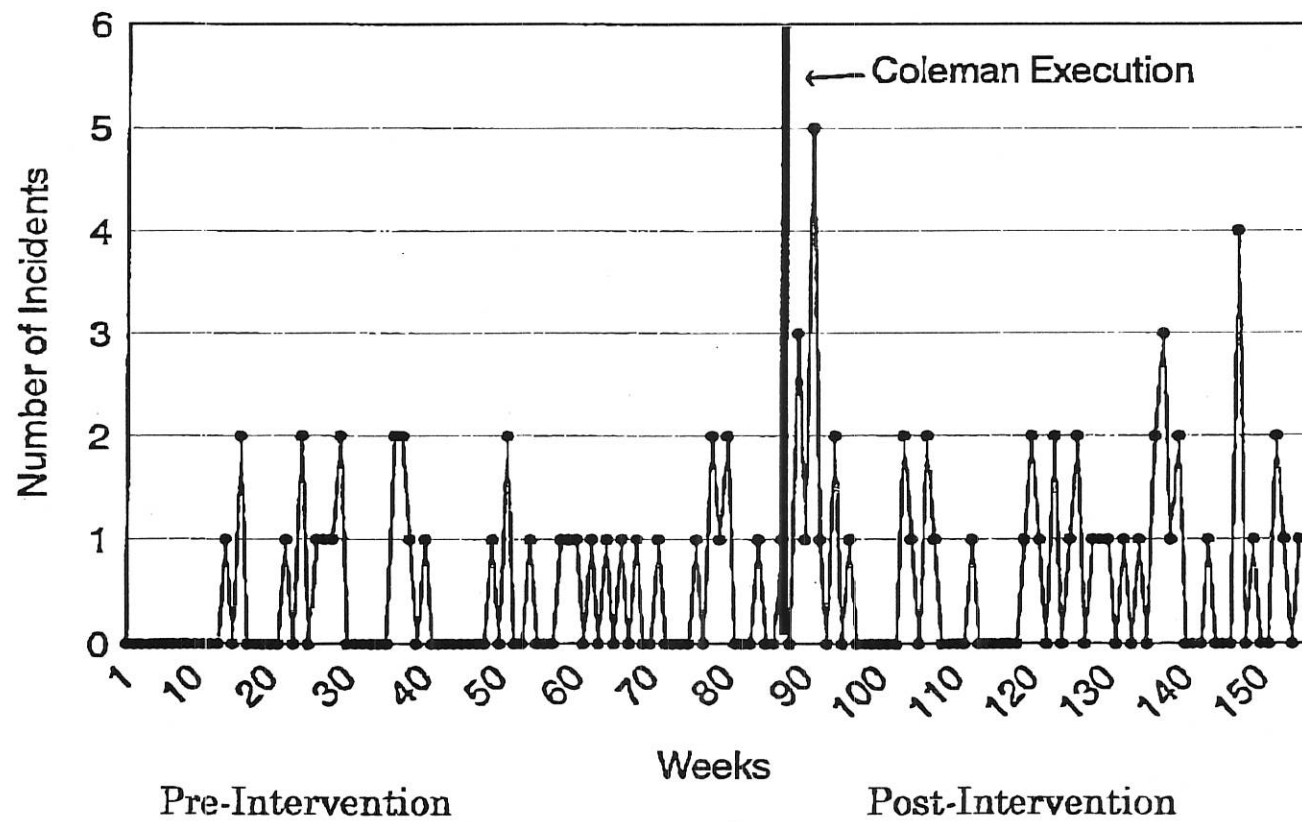


Figure 2. Felony Homicide Incidents



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Figure 3. Stranger Homicide Incidents



BEN COATES  
1100 NW PORTA  
TOPEKA KANSAS

TESTIMONY PRESENTED JANUARY 26, 1994

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

However, these arguments are moral concerns and are subject to individual conscience. There are more pragmatic reasons why I am opposed. I will deal with two such issues: the disproportionate application of the death to poor people and minorities, and the question of innocence. I would also mention the apparent failure to deter crime. If the death penalty and its application is intended to be a deterrent; then one would expect the areas with the most convictions and actual executions to be the safest areas. Texas, Florida, and Louisiana lead the nation in both these categories; they are hardly examples of safe areas. All three states experience homicide rates far above the national average, in fact they are all in the top 10 .

#### WHO GETS EXECUTED

The U.S. Department of Justice Bureau of Justice Statistics puts out a summary of capital punishment each year. The most recent edition (1991) provides a detailed summary of persons on death row and of those executed. African Americans make up less than 12 percent of the nations population but 40 percent of the death row population, a 333 percent over-representation. The same percentage holds for the actual number of persons executed (85 out of 157), this represents more than three times the expected percentage. When other non-whites are added in the percentage rises to 46 percent

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almost four times the expected average. Thus it becomes clear that the penalty is over applied to minorities; one of the powerful arguments why the death penalty was struck down in 1972. The post-Furman remedies have not corrected this problem.

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

### THE QUESTION OF INNOCENCE

Justice Marshall wrote the following in the 1972 Furman decision :

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

These somber words written in 1972 still ring true. There is a great probability that mistakes will happen and innocent people will be put to death. This chilling possibility is reinforced by a 1993 U.S. House of Representatives staff report entitled INNOCENCE AND THE DEATH PENALTY: ASSESSING THE DANGER OF MISTAKEN EXECUTIONS. The report details 48 cases where the person sentenced to die was found to be innocent. There is no estimate of how many actually died before they could receive a new trial or some one came forward to confess. However, the report, like Justice Marshall, indicates that out of the 222 executions since the Furman decision the probability was very high since 48 were found to be innocent prior to their execution.

These findings identified several areas of concern within the process and clearly speak to the finality of the death penalty and the impossibility of correcting mistakes and deliberate misdeeds once the convicted person has been put to death. The only reason these 48 people are alive today is due to the perseverance of dedicated attorney's and family members. You must remember that they were prosecuted, found guilty and sentenced to die in spite of the whole array of due process protection's surrounding the trial.

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

Racial Prejudice - A black man was convicted of the murder of a white school girl. The schools five janitors were all suspects,

but the police looked at the group and were reported as saying to the only black in the group " Since you are the only nigger, you're elected". All blacks were struck from the jury pool and 166 of the 309 exhibits used at trial were destroyed and unavailable for an appeal. Prosecution witnesses perjured themselves. He was granted a retrial 10 years later and all charges were dropped.

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

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

These are representative of the remaining cases and point to the possibility for error either deliberately promoted by the state or accidentally. Luckily these men had advocates who kept them and their causes alive; without the intervention of the press, or a civil rights group all of these men could have perished at the hands of the state.

While they were not death penalty cases, two local Shawnee county rape cases have been overturned in the past five years. One was due to a prosecutor not making crucial evidence available and the other was overturned due a DNA test showing that he was not the perpetrator. Both cases were overturned because dedicated Public Defenders stuck with the case; both men served several years before being released. Again without the vigilance of their counsel they would still be in prison.

I honestly think these issues of disproportionate application and the very real chance of executing an innocent person provide ample practical reasons not to pass this bill. As I stated earlier, there are substantial moral and ethical arguments against this sanction. I hope you will be moved by them as well.

I will provide a person by person listing of the 48 people found innocent with some abbreviated information; if you would like a copy of the complete report I will be glad to provide one upon request.

# PERSONS RELEASED

NAME	TIME SERVED	REASON FOR RELEASE
David Keaton	2 years	actual killer was found
Wilber Lee Freddie Pitts	12 years	actual killer confessed
Thomas Gladish Richard Greer Ronald Keine Clarence Smith	2 years	actual killer confessed and prosecutor's witness lied
Delbert Tibbs	3 years	Supreme Court overturned due to lack of evidence
Earl Charles	3 years	cleared by new evidence
Johnathon Treadway	3 years	cleared by new evidence
Gary Beeman	3 years	real killer was found to be the prosecution's main witness
Jerry Banks	5 years	prosecutor withheld evidence
Larry Hicks	2 years	eyewitness perjured himself
Charles Ray Giddens	3 years	overturned by court of appeals for lack of evidence
Michael Linder	2 years	acquitted at retrial
Johnny Ross	6 years	new evidence
Anibal Jarramillo	1 year	new evidence



Lawyer Johnson	11 years	the state's eyewitness was found to be the real killer
Anthony Brown	3 years	state's witness perjured himself
Neil Ferber	4 years	witness perjured himself
Joesph Brown	12 years	came with in 13 hours of execution prosecutor knowingly allowed false testimony
Perry Cobb & Darby Williams	8 years	state's chief witness found to be unreliable
Henry Drake	10 years	new evidence
John Knapp	13 years	new evidence
Vernon McManus	10 years	lack of evidence at a retrial
Anthony Peek	9 years	new evidence refuted expert testimony
Juan Ramos	4 years	improper use of evidence
Robert Wallace	7 years	new evidence
Jerry Bigelow	8 years	improper counsel
Willie Brown & Larry Troy	5 years	perjury by state's witness
William Jent & Earnest Miller	8 years	suppression of evidence by the state

Randall Adams	12 years	new evidence
Jesse Brown	6 years	reversed by Supreme Court
Robert Cox	1 year	new trial
Timothy IIennis	3 years	new trial
James Richardson	23 years	new evidence
Clarence Brandley	10 years	suppression of evidence and perjury of eyewitness
Patrick Crory	11 years	new evidence
John Skelton	8 years	new trial
Gary Nelson	11 years	prosecutor withheld evidence
Bradley Scott	3 years	new trial -
Kirk Bloodsworth	9 years	DNA showed he was not responsible
Fedrico Macias	9 years	lack of evidence
Walter McMillian	5 years	witness perjury

As I see the escalation of violence and the devaluation of human life, I hear hatred, pain, fear, and sometimes revenge in the outcries of families of both the victims and the perpetrators --feelings with which I am very familiar. My concern is with the emotional price these feelings create.

My children and I relived the events of my son, Paul's murder this summer as his murderer came up for parole for the second time in August. Paul was a Parole Officer in Wyandotte County and on October 19, 1976, was stabbed to death by a parolee at the home of the parolee and his mother. The events, as we relived them, brought back seemingly raw, non-ending pain. Yesterday would have been Paul's 44th birthday.

As we worked our way through our "now" feelings, I was asked about my anger. I told them I have only so much energy and constant feelings of unresolved anger, which I see as hatred and revenge, would rob me of a great deal of energy and that would not be fair to me, my family, those with whom I interact daily, and to Paul. Murder Victims Families for Reconciliation, a group with focus on supporting survivors of violent crimes such as murder, has re-enforced my belief in reducing the emotional price these feelings bring about -- a price I will not pay.

Bringing back capital punishment would cause us to lose our care and compassion for fellow human beings, would accelerate the loss of our dignity and the devaluation of human life. This further devaluation of human life is a price we, as a society, positively cannot afford.

Paul's goal that day in October was to mediate differences between a mother and son. As his mother, mother of the remaining eight children, grandmother of 20, and yes, a Secretary in the Department of Corrections, I cannot demand the life of another's child.

ALMA WEBER

1-26-94

F & SA  
1-26-94  
Atch #9

Testimony of Gregory Ruff  
January 26, 1994  
To the Kansas House of Representatives  
Committee on State and Federal Affairs

I am a Kansas certified law enforcement officer with 23 years of law enforcement experience.

I do not believe in the death penalty and do not support legislation to reintroduce capital punishment in Kansas.

There are a number of reasons why I do not support the death penalty. I am primarily against it for moral reasons. I strongly believe in the sanctity of life. The premeditated taking of a life is wrong. It does not matter if a life is taken by a criminal or by the state, in my opinion it is equally wrong and a sin against god and nature.

I have read that the death penalty is justified by some on the basis that it offers public benefits in the form of greater deterrent and retributive value than life imprisonment. First let me address the deterrent value of the death penalty. During my law enforcement career I have been directly involved in approximately 30 homicide investigations. I have seen the ugliness of murder up close and personal. But I have never heard a murder suspect say they thought about the death penalty as a consequence of their actions prior to committing their crimes. I do not know of any studies or statistics that indicate the death penalty has any deterrent value. I agree with Alvin Brooks, a former police officer and president of the Kansas City Ad Hoc Group Against Crime, who said "If we do it (support the death penalty) because we say it's a deterrent, we need to stop saying it that. It's not a deterrent." Quite simply if you believe in capital punishment as a deterrent, you believe in a big lie.

In regards to the retributive value of the death penalty. I think it's only natural that the families and friends of murder victims would see the death penalty as valuable. But think about this, in this state it is a crime for a person to take a life in the name of retribution or vengeance. Is it any less a crime if the state takes a life in the name of retribution? I personally don't think so and I don't believe that catering to the darker side of human emotions will ever benefit society.

I also believe that the death penalty is a waste of a valuable and limited resource, taxpayers money. I am sure all of you are familiar with the increased cost of prosecuting and defending against appeals involved with the death penalty. Does the general public really want to deal with their fear of crime by spending tax dollars on measures such as the death penalty, which over the long run will not reduce crime in any way? I for one do not want to see my tax dollars wasted that way.

Thank you for the opportunity to testify today.

FSA  
1-26-94  
Atch #10

Paul Helmut Kindling, MD  
1220 Urish Road  
Topeka, KS 66615

January 26, 1994

Rep. Clyde Graeber, Chairman  
House Committee on Federal and State Affairs

Re: House Bill 2578

Mr. Chairman and Members of the Committee:

My name is Paul Helmut Kindling. I have lived in Topeka since 1967. I am a heart surgeon. I was born in Germany and lived there during the time of the holocaust. I remember November 9, 1938, "Kristallnacht", the beginning of the holocaust. I was eight years old then and did not understand what it all meant until years later. As you may know the present German federal constitution, the "Basic Law", prohibits any state from passing a death penalty bill.

Yesterday you heard comments from supporters of this bill. There can be no question that much of what was said was indeed quite powerful. It was powerful because it was emotional. I can understand the emotions involved because, as a surgeon, I have been there to comport relatives of murder victims.

There can be no question that in large part the sentiment for bringing back the death penalty is related to the "revenge factor". One of the proponents yesterday specifically denied this. However, again and again we heard statements like: "Let the punishment fit the crime" ; "Murder is not pretty, so the punishment should not be pretty". To act on one's desire for revenge is really not very civilized. And we all know if we have revenge, it does not really help in the long run.

HB 2578 Section 10 (a) provides: *"... the mode of carrying out a sentence of death in this state shall be by intravenous injection of a substance or substances in a quantity sufficient to cause death in a swift and humane manner."*

Putting the gallows into a bottle, the guillotine into a syringe, requiring a physician to prepare and attend the execution of a human being can never be "humane".

HB 2578 Section 11 provides: *"...the punishment shall be inflicted.....in such a manner as to exclude the view of all persons except those permitted to be present as provided in K.S.A.22-4003..."*

Yesterday you heard supporters of this bill speak about the death penalty as a deterrence. Would an execution then be a better deterrent were it videotaped for public display? In the past executions were public. They were carried out in broad daylight. Now they are done mostly in the middle of the night and out of sight. Is it perhaps that as a society we want to deny that we are then also killers. Is it: "out of sight, out of mind?"

F & S A  
1-26-94

Atch #11

HB 2578 Section 13 (a) provides: "*A person sentenced to death may make an anatomical gift in the manner and for the purposes provided by the anatomical gift act. To the extent deemed practicable by the secretary of correction, in the discretion of the secretary, a person making such a gift shall be executed in such a manner that such a gift can be carried out.*"

As a heart surgeon, I know something about transplantation. Therefore, I can explain how this might work. Blood and tissue typing, Hepatitis, HIV, etc. testing can be done some time in advance. The possible recipients will be notified and prepared. The execution will be carried out in such a manner that the organs can be kept alive after the convict's death. That means the convict must be brain dead yet kept on life support until organs are retrieved. I could describe the scene in more detail but I believe I have made my point that this provision proves that this statute is flawed.

If we could transport ourselves into the next century, ahead into the future, none of us would expect that we would need to take along capital punishment. We would all expect that there would be no execution in this state or this country. We would expect that our civilization had advanced so that there would be little crime and few prisons. Surely that is what we would want for our children. The resurrection of capital punishment, bringing back the death penalty will not help us get there. It will not help advance society.

You have been elected to represent your constituents. Passing this bill would maybe look good to your constituents. But you have also been elected to be the Leaders. And as leaders it is your responsibility to look below the surface, to leave emotion behind, to reason so as to identify the way to the future and not to go back to the past.

Thank you for giving me your attention. I will be glad to answer any questions.

TESTIMONY BEFORE THE KANSAS HOUSE  
FEDERAL AND STATE AFFAIRS COMMITTEE  
January 26, 1994

HB 2578  
DEATH PENALTY

by

Ronald E. Wurtz  
3rd Judicial District Public Defender  
121 SE 6th Street  
Topeka, KS 66603  
(913) 296-1833

*"Held to be a crime when committed by individuals,  
homicide is called a virtue when committed by the state."  
--St. Cyprian, Bishop of Carthage (200-beheaded 258).*

I come to you in my capacity as a private citizen and member of the Kansas Association of Criminal Defense Lawyers. I hope to bring to you my 15 years of experience defending criminal cases in the courts of the State of Kansas, and to convince you that establishment of a death penalty, in any form, is not right for Kansas, either morally or practically.

I have defended citizens who have been charged with murder as often as any practicing lawyer in this State. Some of those whom I defended committed terrible crimes--ones which other states with a death penalty would have sought to kill. I have supervised my employees in the defense of other such cases, and I have consulted with other attorneys across the state on still other similar cases. Even with this experience, I have doubts that I am sufficiently prepared to give the quality of defense necessary to satisfy the "super due process" required by the Courts in a death penalty prosecution.

The passage of a death penalty is unwise for many reasons, but I will confine my testimony to the following:

- The impact of a death penalty bill on public defenders and counsel who volunteer to defend the indigent citizen charged with crime will be severe; it will cripple the entire criminal justice system or cost so much that the death penalty will be clearly unwise.
- The risk of convicting and executing an innocent person is real. This risk is not worth any perceived benefits of execution of a few guilty persons.
- The death penalty does not accomplish any reduction in crime, and it may even increase violent crime through its demonstration that the government itself has no respect for life.

F+SA  
1-26-94  
Atch #12



**Death is different.** The defense of a case in which the death penalty is sought requires four to six times the effort and resources as a non-death case for the same crime. Counsel assigned to defend a death case must understand a whole different body of law which has grown up in death penalty cases, and they must prepare the defense of such a case in a more meticulous manner than any other case, including the current "Hard 40" case. Justice McFarland, writing for a majority of the Kansas Supreme Court in a "Hard 40" case has said that court decisions in death penalty cases are "of limited precedential value" in non-death cases because the death penalty differs so significantly from other cases, regardless of the length of imprisonment involved in the non-death case.<sup>1</sup>

Because "death is different" defense counsel must (1) file two to six times as many motions; (2) take more time selecting a "death-qualified jury"; and (3) prepare and present two trials, one on the issue of guilt, one on the question of punishment. In summary, the death penalty trial is much more complex. It requires experienced counsel,<sup>2</sup> to make a record for possible appeal of every issue that may arise,<sup>3</sup> to investigate mitigating factors for a penalty trial,<sup>4</sup> and to try a case that will last two to three times as long as the same case without the death penalty.

**Monetary Cost.** The "death is different" rule that permeates a death penalty case translates into expense to both the state and local governments. Increased local costs include increased expenses for jury,<sup>5</sup> transcripts,<sup>6</sup> police<sup>7</sup> and prosecutors<sup>8</sup>. These

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<sup>1</sup> State v. Bailey, 251 Kan. 156 (1992), citing United States Supreme Court cases Woodson v. North Carolina, 428 U.S. 280, 303-05, 49 L.Ed.2d 944, 96 S.Ct. 2978 (1976) and Rummel v. Estelle, 445 U.S. 263, 63 L.Ed.2d 382, 100 S.Ct. 1133 (1980).

<sup>2</sup> The ABA Standards for Criminal Justice recommends that two attorneys be assigned to all death penalty cases.

<sup>3</sup> Matters which would be handled on a handshake between the prosecutor and the defense counsel in non-death cases must be placed on the record by way of motions and hearings to preserve all issues for appeal.

<sup>4</sup> Typically the accused's background from time of birth on will be combed for information which would serve to convince a jury that the death sentence should not be imposed. This often means travel across the United States to interview people who knew the accused.

<sup>5</sup> Because there must be a "death-qualified" jury, more jurors must be called for jury selection, jury selection takes longer, the trial is much longer, and sequestration of the jury occurs much more often in death cases. Counties are responsible for these costs.

<sup>6</sup> With three to six times more motions, there will be many more pretrial hearings. Transcripts of many of these hearings will be necessary for counsel to prepare for trial, and the county must pay for these. In a non-death case, the only cost is usually a transcript of the preliminary hearing.

matters are beyond the scope of my presentation, but are important enough that this Committee should again be reminded. It is the cost to the Board of Indigents' Defense Services (BIDS) that I wish to address today.

The indigent defense system is chronically underfunded without a death penalty. BIDS has required a supplemental appropriation to pay for defense costs for the last five years. This year, BIDS will run out of money to pay assigned counsel in March if no supplemental appropriation is passed. A death penalty will consume scarce funds at a fantastic rate. Already over-worked public defenders will be forced to refuse more cases, and assigned counsel costs for non-death cases will increase further. All of this to execute a few people.

The amount of court time required to litigate a death penalty case will take time from other serious criminal matters and will further clog the civil dockets of our courts. Eventually more judges with support staffs and courtrooms will be required, especially in the urban counties.

An informal survey of experienced members of the Kansas Association of Criminal Defense Lawyers in January, 1994 disclosed none who would be willing to defend a death penalty case for the current rate of \$50 per hour. The average amount quoted was \$185 per hour. This figure is not surprising since surveys of states with a death penalty uniformly show that defense of a death case takes 400 to 1600 hours of defense counsel time. 400 hours translates to 10 weeks of an attorney's time. \$50 per hour barely covers overhead for many attorneys, therefore it is clear that it would be a financial hardship on anyone who regularly bills \$100 per hour or more for their time to paying clients.

This means that the fees paid to private counsel assigned to death penalty cases must be raised, or all cases must be handled by public defenders. If the public defender system is to take over all death cases, more defenders must be hired. Presently, public defenders each handle in excess of 150 felony cases per year. Public defenders handling death penalty cases in states with the death penalty are able to handle only two to four cases per year, and it is likely that two attorneys will be assigned to each death penalty case. It follows that with only 10 death penalty cases per year<sup>9</sup>, five additional attorneys must be hired. To attract

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<sup>7</sup> The increased number of motion hearings will require the presence and testimony of investigating officers, thereby increasing overtime pay for officers. A "hidden" cost is the removal of police from regular duties while in court, resulting in decreased police presence on the streets.

<sup>8</sup> Prosecutors will also experience the need for additional staff to handle the increased litigation generated by a death penalty case.

<sup>9</sup> We can expect far more cases to be filed. In FY 93 BIDS records disclose that public defenders and assigned counsel closed 59 first degree murder cases, 37 of which were premeditated murder cases. BIDS estimates that 40% of cases may be filed as capital cases.

qualified counsel, a premium salary will likely be necessary. Additional support staff including clerical, investigative and paralegal must be added to pure attorney expense.

Other costs which the state will pay include expert witness fees, investigative expenses and appellate costs, all of which are significantly higher in a death penalty case.

**Finding qualified counsel.** As noted above, very few, if any criminal defense lawyers in Kansas have defended a modern death penalty case. I personally know only one Kansas attorney who has worked on a death penalty case. Because "death is different" new skills must be learned in order to qualify to defend a death case. This means training must be instituted, and/or experienced counsel must be lured from death penalty states.

Some may discount this issue by noting that "experience will come with time." While this is true, cynics should recognize that failure to provide qualified counsel will increase the mistakes made in the trial. Mistakes in a death case mean reversal on appeal, a new trial, and all of the expenses attendant thereto. The most economical response is to provide qualified counsel "up front" to minimize the chances that the case will be reversed on appeal.

**Keeping qualified counsel.** "The thing I hear these days, particularly from the most conscientious lawyers, is, 'I will never take another death-penalty case.' It's enormously expensive, and you take an emotional beating. Why do it?"<sup>10</sup>

Public defenders, with a few exceptions, currently leave the business after about three years--just as they have become experienced enough to handle complex or serious cases. The emotional toll taken on defense attorneys handling high case loads without the added burden of a death penalty is enormous. I have met many attorneys across our nation who handle death cases, and they are "different." A part of them has been taken away. Even non-death cases reduce strong adults to tears of frustration--I have been there. The fear that an innocent person will have to go to prison is tough enough, but imagine the pressure of defending someone who may be killed if the attorney makes a mistake!

It is clear that most attorneys assigned to defend death cases will not last long in the job. Again, this translates into additional expense of training and pay to attract people to take on such a daunting task.

**Innocent people are convicted.** "At least 48 people have been released from prison after serving time on death row since 1973 with significant evidence of their innocence. (See M. Radelet, H. Beadau, & C. Putnam, "In Spite of Innocence (1992); H. Beadau, & M. Radelet, "Miscarriages of Justice in Potentially Capital Cases," \_\_

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<sup>10</sup> Wall Street Journal, 12/21/92, page B-2, quoting Stephen B. Bright, head of the Southern Center for Human Rights.

Stanford L. Rev. 21 (1987), and the files of the National Coalition to Abolish the Death Penalty.) In 43 of the cases, the defendant was subsequently acquitted, pardoned or charges were dropped. In three of the cases, a compromise was reached and the defendants were immediately released upon pleading to a lesser offense. In the remaining two cases, one defendant was released when the parole board became convinced of his innocence, and the other was acquitted at a retrial of the capital charge but was convicted of a lesser related offense."<sup>11</sup>

I have personally experienced the agony of having a client wrongfully convicted. It took me seven years to finally free an innocent man, and other attorneys who looked at the case told me that I had tried a near perfect case from a defense standpoint. There were no trial errors which would result in a reversal, but the jury found the man guilty in spite of his innocence. Had this been a death penalty case, he might have been killed before the DNA technology which eventually proved his innocence was developed.

I am familiar with other cases in which innocent people are convicted. One of these cases occurred as a result of prosecutorial misconduct through withholding of exculpatory evidence. In numerous other cases the prosecution has withheld evidence, relied on perjured testimony, and otherwise cheated for a conviction. See Congressional Subcommittee Report, note 11.

It is clear that our criminal justice system is imperfect, and perfection cannot be legislated. To impose such a final solution as death based on our imperfect system is the height of unfairness.

**The death penalty does not work.** No credible expert can be found who will say that a death penalty will deter crime. The only reason for it is vengeance for an atrocious offense. Yet many cases must be tried for a death sentence before one is adjudged, and of those that are adjudged, several will be reversed. According to a public defender who handles death penalty cases in Colorado, the State has failed in its last 13 attempts to impose a death sentence in Colorado, but the expense of each was still there. In the case of Ralph Takemire, a capital case prosecuted in Englewood, Colorado, the county was nearly bankrupted, and in the end the state was forced to give up its request for a death sentence. When one factors in the length of time it takes to get a case from charging to execution approaches 10 years, even the vengeance motive is attenuated. Victims' families must live with the case without closure for too long. In reality, the death penalty increases the suffering of those affected by the crime itself.

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<sup>11</sup> "INNOCENCE AND THE DEATH PENALTY: Assessing the Danger of Mistaken Executions," Staff Report, 10/31/93, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, 103rd Congress, First Session.

January 26, 1994

TO: THE FEDERAL AND STATE AFFAIRS COMMITTEE

"RACISM AND THE DEATH PENALTY"

Ladies and gentlemen, as a long time educator, I am aware that too often, specifically African-American males are given two rooms in life. A special education room, and a prison cell. Now, we are looking at two death penalties. An educational death as well as execution.

If the victim is white, and the defendant is black, poor, uneducated, uninformed, and have a court-appointed attorney, the chances that you will be one of those selected for execution increases dramatically each year.

In Florida, killers of whites are 37 times more likely to get the death penalty than killers of blacks. In Georgia, the rate is 10 times higher, Maryland six times. The evidence is irrefutable: Black life is cheap, white life valuable.

In 82% of the studies [reviewed], race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found more likely to be sentenced to death than those who murdered blacks.

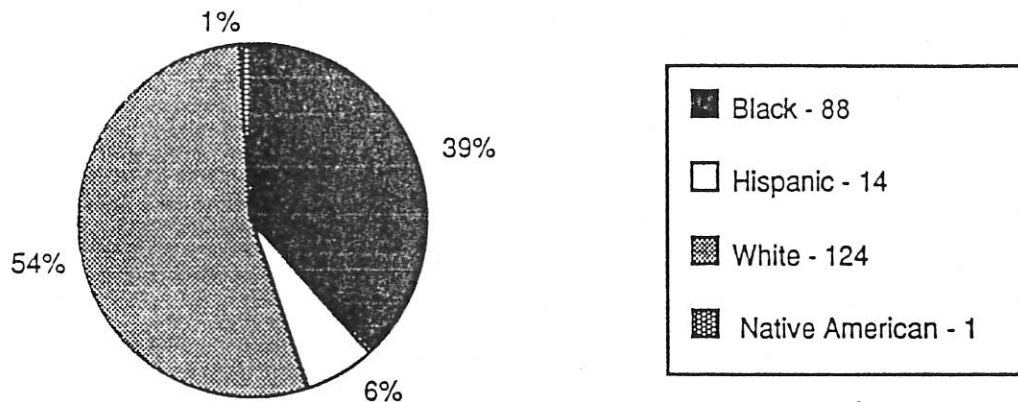
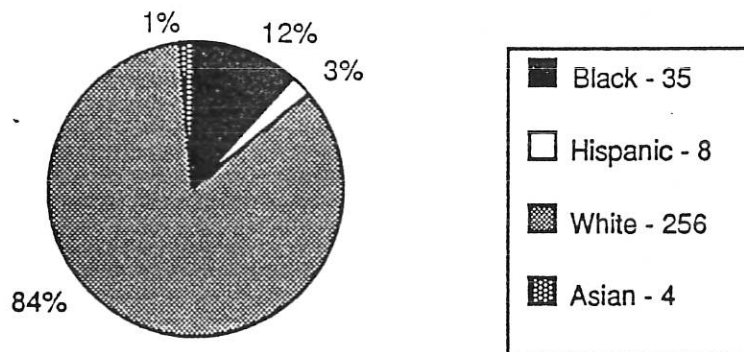
If Kansas is to follow the national trend in the application of the death penalty as it has in the application of imprisonment, Kansas will continue to follow this racial disparity. Given these statistics, it is clearly stated that approximately 50% of death row is black, when only 12% of the American population is black.

In my conclusion, I appeal to your sense of racial fairness and justice. Keep Kansas alive and free of a racist law.

Sandra K. Lassiter,  
Concern Citizens for Equal Justice

F & SA  
1-26-94  
Atch # 13



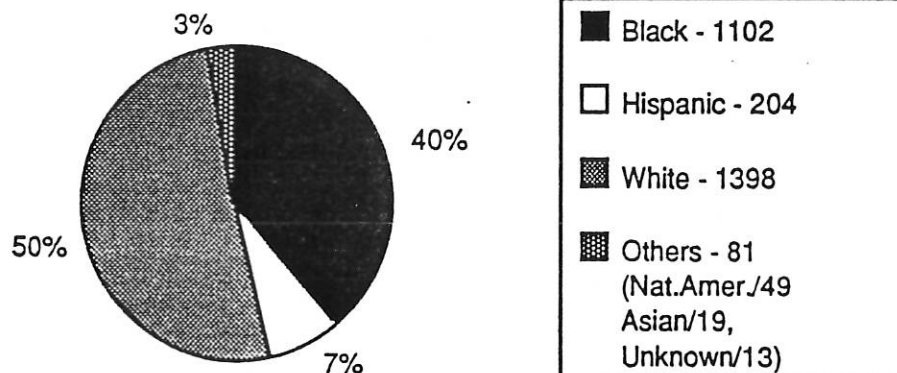
RACE AND THE DEATH PENALTY -- RACE OF DEFENDANTS EXECUTEDRACE OF VICTIMS

84% of the victims in death penalty cases are white even though 50% of murder victims in the U.S. are black.

*"In 82% of the studies [reviewed], race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found more likely to be sentenced to death than those who murdered blacks."* - U.S. General Accounting Office, *Death Penalty Sentencing*, February, 1990.

TOTAL NUMBER OF DEATH ROW INMATES: 2,785 (as of October, 1993)

Breakdown by race: Half of those on death row are from minority populations.



hard C. Dieter  
EXECUTIVE DIRECTOR

1606 20th Street, N.W.  
Second Floor  
Washington, D.C. 20009  
Phone: (202) 347-2531  
FAX: (202) 332-1915

# DEATH PENALTY INFORMATION CENTER

## FACTS ABOUT THE DEATH PENALTY

January 6, 1994

### STATES WITH THE DEATH PENALTY (36)

Alabama	Delaware	Kentucky	Nebraska	Ohio	Tennessee
Arizona	Florida	Louisiana	Nevada	Oklahoma	Texas
Arkansas	Georgia	Maryland	N.Hampshire*	Oregon	Utah
California	Idaho	Mississippi	New Jersey	Pennsylvania	Virginia
Colorado	Illinois	Missouri	New Mexico	South Carolina	Washington
Connecticut	Indiana	Montana	North Carolina	South Dakota	<u>Wyoming*</u>
				-plus	U.S. Gov't
					U.S. Military

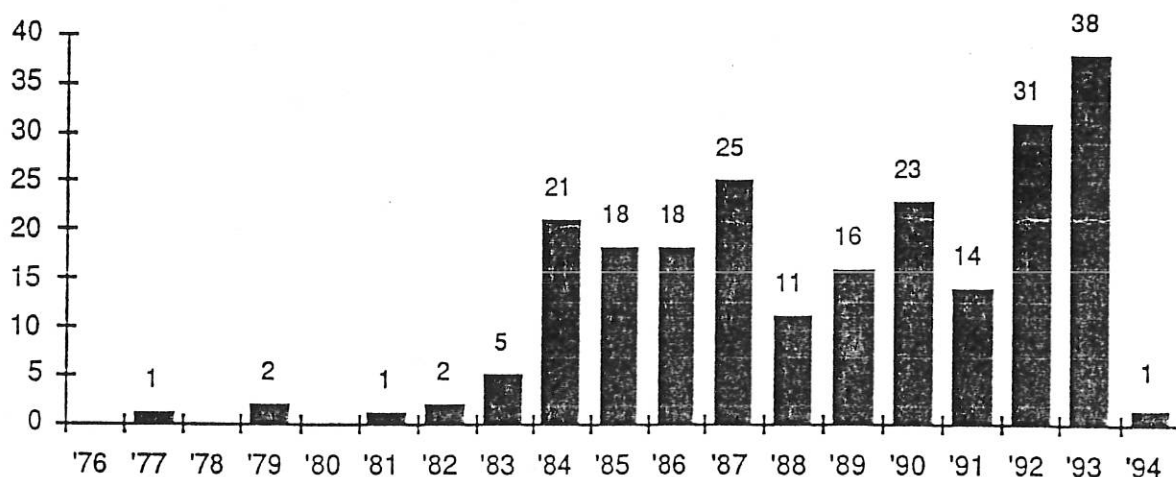
\*Indicates jurisdictions with no one on death row

### STATES WITHOUT THE DEATH PENALTY (14)

Alaska	Kansas	Michigan	North Dakota	West Virginia	-plus
Hawaii	Maine	Minnesota	Rhode Island	<u>Wisconsin</u>	Dist. of Col.
Iowa	Massachusetts	New York	Vermont		

### EXECUTIONS SINCE THE 1976 REINSTATEMENT OF CAPITAL PUNISHMENT: 227

Breakdown by year:



### EXECUTIONS SINCE 1976 BY METHOD USED

Electrocution	108
Lethal Injection	108
Gas Chamber	9
Firing Squad	1
Hanging	1

#### BOARD OF DIRECTORS

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13-3



**X ORDER & MURDER RATES PER 100,000 INHABITANT OF THE 50 STATES  
ACCORDING TO THE UNIFORM CRIME REPORT - 1992**

Rank	State	Murder rate per 100,000	Method of execution	Execs. in 1992	Execs. since 1977	Prisoners dth. row Dec. 1992
1.	Louisiana	17.4	LI		20	40
2.	*New York	13.2	(NONE)	--	--	--
3.	California	12.7	GC/LI	1	1	349
4.	Texas	12.7	LI	12	54	367
5.	Mississippi	12.2	GC/LI		4	47
6.	Maryland	12.1	GC			15
7.	Illinois	11.4	LI			154
8.	Alabama	11.0	Elect	2	10	114
9.	Georgia	11.0	Elect		15	109
10.	Nevada	10.9	LI		5	60
11.	Arkansas	10.8	LI/Elect	2	4	34
12.	No. Carolina	10.6	GC/LI	1	5	104
13.	Missouri	10.5	LI	1	7	84
14.	So. Carolina	10.4	Elect		4	44
15.	Tennessee	10.4	Elect			105
16.	*Michigan	9.9	(NONE)	--	--	--
17.	Florida	9.0	Elect	2	29	324
18.	New Mexico	8.9	LI			1
19.	Virginia	8.8	Elect	4	17	48
20.	Indiana	8.2	Elect		2	53
21.	Arizona	8.1	GC	1	1	110
22.	*Alaska	7.5	(NONE)	--	--	--
23.	Ohio	6.6	Elect			127
24.	Oklahoma	6.5	LI	2	3	120
25.	*West Virginia	6.3	(NONE)	--	--	--
26.	Colorado	6.2	LI			3
27.	Pennsylvania	6.2	LI			145
28.	*Kansas	6.0	(NONE)	--	--	--
29.	Kentucky	5.8	Elect			28
30.	Connecticut	5.2	Elect			4
31.	New Jersey	5.1	LI			7
32.	Washington	5.0	Hang/LI			11
33.	Oregon	4.7	LI			12
34.	Delaware	4.6	Hang/LI	1	1	7
35.	*Wisconsin	4.4	(NONE)	--	--	--
36.	Nebraska	4.2	Elect			11
37.	Wyoming	3.6	LI	1	1	0
38.	*Hawaii	3.6	(NONE)	--	--	--
39.	*Rhode Island	3.6	(NONE)	--	--	--
40.	*Massachusetts	3.6	(NONE)	--	--	--
41.	Idaho	3.5	FS/LI			23
42.	*Minnesota	3.3	(NONE)	--	--	--
43.	Utah	3.0	FS/LI	1	4	11
44.	Montana	2.9	Hang/LI			8
45.	*Vermont	2.1	(NONE)	--	--	--
46.	*No. Dakota	1.9	(NONE)	--	--	--
47.	*Maine	1.7	(NONE)	--	--	--
48.	New Hampshire	1.6	Hang			0
49.	*Iowa	1.6	(NONE)	--	--	--
50.	So. Dakota	0.6	LI			1

\* Abolition states    LI = lethal injection    GC = gas chamber    FS = firing squad    Elect = electrocution

Data supplied by the U.S. Dept. of Justice & the NAACP Legal Defense Fund.

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JANUARY 26, 1994

TO: THE FEDERAL AND STATE AFFAIRS COMMITTEE

"WRONGFULLY ACCUSED"

Ladies and gentlemen, too often what appears to be the fact is not the case. Just this week in the Capitol Journal, two unknown Asian males had been wrongfully accused of shooting a highway patrolman. This highway patrolman gave a description of the men with a composite drawing, the vehicle, and many other details surrounding this incident.

Twenty-one days later, the accuser was found to have fabricated the whole event. What if, two real Asian men, breathing, alive and well, upstanding leaders in the Community, with mothers, sisters, brothers, and friends had been in the vicinity of this atrocity. They could have then been arrested and charged with this crime. Unfortunately, they could have been tried, convicted, and sentenced for a crime that was never committed against the law enforcement officer.

The death penalty, heaven forbid, could have placed them in their graves from which there is no pardon. Fortunately, these fabricated men were never located and charged. I know of too many instances when the fabricated men were FOUND, charged, sentenced, placed on death row, and executed. Since 1970, forty eight people have been released from death row with evidence of their innocence. Since 1900, twenty three people who were INNOCENT have been EXECUTED.

YOU CAN'T PARDON A DEAD PERSON!!!

Ladell Zollicoffee



FINANCIAL FACTS ABOUT THE DEATH PENALTY

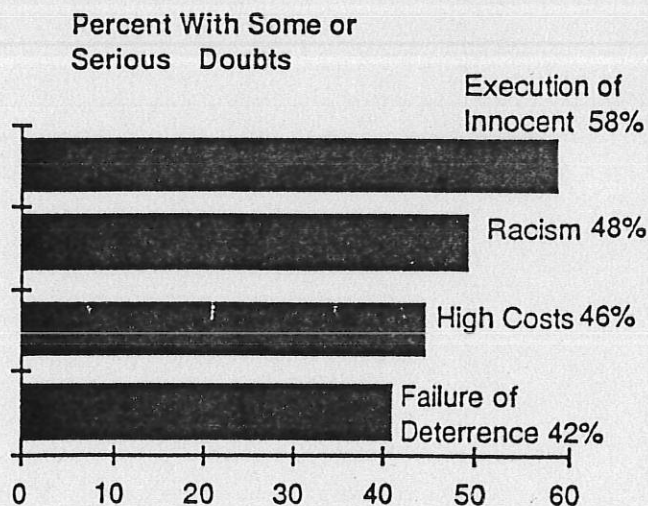
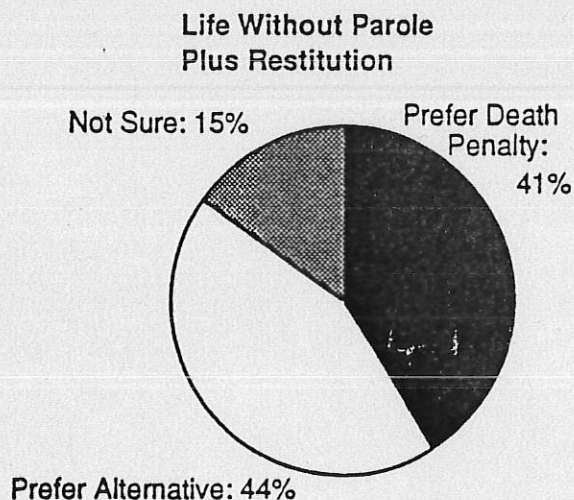
- The most comprehensive study in the country found that the death penalty costs North Carolina \$2 million per execution *over* the costs of a non-death penalty murder case with a sentence of imprisonment for life. (Duke University, May 1993). On a national basis, these figures translate to an extra cost of half a billion dollars since 1976 for having the death penalty.
- The death penalty costs California \$90 million annually beyond the ordinary costs of the justice system-\$78 million of that total is incurred at the trial level. (Sacramento Bee, March 28, 1988).
- Florida spent an estimated \$57 million on the death penalty from 1973 to 1988 to achieve 18 executions - that is an average of \$3.2 million per execution. (Miami Herald, July 10, 1988).
- In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (Dallas Morning News, March 8, 1992).

INNOCENCE AND THE DEATH PENALTY

- Since 1970, 48 people have been released from death row with evidence of their innocence. (Staff Report, House Judiciary Subcommittee on Civil & Constitutional Rights, Oct. 1993).
- Researchers Radelet & Bedau found 23 cases since 1900 where innocent people have been executed. (*In Spite of Innocence*, Northeastern Univ. Press, 1992).

PUBLIC OPINION AND THE DEATH PENALTY - APRIL 1993

- Public support for the death penalty drops to below 50% when voters are offered alternative sentences. More people would support life without parole plus restitution to the victim's family than would choose the death penalty.
- Problems with the death penalty raise significant doubts in people's minds. 58% of those surveyed were concerned about the danger of executing innocent people. 48% had doubts due to racism in the application of the death penalty, 46% have doubts about the high costs, and 42% have doubts related to the failure of deterrence.

SOURCES:

NAACP Legal Defense and Educational Fund, Inc.  
 U.S. Department of Justice, Bureau of Justice Statistics, "Capital Punishment 1991"  
 Professor Victor L. Streib, Cleveland-Marshall College of Law, Cleveland State University  
 Greenberg/Lake and Tarrance Group National Poll (April 1993)

*The Death Penalty Information Center has available more extensive reports on the costs of the death penalty, on public opinion and alternative sentences, and on the danger of executing the innocent.*



Testimony - January 26, 1994  
Federal and State Affairs  
HB 2578 Opponent

by THOMAS C. WATHEN  
Retired Officer  
Kansas Department of Corrections

WASTED EFFORTS:

I will begin with a quotation from Lewis Lawes, the warden at Sing Sing prison for twenty two years. He supervised many executions. He had this to say about the death penalty: "It is the last resort of human barbarism."

I am a retired Officer from the Kansas Department of Corrections. In eighteen years of such employment I had occasion to know and deal with at least two men who had been condemned to be hanged but were saved by the U.S. Supreme Court's imposed moratorium. I don't know what I expected but I did not find them to be any sort of monsters. They seemed like ordinary people and gave me no problems.

Capital punishment was still in effect in Kansas at the beginning of my employment. Four men were put to death by the state during that time. I found that their names and fate had been forgotten by the other inmates by the time of my retirement in late 1980. Only a few of the "old lifers" knew who they were. If memory inside the prison is so short, I think it is safe to say that people outside will do no better. So much for deterrence by example!

As you no doubt know, it takes fifteen years for a first degree murderer to apply for parole. They get no "good time" but must do that time day for day. I have personally known a few of these parolees and have not known a single one to repeat his crimes after being paroled. I might add that I have also known some who were denied parole even after fifteen years. I believe it is also true that no one has committed another murder after serving fifteen years in Kansas Correctional institutions which does considerable damage to the argument that they will get out and do it again.

I have often heard it said that the death penalty should be used for those who are convicted of a murder while incarcerated. These people must be tried and convicted. My reaction to this idea must be a question - "Where are you going to find an honest witness?" It is highly unlikely that the murder will take place in front of an officer.

According to Mr. Robert Keiser who was Director of Penal Institutions in 1963, there have been less than 50 executions in Kansas since the practice was resumed in 1935. Thirteen of these were military, six were under Federal law and the remainder were under Kansas statutes. None of these can be shown to have had any effect on the crime rate.

In conclusion I would like to remind you that the United States and South Africa are the only two Christian countries that continue this practice.

F & SA  
1-26-94

Atch # 14



Our Faith Compels Us  
To Speak Against the Death Penalty

We speak as leaders of faith communities in Kansas, informed by our understanding of God's word in scripture and by our diverse religious traditions.

We speak out against the death penalty because we believe first, it is contrarary to God's will; second, it diminishes rather than enhances the value of human life and the social order; third, it would require the investment of great resourses in pursuit of death, resources that ought better be invested in life; and fourth, it has not been demonstrated to be an effective means of promoting justice or of deterring crime.

WE BELIEVE that life is valued most and best when understood as God's gift, God's creation. God alone, as the Author of life, has the authority over life and death. Therefore, the State has no more right than the murderer to claim that power over life and death. The death penalty is contrary to God's will.

WE BELIEVE our faiths teach us how human life and community can best be valued and sustained. The principle of retaliation ("an eye for an eye") in the Hebrew scriptures was not given as a requirement of but rather a limitation on vengeance. Hebrew scripture teaches us that reconciliation, not retaliation, is God's highest intent, and therefore it should be ours also. The New Testament urges us to love those who would harm us, to pray for those who would persecute us, and to overcome evil with good. It teaches us that redemption is God's possibility for all human beings. These beliefs best sustain the value of human life as well as a just social order. Capital punishment is incompatable both with the Torah's teachings of God's intended justice as well as New Testament teachings of love, reconciliation and redemption.

WE WOULD SUPPORT efforts to direct public anger and fear about crime toward its root causes and prevention. Capital punishment cannot deliver the security people seek, nor the justice our society needs. While it may assuage public anger, it does so at the cost of great resources that could more effectively enhance security if invested in crime prevention. The end result of capital punishment is merely another death.

WE WOULD SUPPORT longer sentences rather than capital punishment to secure the public against incorrigible and dangerous persons. The death sentence cannot be an effective instrument of justice. It has been imposed disproportionately on minorities; there are cases of persons executed who later were discovered to have been innocent; and, in states having imposed the death penalty, it has not proven to have deterred crime. Furthermore, it has proven to be far more costly than incarceration for life. Capital punishment does not serve the people because it promotes neither security nor justice.

*Rev. Ron Estlinger*

F+SA  
1-26-94  
Atch #15

Albert Frederick "Fritz" Mutti  
Bishop, Kansas Area  
United Methodist Church

John F. Ashby  
Bishop of the Episcopal Diocese  
of Western Kansas

David W. Kent  
Canon to the Ordinary  
Diocese of Kansas (Episcopal)

John N. Langfitt  
Executive Presbyter, Heartland Presbytery  
The Presbyterian Church (U.S.A.)

Marvin Zehr  
Conference Minister  
Western District  
General Conference Mennonite Church

John H. Krueger  
Kansas-Oklahoma Conference Minister  
United Church of Christ

William E. Smalley  
Bishop  
Diocese of Kansas (Episcopal)

David M. Murray  
Administrator  
Diocese of Kansas (Episcopal)

David C. Downing  
Regional Minister, Christian Church  
Disciples of Christ of Greater Kansas City

**REMARKS TO THE HOUSE STATE AND FEDERAL AFFAIRS COMMITTEE**

January 26, 1994

Dear Representatives:

Thanks for the opportunity to appear and express my views on certain aspects of the subject involving death penalty legislation pending before you. I do not propose in my remarks to address the moral or ethical issues involved in such legislation. I do not propose to address issues relating to cause and effect or consequences on criminal activity relating to the death penalty. My comments are solely directed at the issue of whether or not enacting the death penalty is the wisest use of the money resources the State has available, and the consequences that may affect each one of us if concerns about adequate funding or implementation of a death penalty bill are not realized and met. I am informed that others will address the issue of the cost of such legislation in terms of dollars for prosecution and defense functions. I think those consequences will be terribly significant, and terribly expensive. Estimates range in the various studies that I have seen of between \$500,000 and \$1,500,000 for each death penalty prosecution. If the potential costs in terms of dollars and cents for the prosecution and defense are added up, it is a potentially tremendous outlay of funds. Quite frankly, if the funds are not allocated or a commitment to allocate the funds is not made at the outset, the legislation does not accomplish any of its desired objectives.

F & S A  
1-26-94  
Atch #16



I want to take a few moments of your time to talk about an often overlooked effect of legislation of this sort, the impact on our justice system. And, I do not mean impact just on the criminal justice system, I mean impact on the justice system, that system that affects each one of us sooner or later in our lives. That system that involves civil litigation, probate litigation, litigation concerning children and protecting their rights as well as traditional criminal litigation.

Let me introduce myself. I am a private attorney. I practice in Lawrence, Kansas, in a small law firm of four attorneys. I have been practicing in Lawrence and Douglas County for about 22 years. Our business is probably what you would expect of a small town, small law firm. A very general practice. Included in that practice is representation of clients in criminal cases. We have three attorneys in our office who are and have been members of the assigned counsel panel for the defense of indigent felony defendants, and two attorneys on the same type of panel for misdemeanor defendants. I have tried murder cases. I have tried murder cases that probably would have been capital cases had there been such a law in effect at the time they were tried.

I was an Assistant Attorney General for Attorney Generals Londerholm, Frizell and Miller, two Republicans and one Democrat, for about 4-1/2 years. During that time, I was chief of the litigation division of the Attorney General's office for four years, and at the same time, chief of the criminal division

for about 3/4 year. Included in my responsibilities were presenting the interests of the State of Kansas in any case in which an inmate of a State of Kansas correctional facility was trying to claim that he had been convicted in violation of the Constitution of the United States. Included in my responsibilities were representing the State of Kansas at the trial court level in direct prosecutions and/or attacks on the validity of sentences. I handled those cases in state district courts, the state Supreme Court, federal District Court, 10th Circuit Court of Appeals, and the Supreme Court of the United States. During the time that I was in that office, I participated in developing the response of the state court system to the onset of federal habeas cases and collateral attacks on convictions following a number of United States Supreme Court decisions applying the federal constitution to state court cases.

After I started in private practice, I became involved in work with the judicial branch of government as examiner for the Commission on Judicial Qualifications. That is the agency of the Supreme Court which processes complaints against judges. I have been engaged in that capacity for 19 years. As a result of that, I believe have become acquainted with about every aspect of the judicial system in the State of Kansas. I want you to know that the opinions I express here today are mine and mine alone, and made as an individual citizen of the State of Kansas, and only in that respect.

I believe that in the past 20 years, the quality of the judicial branch of government in the State of Kansas has improved tremendously. I believe, based on my experience listening to reports of the judicial systems of some of our sister states, that ours must rank near the top in quality. For the dollars that we spend on our judicial system, we get more than most. I believe that by virtue of my experience, I know the stresses and strains that have been placed upon our judicial system in the last few years, and I believe that there will be additional, and perhaps very serious, even catastrophic stresses put on the system unless the impact of legislation like the death penalty on the judicial system is seriously considered and adjustments made.

Let me start off with a few statistics concerning the judicial system. When I speak of the judicial system, I speak of all the business that our courts handle, not just criminal cases. All of us are likely to have some business in the court system at one time or another. That system involves processing criminal cases, civil cases, limited civil cases, small claims cases, traffic cases, probate cases, adoption cases, juvenile cases, child in need of care cases, and even more categories.

1. Total criminal/civil filings statewide increased 10% between fiscal year 1990 and fiscal year 1993, the fiscal year which ended June 30, 1993.

2. The total number of felony prosecutions increased 9% between the fiscal year 1990 and fiscal year 1993.

3. The total amount of money available in the judicial branch budget for fiscal year 1990 to fiscal year 1992 was -1%. If we add fiscal year 1993, the total available in the judicial budget from fiscal year 1990 to fiscal year 1993 was increased 4%. I am told the Governor's proposed budget calls for an across-the-board cut of 4%.

4. In 1990, we had 218 trial judges. In 1993, we had 218 trial judges.

5. In 1990, we had 70 magistrate judges and 148 district court judges. In 1993, we had 69 magistrate judges and 149 district court judges. The last time there was an increase in the number of district court judges was fiscal year 1988. Obviously, judges are a lot busier.

6. In Douglas County, my home county, we had an increase of 29% in new filings in fiscal year 1989 to fiscal year 1993, and no new judicial resources. We had lawyers serving without pay (none is available) in small claims and state traffic cases.

7. 2 of the 31 judicial districts in the State have law clerk positions available on a half-time basis at the trial judge level. Not every trial judge in the State of Kansas has a secretary or administrative assistant position. Not every judicial district has a complete law library. Not every judge who is required to make transcripts of proceedings has his or her own court reporter. Not all trial judges have their own courtrooms or offices.

Work on the appellate level faces the same kind of problems in terms of workload.

1. In 1975, it was necessary to create a Court of Appeals. In 1987, the number of judges on the Court of Appeals had to be increased. The number of appellate judges, 10 for the Court of Appeals and 7 for the Supreme Court, has remained constant since 1987.

2. Appeal case filings between fiscal year 1990 and fiscal year 1993 increased 12%.

These figures all demonstrate the workload of the judicial branch of government is regularly increasing. Some of the increases have been dramatic; others steady. The one constant, however, is that the business of the court system continues to increase but the resources available to handle the workload do not increase correspondingly.

There are additional hidden factors that have to be considered on the subject of workload. In the last few years, the responsibility and time it takes a judge to adjudicate one proceeding has increased tremendously. Last fall, I was shocked to discover that there had not been an impact study of the effect of sentencing guidelines on the time expenditures of the trial courts, or for that matter, for the appellate courts. The attorneys with whom I have spoken, as well as the experience of the first seven months of sentencing guidelines would suggest to me that we will have a tremendous impact for at least two years or so and then we will continue to have an impact, but it will not be as great. From the experience we have had

locally, I would say that in our district, we have approximately 50 new cases, although they are not tabulated as new cases, concerning sentencing guideline issues that do not even involve utilizing the guidelines in a sentencing case if the crime was committed after July 1, 1993. In other words, we are talking about retroactivity questions adjusting sentences of current inmates. When we get to significant application of the guidelines themselves in criminal cases, we have had a new adjudicative portion of a proceeding introduced. Now, it is quite conceivable and many times likely that there will be an evidentiary hearing on the criminal history of the defendant. There is significant impact that I believe will be felt is that there simply will be more criminal jury trials because of sentencing guidelines. Figures available suggest maybe a 20% increase in jury trials. Every time there is a jury trial in a normal criminal case, a judge has less time available to handle other judicial duties. Every year, the legislature seems to create new things for our trial judges to do. That is not going to stop this year with or without the death penalty.

What impact is a death penalty going to have on the court system? I am not now talking about the tremendous expense for defense and prosecution to be involved in such cases. Now I am simply talking about the time that it is going to take the court system to handle such cases that a judge or the system will have to take away from performing other duties. And let me explain to you how the system must work. Criminal cases, because of speedy trial rights of both the federal and

state constitution, get priority in being considered. There are time limits within which such cases must be tried.

Next after the most serious cases come the remainder of criminal cases. Subsequent to that, courts take up other business that they have including all the civil action, domestic actions, probate actions, juvenile actions, and others. By the nature of things, therefore, if the system gets bogged down with the first group of cases, serious criminal cases, it is not the criminal prosecutions that suffer the most, it is everything else that happens in court. Those are the things that affect all of us.

Let me tell you some things that we know from experience over the country about capital cases. First, they are extremely complex. Different things are involved in capital cases, especially the penalty phase, than are found in other criminal cases, so we have a whole new body of law. In many of the cases, we find federal courts, including United States Supreme Court, deciding those cases 5 to 4 and 6 to 3. That means even the justices who spend a lot of time working on these issues are not positive about the answers. As Professor Gottlieb observed in his article in Volume 37, Number 3 of the University of Kansas Law Review:

"In a long and complex series of cases, the Court has struck down death sentences when instructions on aggravating circumstances have been too vague, when instructions on mitigating circumstances have not properly been given, when arguments have minimized the jury's responsibilities in fixing the death penalty and when excessive



attention has been focused upon the status of the victim. All of these requirements, unknown to criminal litigation outside of the death penalty, are designed to assure that the selection of the small class of first degree murderers that actually receive capital punishment is made in an accurate manner. This heightened scrutiny is justified as the Court has noted on many occasions because as a punishment, death is 'different'. Gottlieb, *"The Death Penalty In the Legislature: Some Thoughts About Money, Myth and Morality"*, 37 Kan. L. Rev. 443, 447.

Again, in describing the attitude of the Court toward these cases:

"From the point of view of the defendant it [death as a form of punishment] is different in both its severity and its finality. From the point of view of society, the action of the sovereign of taking the life of one of its citizens also differs dramatically from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death penalty be, and appear to be, based on reason rather than caprice or emotion." *Gardner v. Florida*, 430 U.S. 349, 357 (1977).

Suffice it to say that the law issues, as well as the factual issues, in capital cases are extremely complicated. That means not only are the attorneys busy, but the courts are extremely busy.

Capital cases affect the attitude of the attorneys who are handling them. Again, from Professor Gottlieb:

"In addition to changing the jurisprudence of a criminal trial, the possibility of a death penalty also has a profound

"impact on the conduct of attorneys. As Justice Marshall stated more than a decade ago 'Defense counsel will reasonably exhaust every possible means to save his client from the execution . . .'. Lawyers help zealously to represent their clients in every case. The recognition that a case literally involves life and death, however, produces extraordinary effort." Gottlieb, *"The Death Penalty In the Legislature: Some Thoughts About Money, Myth and Morality"*, 37 Kan. L. Rev. 443, 447.

In a study prepared by the New York Defenders Association for the New York State Senate entitled *"Capital Losses; the Price of the Death Penalty for New York State"*, the authors observed:

"Pre-trial motions play an important role in most criminal cases. However, the death penalty trial is strikingly different than other felony trials because of the length of the procedural stage and its overall importance to the ultimate objective - preventing the imposition of the sanction of death. Extensive pre-trial motions play, therefore, a crucial role in every death penalty case . . . The usual number of pre-trial motions in non-capital cases vary between five and seven. In death penalty cases, every motion will be critical requiring substantially more time to prepare. Experienced attorneys state that the typical capital case requires the filing of between 10 and 25 trial motions. Many pre-trial motions will relate solely to the unique aspects of the defendant's underlying criminal case. Others will be specifically a function of there being a death penalty statute in existence." p. 12.

The 1986 Report to the Kansas Board of Indigent Defense Services by the Kansas Death Study Committee makes the same observation. Report of June 3, 1986, p. 3.

Recent information available in a study of the capital system in North Carolina and from other sources indicates that we can reasonably expect the length of a capital trial to be four times that of the next most serious criminal trial, solely because the death penalty is involved. I tried a first degree murder case in 1989 which probably would have been charged as a capital offense if that were possible. The trial itself lasted two weeks. Compared to a death case, it was relatively simple. Using those projections, that means a two month trial.

I do not tell you all of these things about the trial of a capital case because I want you to think it is hard work. I want to convince you by this discussion to agree with my conclusion that a capital trial is a tremendously significant use of court time in our judicial system. I want you to think that there is some validity in the conclusion that I urge that for every capital case that is tried, a minimum of six months to a maximum of nine months or perhaps more of the time of one judge is going to be taken and utilized almost exclusively for that case. That means that for every capital case, a judge is taken out of the regular service of his judicial duties for a time period that probably is at least six months. Now, that does not necessarily mean he or she cannot do anything else, but it does mean that anything lengthy cannot be done; that nothing can be scheduled on a regular basis; that evidentiary hearings in any kind of case probably can be heard. Remember, I am just talking about the trial stage.

16-11

While we can add up the dollars and cents in cost of defense and prosecution, and that figure is a relatively astronomical figure, you and I can look at that figure and say, well that is dollars we will have to spend to arrive at an end, and while we do not like spending the money, we may conclude that it is a justified expense, and go on about our business. The impact of the cost does not affect each one of us separately, except as we pay taxes. Personally, I think that is a pretty big consequence. However, when we start tying up court time in protracted litigation like the death penalty cases, a by-product is a result that affects every one of us directly if we have any business that has to go before the court. If we have automobile accidents, medical malpractice cases, traffic cases, if we are robbed, if our house is burgled, if we or our children have divorces, if we have child custody problems, if we have all of those other problems that the court systems must address every day of every year. In those cases, because we may not have a judge available, each one of us is affected. I believe if that happens then the concept of justice for everyone is severely impacted.

I know what would happen in Douglas County in such a situation. We have three judges who regularly try criminal cases. They set criminal cases every single week of the year except when they are allowed a vacation. Today, because they are so busy and because their dockets are so full, if you want to put on evidence in a child support case, you may have to wait as long as two months. Today, if you want to have any kind

of an evidentiary hearing on any kind of issue, you are probably looking at a two-month delay between the time you make the request and the time it is heard. That is extraordinary for us. Take one of those three judges out of service for six months for all practical purposes and see what happens to your sytem then.

Believe it or not, those of you who live in western Kansas, if you have a capital case will be conceivably impacted the most. There are 31 judicial districts in the state. In 9 of them, mostly in western Kansas, one or two district judges serve a multi-county district. In the following counties, two judges serve multi-country districts: 2nd District (Jackson, Jefferson, Pottawatomie, Wakarusa); 15th District (Cheyenne, Logan, Rawlins, Sheridan, Sherman, Thomas, and Wallace); 16th District (Clark, Comanche, Ford, Gray, Kiowa, Meade); 22nd District (Brown, Doniphan, Marshall, Nemaha); 23rd District (Ellis, Gove, Rooks, and Trego); 24th District (Edwards, Hodgeman, Lane, Ness, Pawnee and Rush); 26th District (Grant, Haskell, Morton, Seward, Stanton, Stevens). In two districts, one district judge serves a multi-county district. 12th District (Cloud, Jewell, Lincoln, Mitchell, Republic and Washington); 17th District (Decatur, Graham, Norton, Osborne, Phillips and Smith). What happens to your system if one of those judges is taken out of action for six months or more. Are there resources available to cover his or her regular docket? Probably not. We have not found a whole lot of relief available in Douglas County. Most of the judges are extremely busy.

16-13

The impact of these cases on the judicial systems in other states has been noted. A series of articles in the Miami Herald over the years have suggested problems in the State of Florida created by capital cases. An article in the Sacramento newspaper September 5, 1993, states:

"There is another cost. Death penalty cases now consume 50% of the state Supreme Court's time. As a result, there is an enormous number of unresolved legal issues affecting civil law that the court no longer has time to decide. So, in addition to wasting a billion dollars, the death penalty also prevents the courts from deciding civil disputes in which more billions of dollars are at stake."

My message to you is simple. Our judicial system is today straining to be able to effectively and efficiently take care of its business. Business that you and your co-legislators seem to increase every single time you meet. In the last two years, you have made one extremely time-consuming addition to the work of the courts and that was with sentencing guidelines. Capital punishment is another, even more significant, factor affecting the way the system runs. Before you seriously consider adopting a proposal that will have the impact that this proposal will have, please thoroughly study the effects that you are going to reek with such legislation. I do not say this because I am concerned about the individual defendants who may be affected by the legislation, but because as a citizen of this state and as a person who represents clients who have rights that they wish to pursue in our court system,



I am concerned that all of us will be able to continue to have our day in court.

In the event anyone wants to ask me what we should do to attack the crime problem, I am not sure I have a good answer. I can tell you from my experience, I have observed two things. One, more of our citizens every year do not believe that there are any consequences from violating the law. Two, every year more of our citizens believe they have no future regardless of what they do. Why does it make any difference if they break the law, even if they are killed so doing. As a lawyer, the only one of those I can speak to is the first. If we had more resources that we can devote towards the administration of justice, then I say by golly, devote it now. Give the courts, the prosecutors, and the defense lawyers the resources they need to make the system work better and quicker because only if the system works as efficiently as possible so that there is speedy justice for the defendant, the victim, and the public, will the message get out that there are consequences for violating the law. I do not think there is anything else that is going to work concerning the first of those two problems. That is what I would urge you to consider. Thanks.

Edward G. Collister, Jr.  
Attorney at Law  
3311 Clinton Parkway Court  
Lawrence, Kansas 66047  
(913) 842-3126



**In Opposition To Legislation Reinstating The Death Penalty In Kansas  
(Including HB2578)  
Statement By Kurt Thurmaier, 1611 Learnard Avenue, Lawrence, Kansas  
January 26, 1994**

**To: Members Of The House Committee On Federal And State Affairs**

Ladies And Gentlemen:

I ask you today to preserve Kansas as one of the few islands of sanity and righteousness in a nation plagued by violence. Kansas is one of the few states in this violence plagued land that doesn't kill people who commit crimes. It is one of the few states left which doesn't raise murder to the level of a state activity.

I want you to lock murderers and rapists in prisons with no chance for parole. I don't want them near me, near my wife, near my two little girls, or near my neighbors. I don't want them to have the chance to kill or rape again.

And neither do I want their blood on my hands or yours.

I stand before you today a simple, humble man, a husband, a father, a son, a neighbor. If I were killed tomorrow by a criminal act, I would not want anyone who loved me to take vengeance for my death through the state killing my killer. I will be with God.

But I tremble at the thought that the State of Kansas might execute an innocent person to avenge my death. The person, probably poor, probably black or latino, who was at the wrong place at the wrong time, will leave behind a grieving mother, or father, or sister or brother, or son or daughter. We know innocent people have been executed under the death penalty in other states. And I have been proud of Kansas for being one of the states where that could not happen.

I try to live by two principles at all times. The first principle I put to you as a simple but powerful question that I hope will guide your actions on this issue.

**If you were on trial for being a Christian, would there be enough evidence to convict you?**

I pray that I would be found guilty beyond any doubt. And that is due in part to a second principle:

**Let go, and let God.**

Let God judge the criminals--just as each of us will be judged. Vengeance is for the Lord, not for us. There are too many flaws in *our* justice system.

I leave you with one final thought. It is another haunting question.

**Why do we kill people to show people that killing people is wrong?**

The death penalty is not about deterring other people from these crimes. It is about revenge for people who suffer horrible losses. You have heard the emotional testimonies of people who have lost people they love. My heart aches for each of them.

But your duty is to lock the killers in prison for life. Throw away the keys! But don't throw away their lives. Leave their lives to God's judgment.

Amen.

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TESTIMONY BEFORE THE KANSAS HOUSE  
FEDERAL AND STATE AFFAIRS COMMITTEE  
January 26, 1994

HB No. 2578

DEATH PENALTY

by

E. Jay Greeno  
Chief Public Defender for Sedgwick Co., Kansas  
604 N. Main, Suite D  
Wichita, Kansas 67203  
(316) 264-8700

I appear before this committee at the request of and in my capacity as the Vice President of the Kansas Association of Criminal Defense Lawyers. I have practiced criminal defense law in Kansas for more than ten years, most of them spent representing the indigent accused, as a public defender. I have practice primarily in Shawnee and Sedgwick Counties, although I have consulted with and advised attorneys throughout the state. I am here to give you a perspective from "the trenches."

As an attorney, citizen of Kansas, father and a human being who has been as involved in the criminal justice system as you can get, I can say, unequivocally, that if you make a "death penalty" law in Kansas, you will kill innocent people.

Certainly, any process which involves the human factor can never be flawless. I have seen it, you have seen it, we all know it exists. Even with "super due process" mistakes will be made, innocent people will be convicted, condemned, this State will have perpetrated the same conduct that it seeks to punish.

I know this committee has been inundated with statistics, written materials, and testimony from many, many viewpoints. Any further reports or statistical analysis I might provide would certainly be redundant. However, I can tell you, I have seen judges who make mistakes, witnesses who perjure themselves, prosecutors that have violated the law, appellate courts that are just plain wrong, defense attorneys who are sadly inadequate, and politics that have infiltrated and influenced a system designed to protect us from these very flaws.

No matter how hard you work, how much money you spend, how very, very carefully you craft the laws, you cannot legislate a perfect system. I know. I have shed the tears, lost the sleep, suffered the agony, and tried to comfort those who have been dealt

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with unjustly by this system. Certainly, I am not saying that we should just scrap the present criminal justice system and start over. However, until there is a death penalty, there is still an opportunity to correct the mistakes we will inevitably make. Execution will make our mistakes a moot point.

The question is not whether Kansas can afford a death penalty -- of course it can. Money can be taken from schools, police agencies, health care, substance abuse programs, and other social programs. I am deeply saddened when I read the newspaper and I see proponents of the death penalty in the legislature who say that the estimated costs of implementing such a punishment are highly inflated. This is precisely the attitude which has lead the Board of Indigents' Defense into the red over and over again. Though I am encouraged by programs like neighborhood policing and U.S. Attorney General Janet Reno's position on substance abuse and crime, I cannot help but feel that the death penalty has become a political issue and not a criminal justice issue.

Please do not let this most final of all punishments attempt to serve as satisfaction for the "blood lust" which has resulted from this state's crime problem. Is the sacrifice of one human life worth it?

"No matter how careful courts are, the possibility of perjured testimony, mistaken honest testimony, and human error remain all too real. We have no way of judging how many innocent persons have been executed, but we can be certain that there were some."  
Furman v. Georgia, 408 U.S. 238, 367-68 (1972) (Marshall, J., concurring).

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE  
TESTIMONY IN OPPOSITION TO THE DEATH PENALTY  
Offered by Thomas S. White, LMSW, Ph.D.  
January 26, 1994

Kansans are outraged by the many heinous crimes which have been committed in our state during the past year and beyond. We are all asking how public safety can be improved, and how those convicted of serious crimes against persons should be punished and managed. Many are calling for the death penalty for first degree murder and other crimes.

The evidence is that the death penalty probably does not offer increased protection: In 1992 Kansas had a homicide rate of 6.0 per 100,000, while Missouri, Arkansas, and Texas (which collectively execute persons with astonishing frequency) had homicide rates ranging from 10.5 to 12.7 per 100,000.

Executions are not only unnecessary for public protection, but are essentially terroristic acts: Once a murderer has been sentenced to an appropriate prison term he or she is subject to degrees of security from which escape is virtually impossible. Execution of the murderer generally does nothing to give substantial relief and comfort to the victim's family. On the other hand, The execution of an offender in its effects upon members of the condemned's family amounts to the intended consequence of calculated cruelty: The execution of prisoners constitutes not only unwarranted punishment of the offender, but effects terroristic retribution upon, and irreparable devastation of prisoners' innocent families. The grief, loss, and stigma of having a family member who has committed a heinous crime is in some ways comparable to the loss and grief in having a family member murdered. These are families who have already borne the almost unbearable, and surely, whatever their failings, if any, they do not deserve intentional retaliation. Justice does not demand, indeed should not permit such debasement, and we ask the Legislature to deliver the state and its people from complicity in executions and the devastation of families integral to them.

The death penalty and executions (some of them of innocent people) are clear statements by a state that terroristic acts, including murder, are allowed as the result of a situational ethic which says that if a person or other legal entity wants to kill someone and has the power to do so, doing so is O.K. "Violence breeds violence", and this maxim applies as much to state violence and its effect as to any other kind. The state must set an example that violence and killing are not acceptable responses to tragedy and loss, however grievous. An understandable part of human nature is to desire the death of someone who has murdered a member of one's family; but it is the nature and a fundamental purpose of civilized Western society and its legal system to administer justice with dispassion and restraint.

Would the death penalty make Kansas citizens safer, or

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less safe? The perception of the poor and minorities is generally that the death penalty is one more weapon of the white middle and upper classes against the growing underclass, whose members have rarely experienced and do not now enjoy equal protection under the law. It would appear that enactment of death penalty legislation would not increase the safety of the ordinary citizen, and that it might markedly increase violent crimes against law enforcement personnel, prosecutors, judges, and others. If the state resorts to terrorism, it may likely invite and can logically expect more of the same: Most particularly that directed toward authority figures, (and toward persons close to them) who would be the willing and visible instrumentalities of executions. Death by injection, the shameful and cowardly perversion of a bona fide medical procedure, (or any other means), may not be the shot in the arm our criminal justice system and our state needs and deserves.

Many gubernatorial and other candidates for public office are competing for passage to Topeka on the executioner's wagon. They and all concerned should consider that in-depth statistical and social/psychological studies need to be undertaken which will shed light on the effects and implications of capital punishment in the world and particularly in American society. The issue of capital punishment is a moral and scientific one: Its politicization is regrettable, unless political debate rests largely upon careful deliberation of scientifically grounded opinion. No system of law and social control which has intentionally institutionalized brutality and violence can reasonably expect other than brutish and violent behavior on the parts of individuals within and among groups subject to its control.

I do not know if I could live in a state which used its power and authority in part derived from my constituency, and my tax money, to infuse a human being, already rendered harmless by lawful restraint, with a lethal substance. If common sense and decency do not prevail in this issue, and if the Legislature insists upon the abject debasement of the criminal justice system and of our culture and society through enactment of the death penalty, it cannot expect other than righteous judgement, and the collective decline of civilization as it now flourishes within our beloved state.

Finally, I want to ask you to consider that the death penalty might greatly increase risks of bodily harm and death on the parts of law enforcement personnel called upon to apprehend and detain murder suspects. "Normal" people scarcely need the threat of the death penalty, or any other, to prevent them from murdering. It is a curious fact that it is by and large only normal people who are able to consistently make the "connection" between criminal acts and penalties: Normal people then attribute this same knowledge and self-discipline and control to people who are not normal.

Persons who commit premeditated murder almost without exception do not believe they are going to be apprehended and successfully prosecuted, so for them the existence of the death penalty is academic until after warrants have been issued for their arrests. Persons who commit murder in the course of other felonies are typically unreflective, impulse ridden people who give little thought to their ultimate apprehension until after the crime has been committed. It is then that they begin to think about penalties, and how to avoid them. I believe that both groups pose a greater threat to law enforcement officers in jurisdictions involving the death penalty, as one of these individuals may then perceive that he may be facing the death penalty, and is more prone to shoot officers in traffic checks, etc, and is also more likely to take and kill hostages or to go on shooting rampages of innocent people, with the episode concluding with the suspect's death in the shoot-out or by suicide, after other loss of innocent lives and maiming has already occurred.

I urge the legislature to carefully study these issues and to appoint a commission to research the literature and to conduct statistical and other studies to help assess the possibly increased danger to law enforcement personnel, and to the public, associated with the death penalty. I probably do not need to remind you that the Menninger Foundation has on its staff and available for consultation distinguished forensic psychiatrists, and the various schools and departments of KU and other Regent's institutions are more than able to assist with the research and analysis and interpretation of findings.

Consider, as well, that some "macho" killers value neither their victims' lives nor their own, and that for some of these people the death penalty as a "quick way out" may not have nearly the deterrent effect as would severe prison sentences quickly and surely imposed. I ask the legislature and the courts to use the "hard forty" when appropriate; to impose consecutive sentences for multiple crimes committed during heinous offenses; to make full use of a mandatory life sentence without the possibility of parole in certain circumstances, and to allow such judicial discretion as is necessary to assure public safety. Please remember that a cardinal principle of imposing penalties for criminal behavior is that the offender is sentenced to prison and serves time, including a life sentence, as punishment, not for punishment.

Thomas White  
P.O. Box 89  
El Dorado, KS 67042-0089  
Phone (316) 321-5458



Against the Death Penalty  
Dr. Delores Craig

I am a professor at Wichita State University, in the Department of Administration of Justice. As an academician I have conducted research in law enforcement and corrections for the past six years. Prior to that I held professional positions in law enforcement, and in corrections. My opposition to the death penalty is intellectual, philosophical, and emotional. It's that sort of issue.

My intellectual response to the death penalty is largely a consequence of the overwhelming weight of research findings. I would like to comment on research related to death penalty effects on homicide rates, other felony crime, prison violence, and economics.

An extensive body of research has established that the death penalty is not a deterrent to homicide. A book by Sellin, published in 1980, looked at the effect of the death penalty in Kansas, and many other states. The incontrovertible finding was that states which abolished the death penalty did not see a rise in homicide rate. In some cases, there was a lower rate of homicide when the death penalty was removed. More recently, a 1990 article by Decker and Kohfeld looked at the effect of the death penalty in the five states which use it the most. This study of a 50 year period showed that the use of the death penalty did not appreciably alter the homicide rate. And this is what would be expected, since most murders are crimes of passion,

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not likely to be altered by consequences of whatever magnitude.

The use of the death penalty might be expected to have an affect on crimes where homicide is a possible complication, such as armed robbery, or assault. A 1991 study by William Bailey analyzed possible effects of the death penalty on murder, negligent manslaughter, rape, assault, and robbery, as well as burglary, grand larceny, and vehicle theft. There was no relationship between the use of capital punishment and any of these felony rates.

One fear is that the person who would be assigned the death penalty, were it available, will prove a management problem in prison. They could be a menace to other inmates or staff. Again, the effect of capital punishment is negligible. There is no difference in rates of prison violence between states which use the death penalty and those which do not use it.

To put it plainly, the death penalty is a more or less irrelevant reality to the world of criminals. It does not appear to control the impulse to kill. Nor does it appear that those who would receive the death penalty are somehow a greater menace to other inmates or staff than are those who receive some other sanction, such as life in prison. Thus, we cannot encourage its use based on some effect on those who commit crimes.

Economically, the message is also clear. In states which use capital punishment, the costs are great. Florida's most recent review of costs shows that each execution has a tab of about \$3 million. The cost of life in prison runs about \$600 thousand. States such as California and New Jersey show even

higher costs per execution. These costs reflect the extensive appeals that go with capital punishment, and the elaborate trial process.

I said earlier that my opposition is intellectual, philosophical, and emotional. My philosophical opposition lies in the domain of equity. I cannot exact justice in the form of an eye for an eye unless I am able to say that the person who is to be executed had every opportunity to avoid the act which brought about such a sanction. Unless I can also say that such a sanction is applied equally to all members of the society which invokes such a sanction. We cannot claim the high moral ground that goes with either of these assertions. Our society has many members who are born to poverty, who do not receive an adequate education, and who have had no job prospects from the very beginning. Furthermore, their treatment in the criminal justice system is far from evenhanded. Throughout the United States, minorities consistently receive different treatment. They are more likely to go to prison, stay longer in prison, and are subject to greater supervision upon release. Until we address the questions of equality of opportunity and equality of apprehension and sanction, we cannot righteously take the life of one of our own.

Finally, I have said this is an emotional issue for me, just as I know it is for others. Taking a life is not something anyone can do lightly. I am convinced that those who serve on staff in death units suffer. Criminals are human beings too. They laugh and cry and form friendships. Correctional officers

come to know those they keep. A person who kills has more in common with the rest of us than you might think. I know that I do not have the right to take the life of another, even if they have taken another person's life. Nor do I believe that society has such a right. Violence begets violence. Let's find a better way.

## PASTORAL STATEMENT ON THE DEATH PENALTY

### KANSAS CATHOLIC CONFERENCE

Once again the people of Kansas are debating the "Death Penalty". Once again the reasons for and against this ultimate measure will be argued by our legislators and commented on by the media.

People want less crime -- and they are right. Many people believe that the "Death Penalty" will result in less violent crime. That is yet to be proven. The experience of other states proves this not to be true. Our neighboring States of Missouri, Oklahoma, Colorado have all exceeded our Kansas murder record since they reinstituted the "Death Penalty".

There will be arguments about the relative cost of court cases and executions versus the cost of imprisonment for life. Nationally, states spend more money on an execution than on imprisonment of a convicted felon.

There will be tragic stories of bereaved families versus the imprisonment of the murderer of their loved one. And, there will be stories of the tragic deaths of the innocent who have been falsely accused.

#### ANOTHER VIEW

For us, the citizens of Kansas, there is a much more important -- and more compelling question: Can the "Death Penalty" be reconciled with the teachings and example of Jesus Christ?

God sent His only Son to show His love for all persons. Jesus taught us how we are to live on this earth. It is through His words and example that we must view and judge the world in which we live. He teaches us that His Father's greatest gift to us is life and, next to life, is love, mercy and forgiveness. Indeed, the very fact that God gave His only Son to us, a sinful people, reveals convincingly the goodness and greatness of God's mercy and love (Rom. 5:1-11).

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Pastoral Statement  
Death Penalty

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

At the same time, we affirm strongly that the life of every person, and the breath of every person, regardless of the status or condition of that person, is in the hands of God.

We affirm that each person created in the image and likeness of God, is of inestimable dignity and shares in the "Death Penalty" of Jesus on Calvary.

We affirm that the divine and human law forbidding the taking of innocent human life is universally valid: it obliges each and everyone, always and everywhere.

We affirm that this suffering must not lead to vengeance, but to a firm resolve that help be given to the victims of crime and that justice be done fairly and swiftly.

We oppose the "Death Penalty" to follow the example of Jesus, who taught justice and lived the forgiveness of injustice.

We oppose the "Death Penalty". We wish to join Kansans in sending a message that we can break the cycle of violence ... that we need not take life for life.

We also oppose the "Death Penalty" because of difficulties in its use:

- \* The death penalty involves the possibility of innocent persons being executed.
- \* The death penalty in our society involves a long and costly process.
- \* The death penalty is often motivated by vengeance.
- \* The death penalty does not deter the direct taking of innocent human life!
- \* The death penalty denies the possibility for conversion, reconciliation, and reparation for the evil done.



Pastoral Statement  
Death Penalty

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We urge our brothers and sisters in Christ to remember the life and teachings of Jesus, who called us to be reconciled with those who have injured us (Mt. 5:43-45). In the Lord's prayer we pray: "... forgive us our sins as we forgive those who have sinned against us" (Mt. 6:12).

We call all Christians and all people of good will to meditate on the crucified Christ who set before us the supreme example of forgiveness and the triumph of compassionate love!

Signed: Kansas Catholic Conference

+Most Reverend James P. Keleher, S.T.D.  
Archdiocese of Kansas City in Kansas

+Most Reverend George K. Fitzsimons, D.D.  
Diocese of Salina

+Most Reverend Eugene J. Gerber, D.D.  
Diocese of Wichita

+Most Reverend Stanley G. Schlarman, D.D.  
Diocese of Dodge City

+Most Reverend Ignatius J. Strecker, S.T.D.  
Archdiocese of Kansas City in Kansas

+Most Reverend Marion F. Forst, D.D.  
Archdiocese of Kansas City in Kansas

January 1994

# LWVK

## LEAGUE OF WOMEN VOTERS OF KANSAS

January 26, 1994

Representative Clyde Graeber, Chair  
House Federal and State Affairs Committee  
State House, Topeka

Re: H.B. 2578

Chairman Graeber and Members of the Committee:

I am Elaine Mann, Lobby Corps Co-Coordinator for the League of Women Voters of Kansas. Although I am unable to be in Topeka today, I appreciate the opportunity to present this written statement to the Committee on behalf of the League of Women Voters in opposition to the death penalty provisions of H.B. 2578.

As you may know, the League of Women Voters is a non-partisan political organization of informed citizens who take positions on a variety of state and national public policy issues after extensive study and consensus. The Kansas League has opposed a death penalty in Kansas since it studied sentencing alternatives in the state in 1981 and 1982.

We oppose a death penalty for the following reasons:

1. It is not a deterrent to others.
2. A guilty person may be acquitted because juries may be less willing to return a guilty verdict if the sentence is death.
3. An innocent person may be wrongfully convicted.
4. It is too costly to the state in terms of legal fees and court time." (The League of Women Voters of Kansas, Study and Action 1993-5, p.8)

If the death penalty were a deterrent to would-be murderers, then one might expect Texas, the leader among U.S. states in executions and in the number of prisoners on death row, to have one of the lowest murder rates. In fact, it has one of the highest, ranking fourth. Moreover, of the twenty most murder-prone states, all but two have the death penalty. On the other hand, looking at the ten states with the lowest murder rates, six do not have the death penalty. Kansas has a lower homicide rate than Oklahoma, Arkansas, and Missouri, all states which have executed prisoners. (1992 homicide statistics from the Uniform Crime Report)

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# LWWK

## LEAGUE OF WOMEN VOTERS OF KANSAS

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H.B. 2578 will not deter crime in Kansas. In fact, if its implementation takes scarce resources away from other, more effective anti-crime measures, it may have just the opposite result. In Texas, for example, it has been estimated that a death penalty case costs about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. Yet other Texas prisoners are being released early to avoid overcrowding, and inmates serve only an average of one-fifth their sentences. Here in Kansas, we can ill afford to spend the additional monies required to prosecute a capital case when there are so many other pressing state and county needs and more cost effective approaches to protecting the public.

H.B. 2578 may result in innocent persons being condemned and executed. Since 1973 at least 48 people have been released from prison with significant evidence of their innocence after serving time on death row. In 43 of these cases, the defendant was subsequently acquitted, pardoned, or charges were dropped. (Innocence and the Death Penalty: Assessing the Danger of Mistaken Executions, Staff Report by the House Judiciary Committee's Subcommittee on Civil and Constitutional Rights, October 21, 1993, p.2.) Common sense tells us that the more we restrict the appeals and post-conviction process in an effort to reduce costs and delay, the more we increase the likelihood of mistake.

Passage of H.B. 2578 may result in guilty persons being acquitted because of a jury's reluctance to return a sentence of death. While it is true that under this bill a jury must find an aggravating circumstance not outweighed by a mitigating circumstance before a death sentence is imposed in the second penalty phase of the case, it is also true that this law may apply in the case of felony murders, where the defendant may not have pulled the trigger. The law will also potentially apply to children as young as sixteen. These factors alone might distort a juror's view of the evidence.

For these reasons, we believe that H.B. 2578 represents bad public policy for the state of Kansas and should not be enacted.

Thank you again for the opportunity to present this testimony, and please feel free to contact me at 913 648-5291 if you have any questions or comments.

Very truly yours,

*Elaine Mann*  
Elaine Mann



## MURDER VICTIMS FAMILIES FOR RECONCILIATION

1176 SW Warren Ave. • Topeka, KS 66604  
(913) 232-5958 • (913) 296-7705

Testimony to House Federal and State Affairs Committee  
RE: HB 2578  
January 26, 1994

Mr. Chairman and members of the Committee, I am sad that I am unable to address you in person today. This is the first legislative hearing I have not testified in person since 1978.

I share the pain of the survivors who testified yesterday. I have felt similar grief, anger and sorrow following the murder of my own father in 1972. Healing from such crimes takes time. I am still in that process, even 21 1/2 years later.

Today I am only present with you in spirit and written testimony as I am attending the memorial service of my wife's mother who died from cancer this past weekend.

How different it is celebrating a family member's life, without having to focus on a heinous act and the social deviant who committed it!!! How wonderful to have the opportunity to share meaningful memories of the human possibilities that we so admired, without being caught in the spider web of our own reactions to viciousness.

How tragic it is to be tortured by the 'whys' and 'what might have beens' rather than watching a parent die who lived a full and complete life!! How tragic it

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is to have a loved one suddenly and without warning brutally and senselessly taken--and knowing there was nothing that could be done, absolutely nothing to restore that precious life!!

The death penalty that's been proposed will not relieve that suffering and pain. I know this--not just from my personal experience of nearly 22 years ago when my father was murdered in cold blood. I know this also from the experiences of the many other Murder Victims Family Members throughout this land who have all experienced the murders of their family members. Legal vengeance, thinly disguised as 'retribution justice' only prolongs and creates greater suffering. Let me emphasize, healing will only occur from time, and the love and support of friends and relatives.

Very soon, you will be asked to push a green or red button in a symbolic sense, to either participate in an execution or to refuse. If, after everything you have heard in these two days, you are convinced beyond any doubt that executing murderers will stop the pain to our state, then by all means push the green button. But if you have any misgivings or doubt, keep this in mind: once the death row is built, there is no turning back. No state has reversed itself since re-enactments followed Furman v. Georgia. Once that line has been crossed, there is no turning back--no matter how narrowly defined the bill. It's magnitude will be increased.

The Governor won't stand in the way. The choice is absolutely yours. Please make the right one!

# **MILLIONS MISSPENT:**

## **What Politicians Don't Say About the High Costs of the Death Penalty**

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*"Whether you're for it or against  
it, I think the fact is that Oregon  
simply can't afford it."*

*—James Ellis,  
Chief Criminal Judge, Oregon*

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A Report by  
The Death Penalty Information Center  
Written by Richard C. Dieter, Executive Director  
1606 20th Street, NW  
Washington, DC 20009  
(202) 347-2531  
October 1992

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## Executive Summary

Across the country, police are being laid off, prisoners are being released early, the courts are clogged, and crime continues to rise. The economic recession has caused cutbacks in the backbone of the criminal justice system. In Florida, the budget crisis resulted in the early release of 3,000 prisoners. In Texas, prisoners are serving only 20% of their time and rearrests are common. Georgia is laying off 900 correctional personnel and New Jersey has had to dismiss 500 police officers. Yet these same states, and many others like them, are pouring millions of dollars into the death penalty with no resultant reduction in crime.

The exorbitant costs of capital punishment are actually making America less safe because badly needed financial and legal resources are being diverted from effective crime fighting strategies. Before the Los Angeles riots, for example, California had little money for innovations like community policing, but was managing to spend an extra \$90 million per year on capital punishment. Texas, with over 300 people on death row, is spending an estimated \$2.3 million per case, but its murder rate remains one of the highest in the country.

The death penalty is escaping the decisive cost-benefit analysis to which every other program is being put in times of austerity. Rather than being posed as a single, but costly, alternative in a spectrum of approaches to crime, the death penalty operates at the extremes of political rhetoric. Candidates use the death penalty as a facile solution to crime which allows them to distinguish themselves by

the toughness of their position rather than its effectiveness.

The death penalty is much more expensive than its closest alternative—life imprisonment with no parole. Capital trials are longer and more expensive at every step than other murder trials. Pre-trial motions, expert witness investigations, jury selection, and the necessity for two trials—one on guilt and one on sentencing—make capital cases extremely costly, even before the appeals process begins. Guilty pleas are almost unheard of when the punishment is death. In addition, many of these trials result in a life sentence rather than the death penalty, so the state pays the cost of life imprisonment on top of the expensive trial.

The high price of the death penalty is often most keenly felt in those counties responsible for both the prosecution and defense of capital defendants. A single trial can mean near bankruptcy, tax increases, and the laying off of vital personnel. Trials costing a small county \$100,000 from unbudgeted funds are common and some officials have even gone to jail in resisting payment.

Nevertheless, politicians from prosecutors to presidents choose symbol over substance in their support of the death penalty. Campaign rhetoric becomes legislative policy with no analysis of whether the expense will produce any good for the people. The death penalty, in short, has been given a free ride. The expansion of the death penalty in America is on a collision course with a shrinking budget for crime prevention. It is time for politicians and the public to give this costly punishment a hard look.

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## Introduction

Over two-thirds of the states and the federal government have installed an exorbitantly expensive system of capital punishment which has been a failure by any measure of effectiveness. Literally hundreds of millions of dollars have already been spent on a response to crime which is calculated to be carried out on a few people each year and which has done nothing to stem the rise in violent crime.

For years, candidates have been using the death penalty to portray themselves as tough on crime. But when politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime. The public is left with fewer resources and little discussion about proven crime prevention programs which could benefit their entire community. In today's depressed economy, the criminal justice system is breaking down for lack of funds while states pour more money into the black hole of capital punishment expense.

Local governments often bear the brunt of capital punishment costs and are particularly burdened. A single death penalty trial can exhaust a county's resources. Politicians singing the praises of the death penalty rarely address the question of whether a government's resources might be more effectively put to use in other methods of fighting crime. A million dollars spent pursuing the execution of one defendant

could provide far more effective long-term crime reduction: many additional police officers; speedier trials; or drug rehabilitation programs. Instead, in today's political atmosphere, politicians worry about appearing soft on crime, even if soft means espousing proven methods of crime reduction. Thus, there is little debate about whether the death penalty accomplishes any good at all.

Meanwhile, the death penalty is reaching a critical stage in America. No longer isolated in the South, the death penalty has become a national phenomenon. There are more people on death row than at any time in the nation's history. The list of states actually carrying out executions has grown to 20, with 4 new states added this year. The number of executions in 1992 is likely to be the largest in 30 years and the costs of pursuing the death penalty continue to mount. At the same time, the United States has parted company from the other democratic countries of the world which have largely abandoned capital punishment.

In the 1990 elections, politicians were particularly blatant in their promotion of the death penalty. It was advanced at all levels of the political process as an answer to crime and was used by liberals and conservatives alike. This year, the death

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***"When politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime."***

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penalty rhetoric, while not as blatant, continues the charade: vital crime fighting programs are being cut while the high-priced death penalty goes unchecked.

Like the emperor's cowering subjects who praised his invisible robes, many politicians extol the death penalty as if it were a solution to the problem of crime. It is a cynical manipulation of the public's legitimate fear of the growing tide of violence: a symbol without substance, a "solution" for politicians who know that no credible evidence exists linking the death penalty to a reduction of murder.

This report will focus first on the role the death penalty plays in the economic crisis facing states and local governments. As budgets everywhere are being tightened, the death penalty looms as an exorbitant and superfluous "luxury item." Some counties have been pushed to the brink of bankruptcy and have had to enact repeated tax increases to fund these extremely expensive cases. As money is spent on the death penalty, it is thereby less available for the very programs which are the backbone of the effort to reduce crime in this country.

Secondly, the report will illustrate how politicians have manipulated the death penalty issue and avoided debate on the real causes of crime. Their approach has been typically marked by a simplistic rhetoric of revenge which ignores the ineffectiveness and costs of capital punishment. This superficial treatment comes

precisely at a time when the economic crisis in criminal justice and crime prevention demands that the death penalty be given a harder look.

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## The Financial Costs of the Death Penalty

Death penalty cases are much more expensive than other criminal cases and cost more than imprisonment for life with no possibility of parole. In California, capital trials are six times more costly than other murder trials.<sup>1</sup> A study in Kansas indicated that a capital trial costs \$116,700 more than an ordinary murder trial.<sup>2</sup> Complex pre-trial motions, lengthy jury selections, and expenses for expert witnesses are all likely to add to the costs in death penalty cases. The irreversibility of the death sentence requires courts to follow heightened due process in the preparation and course of the trial. The separate sentencing phase of the trial can take even longer than the guilt or innocence phase of the trial. And defendants are much more likely to insist on a trial when they are facing a possible death sentence. After conviction, there are constitutionally mandated appeals which involve both prosecution and defense costs.

Most of these costs occur in every case for which capital punishment is sought, regardless of the outcome. Thus, the true cost of the death penalty includes all the added expenses of the "unsuccessful" trials in which the death penalty is sought but not achieved. Moreover, if a defendant is convicted but not given the death sentence, the

state will still incur the costs of life imprisonment, in addition to the increased trial expenses.

For the states which employ the death penalty, this luxury comes at a high price. In Texas, a death penalty case costs taxpayers an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.<sup>3</sup> In Florida, each execution is costing the state \$3.2 million.<sup>4</sup> In financially strapped California, one report estimated that the state could save \$90 million each year by abolishing capital punishment.<sup>5</sup> The New York Department of Correctional Services estimated that implementing the death penalty would cost the state about \$118 million annually.<sup>6</sup>

## The Recession and the Death Penalty

The effects of the present financial crisis on the criminal justice system vary widely, but the common thread has been cutbacks in critical areas. In a report released in August of this year, the American Bar Association found that "*the justice system in many parts of the United States is on the verge of collapse due to inadequate funding and unbalanced funding.*" The report went on to state that "the very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries."<sup>7</sup>

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***"The very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries."***

**-American Bar Association**

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***“Virtually every major program designed to address the underlying causes of violence and to support the poor, vulnerable, powerless victims of crime is being cut even further to the bone.... In this context, the proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility ....”***

***—Scott Harshbarger,  
Attorney General of  
Massachusetts***

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New Jersey, for example, laid off more than 500 police officers in 1991.<sup>8</sup> At the same time, it was implementing a death penalty which would cost an estimated \$16 million per year,<sup>9</sup> more than enough to hire the same number of officers at a salary of \$30,000 per year.

In Florida, a mid-year budget cut of \$45 million for the Department of Corrections forced the early release of 3,000 inmates.<sup>10</sup> Yet, by 1988 Florida had spent \$57.2 million to accomplish the execution of 18 people.<sup>11</sup> It costs six times more to execute a person in Florida than to incarcerate a prisoner for life with no parole.<sup>12</sup> In contrast, Professors Richard Moran and Joseph Ellis estimated that the money it would take to implement the death penalty in New York for just five years would be enough to fund 250 additional police officers and build prisons for 6,000 inmates.<sup>13</sup>

Ten other states also reported early release of prisoners because of overcrowding and underfunding.<sup>14</sup> In Texas, the early release of prisoners has meant that inmates are serving only 20 percent of their sentences and re-arrests are common.<sup>15</sup> On the other hand, Texas spent an estimated \$183.2 million in just six years on the death penalty.<sup>16</sup>

Illinois built new prisons but does not have the funds to open them.<sup>17</sup> It does, however, have the fourth largest death row in the country. Georgia's Department of Corrections lost over 900 positions<sup>18</sup> in the past year while

local counties have had to raise taxes to pay for death penalty trials.

Police officers on the beat, imprisonment of offenders, and a functioning criminal justice and correctional system form the heart of the nation's response to crime. Yet, in state after state, these programs are suffering drastic cuts while the death penalty absorbs time, money and political attention.

## **The Cost to Local Governments**

An increasingly significant consequence of the death penalty in the United States is the crushing financial burden it places on local governments. The current economic recession has made it clear that there is no unlimited source of government largesse. Counties, which bear the brunt of the costs of death penalty trials, are also the primary deliverers of local health and human services in the public sector.<sup>19</sup> Hard choices have to be made among the demands of providing essential services, creative crime reduction programs such as community policing, and the vigorous pursuit of a few death penalty cases.

As Scott Harshbarger, Attorney General of Massachusetts, put it: “Virtually every major program designed to address the underlying causes of violence and to support the poor, vulnerable, powerless victims of crime is being cut even further to the bone. . . . In this context, the



proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility and is, as a sheer matter of equity, morally irresponsible. If this is really the best we can do, then our public value system is bankrupt and we have truly lost our way."<sup>20</sup>

While state and national politicians promote the death penalty, the county government is typically responsible for the costs of prosecution and the costs of the criminal trial. In some cases, the county is also responsible for the costs of defending the indigent. Georgia, Alabama and Arkansas, for example, provide little or no funding for indigent defense from the state treasury.<sup>21</sup> In Lincoln County, Georgia, citizens have had to face repeated tax increases just to fund one capital case.

Even where the state provides some of the money for the counties to pursue the death penalty, the burden on the county can be crushing. California, for example, was spending \$10 million a year reimbursing counties for expert witnesses, investigators and other death-penalty defense costs, plus \$2 million more to help pay for the overall cost of murder trials in smaller counties. (Now, even that reimbursement is being cut.) But many financially strapped smaller counties still could not afford to prosecute the complicated death-penalty cases. Some small counties have only one prosecutor with little or no

experience in death-penalty cases, no investigators, and only a single Superior Court judge.<sup>22</sup>

In Sierra County, California authorities had to cut police services in 1988 to pick up the tab of pursuing death penalty prosecutions. The County's District Attorney, James Reichle, complained, "If we didn't have to pay \$500,000 a pop for Sacramento's murders, I'd have an investigator and the sheriff would have a couple of extra deputies and we could do some lasting good for Sierra County law enforcement. The sewage system at the courthouse is failing, a bridge collapsed, there's no county library, no county park, and we have volunteer fire and volunteer search and rescue." The county's auditor, Don Hemphill, said that if death penalty expenses kept piling up, the county would soon be broke.<sup>23</sup> Just recently, Mr. Hemphill indicated that another death penalty case would likely require the county to lay off 10 percent of its police and sheriff force.<sup>24</sup>

In Imperial County, California, the county supervisors refused to pay the bill for the defense of a man facing the death penalty because the case would bankrupt the county. The county budget officer spent three days in jail for refusing to pay the bill. A judge reviewing the case took away the county's right to seek the death penalty, thus costing the county the partial reimbursement which the state provided for capital cases. The County took the challenge all the way to the California Supreme Court and



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***"Even though I'm a firm believer in the death penalty, I also understand what the cost is. If you can be satisfied with putting a person in the penitentiary for the rest of his life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed."***

***—Norman Kinne,  
Dallas County  
District Attorney***

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ended up costing the County half a million dollars.<sup>25</sup> In the criminal trial, the defendant was acquitted.

A similar incident occurred recently in Lincoln County, Georgia. The county commissioners also refused to pay the defense costs when the attorney won a new trial for a death row inmate Johnny Lee Jones. As in California, the commissioners were sent to jail. Walker Norman, chair of the County Commission explained: "We're a rural county of 7,500 people with a small tax base. We had to raise taxes once already for this case when it was originally tried, and now we are going to have to raise taxes again. It's not fair."<sup>26</sup> The first trial alone cost the county \$125,000.<sup>27</sup> The second trial was completed in September and the defendant received a life sentence.

In Meriwether County, Georgia, a county of 21,000 residents and a \$4 million annual budget, the prosecutor sought the death penalty three times for Eddie Lee Spraggins, a mentally retarded man. The case cost the county \$84,000, not including the defense attorney's bill for appealing, and the third conviction was again overturned by the Georgia Supreme Court.<sup>28</sup> Spraggins was finally granted a plea and received a life sentence.

In Mississippi, Kemper and Lauderdale Counties recently conducted a border survey battle to avoid responsibility for a capital murder trial. Faced with a case that could cost the county

\$100,000, Kemper County wanted to show that the scene of the murder was outside their border and conducted two surveys of the site. County Supervisor Mike Luke explained, "As much as we were talking about the taxpayers of Kemper County having to pay out, we believed we needed to be sure." Luke said that the decision to seek the death penalty was not his—he only had to come up with the money. Lauderdale County, where the trial was originally scheduled, has now sent a bill to Kemper County for expenses incurred while holding the defendant in jail for 19 months. Kemper County is considering how much it will have to raise taxes just to pay the initial costs of the prosecution.<sup>29</sup>

In Yazoo City, Mississippi, the town is worried that it, too, might get stuck with an expensive death penalty case. "A capital murder trial is the worst financial nightmare any government body could envision," said the editor of the local paper.<sup>30</sup>

With more death row inmates and more executions than any other state, Texas is also experiencing the high costs of executions. Norman Kinne, Dallas County District Attorney, expressed his frustration at the expense:

"[E]ven though I'm a firm believer in the death penalty, I also understand what the cost is. If you can be satisfied with putting a person in the penitentiary for the rest of his

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life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed. . . . I think we could use (the money) better for additional penitentiary space, rehabilitation efforts, drug rehabilitation, education, (and) especially devote a lot of attention to juveniles.”<sup>31</sup>

Vincent Perini of the Texas Bar Association, calls the death penalty a “luxury”: “There’s some things that a modern American city and state have got to have. You have to have police and fire and public safety protection. You have to have a criminal justice system. You do not have to have a death penalty. The death penalty in criminal justice is kind of a luxury item. It’s an add-on; it’s an optional item when you buy your criminal justice vehicle.”<sup>32</sup>

Chief Criminal Judge, James Ellis, came to a similar conclusion in Oregon: “Whether you’re for it or against it, I think the fact is that Oregon simply can’t afford it.”<sup>33</sup> James Exum, Chief Justice of the North Carolina Supreme Court, agrees: “I think those of us involved in prosecuting these (death penalty) cases have this uneasy notion that . . . these cases are very time-consuming and very troublesome and take a lot of resources that might be better spent on other kinds of crimes. . . .”

Efforts are under way in both Congress and the Supreme Court to reduce the avenues of appeal available to death row inmates. But most of the costs

associated with the death penalty occur at the trial level.<sup>34</sup>

Whatever effect cutting back on the writ of habeas corpus may have on the time from trial to execution, it is not clear that the changes will make the death penalty any less expensive, and they may result in the execution of innocent people. With the number of people on death row growing each year, the overall costs of the death penalty are likely to increase.

Some state appeals courts are overwhelmed with death penalty cases. The California Supreme Court, for example, spends more than half its time reviewing death cases.<sup>35</sup> The Florida Supreme Court also spends about half its time on death penalty cases.<sup>36</sup> Many governors spend a significant percentage of their time reviewing clemency petitions and more will face this task as executions spread. As John Dixon, Chief Justice (Retired) of the Louisiana Supreme Court, said: “The people have a constitutional right to the death penalty and we’ll do our best to make it work rationally. But you can see what it’s doing. Capital punishment is destroying the system.”<sup>37</sup>

### Alternatives for Reducing Crime

New York does not have the death penalty. In the early 1980s, the N.Y. State Defenders Association conducted a study to estimate how much the death penalty would cost if it were to be implemented in New York. The estimates were that each case

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***"The death penalty, however, has no place in this reform effort. It is a simplistic, arbitrary, misguided, ineffective and costly response, cloaked in the guise of a remedy to the brutalizing violence that angers and frustrates us all."***

***—Scott Harshbarger,  
Attorney General of  
Massachusetts***

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would cost the state \$1.8 million, just for the trial and the first stages of appeal.<sup>38</sup> The majority of those costs would be borne by the local governments. New Yorkers have consistently re-elected a governor whom they know will veto any death penalty legislation which comes across his desk. Now it appears that New York may be reaping the benefit of that choice.

Significantly, no city in New York State, without the death penalty, is among the nation's top twenty-five cities in homicide rates according to statistics recently released by the FBI.<sup>39</sup> In particular, New York City bucked the national trend and experienced a decline in every major category of crime last year.<sup>40</sup> In the first four months of 1992, crime is again down across the board in New York, compared to the same period two years ago, with murders decreasing by over 11 percent.<sup>41</sup>

While direct causes for a decrease in crime are difficult to pinpoint, many experts have attributed New York's success to an increasingly popular concept known as community policing. Two years ago, New York had 750 foot officers on the street. Today that number is 3,000.<sup>42</sup> Community policing is a strategy for utilizing police officers not just as people who react to crime, but also as people who solve problems by becoming an integral part of the neighborhoods they serve.

Such programs do not come cheaply, but they do seem to be effective. In Prince George's County, Maryland, police Capt. Terry Evans said their community policing program is "the only thing I've seen in 23 years of law enforcement that's had an impact, actually turned it around."<sup>43</sup> Fully implemented, Prince George's community policing program will cost the county \$10 million per year.

The programs apparently work best where governments can afford to add officers, rather than taking from existing numbers, leaving other work unattended. This is borne out in cities like Boston where murders dropped 23 percent in 1991, partly because of a program that put more police officers on the beat.<sup>44</sup> The need for more police officers is supported by a survey of Chiefs of Police from around the country, 70 percent of whom said they could no longer provide the type of crime prevention activities they did ten years ago because of too few police officers.<sup>45</sup>

Boston, like New York, is in a state without the death penalty, though Governor William Weld (R-Mass.) has been attempting to re-instate it. That proposal has met with opposition from the state's district attorneys. Judd Carhart, past president of the district attorneys' association said a majority of the state's district attorneys oppose capital

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punishment partially on the grounds that it is a waste of money better spent on other areas of law enforcement and incarceration.<sup>46</sup> Attorney General Scott Harshbarger agreed: "We need major criminal justice and court reform now to address the crisis in our criminal justice system. The death penalty, however, has no place in this reform effort. It is a simplistic, arbitrary, misguided, ineffective and costly response, cloaked in the guise of a remedy to the brutalizing violence that angers and frustrates us all."<sup>47</sup>

Compared to community policing and other successful programs, the death penalty, for all its cost, appears to have no effect on crime. A New York Times editorial noted recently that the number of executions in this country "constituted less than .001 percent of all murderers . . . and were only .000004 percent of all violent criminals. Even if U.S. executions were multiplied by a factor of 10 they would still constitute an infinitesimal element of criminal justice." The public seems to agree: only 13 percent of those who support capital punishment believe it deters crime.<sup>48</sup>

New York and Massachusetts can be contrasted with Texas which is the nation's leader in the use of the death penalty. Texas has the largest

death row and has executed almost twice as many people as the next leading state. Houston alone accounts for 10% of all people executed in the United States since 1976.<sup>49</sup> Yet, the murder rates in three of Texas' major cities rank among the nation's top 25 cities. In all three, Houston, Dallas and Fort Worth, the number of murders increased significantly last year.<sup>50</sup>

Wherever the death penalty is in place, it siphons off resources which could be going to the front line in the war against crime: to police, to correctional systems, and to neighborhood programs which have proven effective. Instead, these essential services are repeatedly cut while the death penalty continues to expand. Politicians could address this crisis, but, for the most part, they either endorse executions or remain silent.

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***"Even if U.S. executions were multiplied by a factor of 10 they would still constitute an infinitesimal element of criminal justice."***

***—New York Times  
editorial, 1992***

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## Political Manipulation of the Death Penalty

What drives this high spending on such an ineffective program? The answer lies partly in the promotion by politicians who hope to benefit by advocating the death penalty. Even though it fails to meet the cost-benefit test applied to other government programs, many politicians use capital punishment to distinguish themselves from their opponents. Politicians have generally not posed the death penalty as one alternative among a limited number of crime fighting initiatives which the people must ultimately pay for. Rather, the death penalty is used to play on the public's fear of crime and to create an atmosphere in which the extreme view wins. The rhetoric then becomes policy and the people pay.

### The Death Penalty in National Politics

Flush with his party's convincing victory in the 1988 Presidential elections, Republican National Chairman Lee Atwater urged his fellow Republicans to capitalize on the issue of crime because "almost every Democrat out there running is opposed to the death penalty."<sup>51</sup> Apparently, the Democrats were listening as well since politicians of all stripes rushed to proclaim their support of capital punishment.

From Florida to California, the political races in 1990 were marked by excessive attempts by

politicians to appear tougher on crime by their willingness to execute people. Ironically, those who were most demonstrative about the death penalty were defeated, though seldom by opponents of capital punishment.

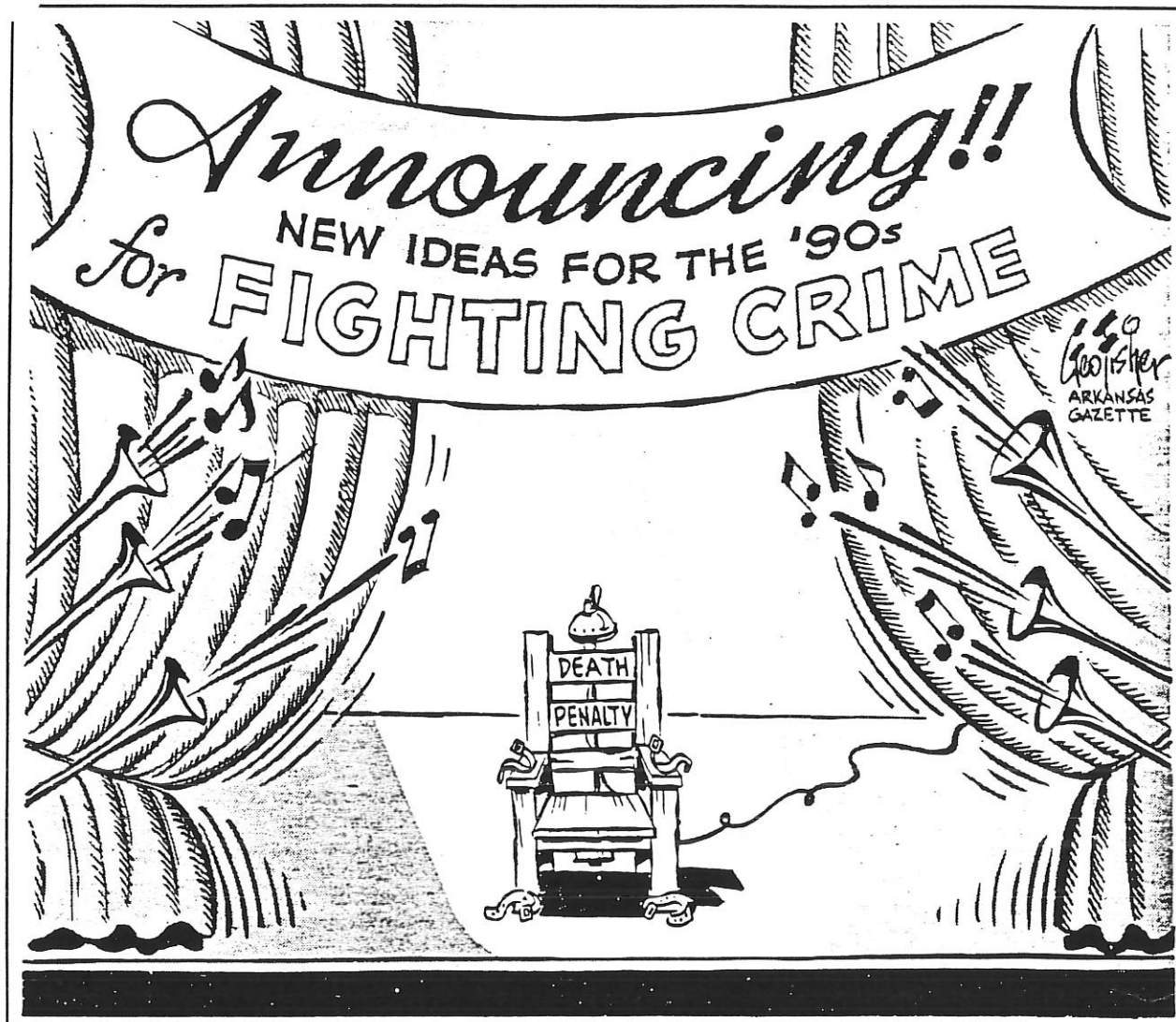
In this election year, the national political debate on the death penalty is more conspicuous for its silence. The utility of the death penalty as a defining issue was lost when most of the Democratic Presidential candidates supported the death penalty. George Bush, Bill Clinton and Ross Perot are all in favor of the death penalty, though none has made it a major campaign issue.

### George Bush: From Willie Horton to the Crime Bill

In the previous campaign, George Bush was able to link a furlough for convicted murderer Willie Horton with Michael Dukakis' position against the death penalty, thus portraying Dukakis as soft on crime. This time, President Bush has sought to convey a tough image by his support for a greatly expanded federal death penalty. When recent unemployment figures indicated that the economy was going to be a negative for the Bush campaign, his advisers called for a greater emphasis on crime to bolster the President's popularity.<sup>52</sup>

In 1990, President Bush sought to identify the Republican Party as tough on crime. He introduced a crime bill whose





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centerpiece was an expansion of the federal death penalty to over 40 new crimes. Not to be outdone, the Democrats endorsed a bill allowing the death penalty in over 50 new crimes. Despite two years of debate and attempts to expand the death penalty even further, the bill remains in political gridlock. While the bill's death penalty provisions and restrictions on federal habeas corpus appeals have received the most notice, proposals for law enforcement, prison construction, boot camps

and other crime fighting provisions have received little attention.

Just prior to the last presidential election in 1988, the death penalty was also promoted as a way of appearing tough on drug crime. Legislation was passed imposing the death penalty in drug-related murders but that law has resulted in only seven prosecutions and one death sentence in almost four years. Bush's bill is designed to have a much broader application. However, some parts of the

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***"What they mean when they say they're 'getting tough' is simply that they are talking tough."***

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**—Franklin Zimring,  
Earl Warren Legal  
Institute**

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current bill are also window dressing, having little to do with the public's concern about crime.

The crime bill would impose death sentences for such offenses as treason, espionage, murder in the act of destroying a maritime platform, murder of federal egg product inspectors, horse inspectors and poultry inspectors. These proposals will have no real impact on crime in the streets, which is the rationale for proposing such legislation. As one legal commentator put it: "What they mean when they say they're 'getting tough' is simply that they are talking tough."<sup>53</sup>

An expanded federal death penalty could also prove to be enormously expensive. One amendment approved by the Senate would impose the death penalty for murders involving weapons used in interstate commerce. The Congressional Budget Office estimated that this proposal would cost as much as \$600 million over four years.<sup>54</sup>

Senator Thomas Daschle (D.-SD) described much of the talk about the death penalty on Capitol Hill as political posturing: "We debate in codes, like the death penalty as a code for toughness on crime. The whole game is a rush to acquire the code: he who gets the code first wins. . . . It denigrates the national debate."<sup>55</sup>

### **Bill Clinton: Insulating Himself from Attack**

Although Clinton's pro-death penalty stance has partially neutralized Bush's use of this

tactic in the current campaign, on the death penalty one can never be tough enough. For example, Vice President Dan Quayle recently attacked Clinton for being soft on capital punishment (despite having presided over four executions as Arkansas Governor) because Clinton had suggested that Gov. Mario Cuomo (D-NY) might make a good Supreme Court Justice.<sup>56</sup>

Bill Clinton has criticized Bush's manipulation of the death penalty issue: "President Bush has used an expansion of the death penalty as a cover for actually weakening the partnership of the federal government in the fight against crime."<sup>57</sup> However, Clinton bowed to the popular wisdom when he made a prominent demonstration of his support for the death penalty by leaving the primary campaign in January to preside over the execution of a brain damaged defendant in Arkansas.

Ever since he lost the Governor's race in Arkansas after serving only one term, Clinton has made clear his support for the death penalty. Clinton returned to office as Governor in 1983 and has granted no commutations to anyone on death row and has presided over all four of the state's executions in the modern era. However, as Arkansas was returning to executions, its murder rate was increasing: murders in Little Rock, alone, jumped 40 percent in the past year.<sup>58</sup>

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## **The Death Penalty in State Politics**

The death penalty is almost the exclusive function of the states rather than the federal government. It is not surprising, then, that some of the most blatant attempts at political manipulation of the death penalty have occurred on the level of state politics.

Florida and Texas are two states with the largest death rows and most active execution chambers. They were also the scene of recent gubernatorial races featuring candidates boasting of their ability to secure more executions than their opponent. In 1990, Florida's Governor Bob Martinez campaigned with background shots of smirking serial killer Ted Bundy, while reminding the voters how many death warrants he had signed. Martinez was defeated by Democrat Lawton Chiles who also favors the death penalty.

### **The Texas Campaign: "Who Can Kill the Most Texans?"**

The governor's race in Texas presented a variety of candidates vying to demonstrate their greater support of the death penalty. As populist Democrat Jim Hightower put it, the race boiled down to one issue: "Who can kill the most Texans?"<sup>59</sup>

Former governor Mark White portrayed his toughness by walking through a display of large photos of the people executed during his term. Attorney General Jim Mattox

insisted that he was the one who should be given credit for the 32 executions carried out under his watch. Meanwhile, the Republican candidate, Clayton Williams showed pictures of a simulated kidnapping of young children from a school yard and then touted his backing of a separate law to impose the death penalty for killing children. His ad ended with the slogan: "That's the way to make Texas great again."<sup>60</sup>

In the end, the campaigns succeeded only in gaining embarrassing notoriety for Texas as Democrat Ann Richards became the eventual winner. Richards has continued Texas' leadership in carrying out the most executions of any state. However, while Texas is spending hundreds of millions of dollars on the death penalty, it is having to release other prisoners early to avoid overcrowding. Inmates serve only an average of one-fifth of their sentences. In Harris County (Houston), arguably the death penalty capital of the country, 67 percent of those arrested are recidivists and crime is the people's number one concern.<sup>61</sup>

### **California Politics: A Case of Neglect**

California's 1990 gubernatorial race also involved jockeying for the position of "death penalty candidate." Dianne Feinstein was the most outspoken, describing herself in commercials as "the only Democratic candidate for governor in favor of the death

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penalty.”<sup>62</sup> This ploy caused her Democratic rival, John Van de Kamp, to respond with ads assuring the voters that he wouldn’t let his conscience get in the way of carrying out executions. Although personally opposed to the death penalty, his ads proclaimed his record as attorney general of putting or keeping almost 300 people on California’s death row and featured pictures of the condemned inmates in the background.

Van de Kamp lost to Feinstein and Feinstein then lost to Republican Pete Wilson, another strident pro-death penalty candidate. This year Feinstein is running for the Senate and all 11 of the major candidates for California’s two Senate seats support the death penalty.<sup>63</sup>

California is in the throes of an extreme financial crisis. The state paid its workers with IOUs for two months and most social services are facing major cuts. Los Angeles County alone is considering laying off 500 sheriff’s deputies to cope with the loss of state funds. Such cuts are likely to have a direct effect on public safety. As one official remarked, “The public doesn’t seem to have a heightened sense of urgency about this yet, and I don’t think they ever will—until they become victims themselves.”<sup>64</sup> Nevertheless, the state has been paying an estimated \$90 million per year over normal costs to carry out the death penalty.<sup>65</sup> With over 300

people condemned to death, California has the second largest death row in the country.

The Los Angeles riots were a stark reminder of the anger which simmers as a result of social neglect. Reforms like community policing were contemplated in L.A. but were viewed skeptically by former Police Chief Daryl Gates because no funds were available: “The first problem,” Gates said in his new book, “is the need for more officers. But again, how much more can taxpayers be asked to pay?”<sup>66</sup> As a result, L.A.’s police force was described by one expert as “the antithesis of community policing. The department was cool, aloof, disconnected from the community.”<sup>67</sup> The city burned.

### **New York Politics: Grandstanding on the Death Penalty**

New York illustrates that voters are not monolithic when it comes to the death penalty. Although more executions have been carried out in New York since 1900 than in any other state, it does not have the death penalty now and has not executed anyone since 1963. For ten straight years, the state legislature has passed death penalty legislation and for ten years Governor Cuomo has vetoed the bills, continuing the tradition of Governor Hugh Carey before him. Although the majority of New Yorkers appears to support capital punishment, Cuomo has been re-elected

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repeatedly. Cuomo's 1990 Republican opponent, Pierre Rinfret, built a campaign around the death penalty but failed to win voter support. Even fellow Republican and death penalty supporter Jack Kemp rejected such blatant manipulation:

"He's running on the death penalty for drug pushers. I mean, goodness gracious, if . . . that's what politics has descended into in the 1990s—who can get to the far right on the death penalty—it is a sad day. . . . I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."<sup>68</sup>

The New York legislature has often come close to overriding Cuomo's veto. Lately, however, that movement has been losing steam. The controversy demonstrates that switching one's allegiance on the death penalty issue to join the mainstream is not always a ticket to electoral success. In the 1990 elections, three Assemblymen who once opposed the death penalty, but who had lately switched their votes, were all defeated.<sup>69</sup> As a result, the vote to override Cuomo's veto lost by a larger margin in the next session.

The New York Daily News, long a supporter of the death penalty with such subtle

headlines as FRY HIM!, has apparently become frustrated with the political games-playing surrounding the issue and now rejects the death penalty. In an editorial earlier this year, the News took particular aim at those pro-death penalty politicians who vote against the alternative sentence of life-without-parole because it would make their own death penalty bill harder to pass: "Why won't the Legislature adopt the obvious alternative—life without parole? Because pols would rather grandstand on the death penalty. It is cheap political expedience, not wise public policy."<sup>70</sup>

The death penalty's chief proponent in the New York Assembly, Vincent Graber from Buffalo, acknowledged the kind of manipulation the News criticized. Graber admitted that the life-without-parole bill was rejected because it interfered with the quest for capital punishment: "This being an election year," Graber said in 1990, "I don't think the Senate is in the mood to go with mandatory life, no parole. The death penalty would become less of a campaign issue and I don't think they want to do that."<sup>71</sup>

### Politics in Other Places

Politicians are quick to capitalize on an opportunity to promote the death penalty. Massachusetts does not have the death penalty, but when Carol Stuart, a young white, pregnant woman, was brutally murdered in 1989, the city of Boston reacted in angry shock. The media and

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***"I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."***

***—Jack Kemp,  
Secretary of HUD***

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the public were misled to believe that a young black man was the attacker and the Republican Party called a press conference within hours of Stuart's death demanding a return to capital punishment.<sup>72</sup> After the embarrassing truth came out that Stuart was probably murdered by her own husband, the campaign fizzled.

In Arizona, state Representative Leslie Johnson (R-Mesa) called for the death penalty for child molesters after a particularly horrendous crime in Yuma. On the floor of the House, Johnson proposed the quick fix: "If we do away with these people, if we do have the death penalty and if you are a sex offender, you're just out of here — dead, gone. And if we get a few innocent people, fine and dandy with me. I'll take the percentage, folks, because I don't want to put my children at risk anymore."<sup>73</sup>

And in the District of Columbia, Senator Richard Shelby (D-Ala.) proposed that the death penalty be enacted for the city by Congress after one of his aides was killed on Capitol Hill. Congress responded by cutting out the Mayor's \$25 million youth and anti-crime initiative while imposing a referendum on the death penalty. The hidden but inevitable costs resulting from having capital punishment were not addressed in the appropriations bill. But if the experience of other states is any indication, it will be years before any execution is carried out, after

an expenditure of as much as \$100 million, either from federal or DC funds.

Finally, the death penalty is manipulated by those politicians who are closest to it: the elected state attorneys and prosecutors who make the decisions on which cases to pursue the ultimate punishment. A campaign advertisement for district attorney Bob Roberts of North Carolina, for example, lists all the defendants for whom he won a death sentence. His slogan: "If one of your loved ones is murdered, who do you want to try the accused? Bob Roberts with his splendid record and experience or his inexperienced opponent."<sup>74</sup>

As a public defender, attorney general Grant Woods of Arizona had argued before a judge that it would be murder if the judge sentenced his innocent client to death. Now, as chief prosecutor and staunch defender of the death penalty, Woods turned on his client, Murray Hooper, saying he is guilty and deserves the death penalty. Since Hooper is still on death row, such a representation has raised questions of legal ethics and client loyalty. Woods claims he is just doing his job.<sup>75</sup>

A district attorney in Georgia, Joseph Briley, was also charged with numerous breaches of legal ethics in a Supreme Court amicus brief signed by 12 legal ethics professors from around the country. When the conviction of Tony Amadeo was overturned, Briley first announced that he would again

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seek the death penalty. However, he later allowed the defendant to plead guilty in exchange for a life sentence after the defense proffered three expert witnesses to testify that his ethical violations should disqualify him from retrying the case. Briley's frustration at having to take the plea was summed up in his comment to one of the defense attorneys: "You've probably made me unelectable."<sup>76</sup>

In Kentucky, Commonwealth Attorney Ernest Jasmin made a name for himself by obtaining a death sentence against the killer of two teenagers from Trinity High School. He then campaigned as the Trinity Prosecutor, taking ads in the high school newspaper and campaigning with one of the victims' parents frequently at his side.<sup>77</sup>

In Nebraska, attorney general Don Stenberg took the unusual step of attaching a personal letter to his Supreme Court brief urging the execution of Harold Otey, whom he described as a "vicious killer" who "still smirks at the family of the victim...."<sup>78</sup> While pushing publicly for Otey's death, Stenberg also sat as one of three decision makers at Otey's clemency hearing and two of his staff presented gruesome details of the murder.

In sum, there has been a steady stream of politicians attempting to capitalize on the death penalty issue in recent years. Real solutions to crime get overshadowed in the tough

talk of capital punishment. When some of these politicians are successful, the death penalty gets implemented or expanded and the people begin to pay the high costs. Somewhere down the road there may be an execution, but the crime rate continues to increase. Politicians do the people a disservice by avoiding the hard economic choices that have to be made between the death penalty and more credible methods of reducing violence.

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## Conclusion

The death penalty is parading through the streets of America as if it were clothed in the finest robes of criminal justice. Most politicians applaud its finery; others stare in silence, too timid to proclaim that the emperor has no clothes. Instead of confronting the twin crises of the economy and violence, politicians offer the death penalty as if it were a meaningful solution to crime. At the same time, more effective and vital services to the community are being sacrificed. Voters should be told the truth about the death penalty. They should understand that there are programs that do work in reducing crime, but the resources to pay for such programs are being diverted into show executions. Being sensible about crime is not being soft on crime. Too much is at stake to allow political manipulation to silence the truth about the death penalty in America.



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