

Approved: 3/7/94  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on February 17, 1994 in Old Supreme Court Chamber of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Darlene Thomas, Committee Secretary

### Conferees appearing before the committee:

Attorney General Robert Stephen  
Nola Faulston, District Attorney, Sedgwick County  
Paul Morrison, District Attorney, Johnson County  
Peggy Schmidt  
Gene Schmidt  
Carla Stovall, Attorney, Entz and Chanay Law Firm  
Juanita Borell, Delthos  
Robert Wagenaar  
Robert Fairchild

Others attending: See attached list

### SB 473--death penalty for certain crimes

Chairman Moran asked conferees to keep their testimony brief due to time constraints of the Committee and the number of conferees still to be heard.

Chairman Moran asked Senator Parkinson to give a brief description of SB 473. Senator Parkinson said SB 473 was a Senate version of the death penalty bill and only addresses first degree murder. He said for a premeditated first degree murderer with aggravated circumstances, as listed under current law, the jury would have the option of imposing the death penalty.

Nola Faulston, District Attorney, Sedgwick County testified in favor of SB 473 and answered questions from the Committee. She suggested several amendments: 1) include a severability clause; 2) page two, line 36 be amended to read, "...from the commencement of the action until a minimum of 10 days post arraignment"; 3) section 9, line 17, she suggested striking the word "adjudication" because it was confusing. She suggested added language to 22-3612 dealing with appeals to read "*...the attorney general shall invoke the assistance of the county or district attorney of the county in which the action originally commenced, except in cases where the penalty of death has been imposed. In such cases, upon written request of the county or district attorney, the attorney general shall represent the State in appeals and other post-conviction proceedings (Attachment No. 1).*"

Attorney General Robert Stephen testified in support of SB 473. He said capitol punishment should include felony murders. Attorney General Stephen said those convicted of first degree murder should not be eligible for parole for at least 40 years. He said he support the suggestion the Attorney General should represent the state in appeals and post conviction proceedings when the death penalty has been invoked.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Old Supreme Court Chamber Statehouse, at 10:00 a.m. on February 17, 1994.

Paul Morrison, Johnson County District Attorney testified in support of SB 473 over the House version because the death penalty should be reserved for those who intentionally kill in a premeditated fashion (Attachment No. 2). He suggested language change in New Sec. 9 to read, "...the court ~~may~~ shall sentence..."

Peggy Schmidt testified in support of SB 473 and provided written testimony. Her daughter Stephanie Schmidt was brutally raped and murdered July 4, 1993 by a repeat offender (Attachment No. 3).

Gene Schmidt testified in support of SB 473 and provided written testimony. His daughter Stephanie Schmidt was brutally raped and murdered July 4, 1993 by a repeat offender (Attachment No. 4).

Carla Stovall, Attorney, Entz and Chanay Law Firm testified in support of SB 473 and provided written testimony (Attachment No. 5).

Juanita Borell, Delphos, Kansas testified in support of SB 473 and provided written testimony. Her daughter Jenna Scott was murdered January 27, 1994 (Attachment No. 6).

Robert Wagenaar, Chanute, Kansas testified in favor of SB 473 and provided written testimony (Attachment No. 7).

Robert Fairchild testified in support of SB 473 and provided written testimony (Attachment No. 8). His daughter was murdered in November, 1993. He represented 21,000 people who signed petitions in favor of the death penalty. The petitions were given to Chairman Moran to be presented and filed by the Secretary of the Senate.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 17, 1994 upon adjournment of the Senate in Room 531-N.

# GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 2/17/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Gene Schmidt	P.O. Box 7829 JP KS66201	SDS
Peggy Schmidt	P.O. Box 7829 "	"
Carole Stovall	Topeka	Public
Quinta Boud	P.O. Box 102 Delphos KS,	individual - survivor of homicide to daughter
Robert Wagenaar	P.O. Box 964 Chanute, KS	individual - pastor
Nola Foulston	Wichita	Individual Attorney
Carl E. Lowell	Topeka	Interested Ind.
Don R. Bayle	312 S. KEYSTONE/STANB	U.S.D. 349
Scott Brown	504 March / Kilsen, KS	USD 347
Kathy Spicer	1108 Oakmont, Hays	USD 489
Mary Alice Bohling	Rt. 1, Jetmore, KS	USD #227
Lorraine Ryan	Box 68 McRacken, KS	USA 575
Gary L. Kay	Box 10 LeCross, KS	USD 395
Gary Tearnor	Cuba, Kansas	USD 433
Daniel Genovese	Cuba KS	" "
Sharon Mason	So Haven, KS	USD 509
James Suttler	South Haven, KS	USD 509
Stevie Case	Olath, KS	Sen Parkinson's Office
Walter Herstein	Shawnee Mission, KS	
Donald Gasper	710 N. Kansas Anthony, KS 67003	U.S.D. # 361
J.C. Baker	423 N. Santa Fe Anthony, KS 67003	USD # 361
Dora Kramer	1605 Maple Olathe, KS 66061	Leadership Olathe
Juanita Sanders	803 Seminary Junction City, KS 66441	POME - Son



## GUEST LIST

COMMITTEE: Senate Judiciary Committee

**DATE:** 2/17/94

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# GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 2/17/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
S. Therese Bongert	Topeka	KCADP
Donna Schneeweis	Topeka	AI
Joyce Hoxes	Lenexa	WMCADP & Graduate Student
Monty Truett	Topeka	AP
Bill Lucas	Topeka	MVFR
Bob G. Fairchild	Kingman	Resident
Sue R. Fairchild	Murdock, KS	Resident
Carolyn Fairchild	" "	" "
Julene Fairchild	Kingman	Resident
Bill Hart SR.	Olathe, KS	Leadership
Melvin Mack SR.	Olathe, KS	Leadership Olathe
Susan Fetsch	Olathe, KS	Leadership Olathe
Kathy Chrisch	Olathe, KS	Leadership Olathe
Ron MEGIE	OLATHE, KS	" "
Susan Sherman	Olathe, KS	" "
Roy Vinyard	" "	" "
STEVE BYRAM	OLATHE, KS.	" "
Janet Horn	Olathe, KS	Leadership Olathe
Gilva McDonald	Olathe, KS	" "
Larry Barrigan	Topeka	National Congress for Men & Children

12-3010. City of Overland Park v. McLaughlin, 10 K.A.2d 537, 538, 704 P.2d 997 (1985).

9. Cited; absence of defendant or counsel at misdemeanor appeal trial (22-3405) where untimely request for jury (22-3609) made discussed. City of Overland Park v. Barnett, 10 K.A.2d 586, 593, 705 P.2d 564 (1985).

10. Generally held if constitutional rights are at issue, habeas corpus is available even though no direct appeal taken. In re Habeas Corpus Application of Gilchrist, 238 K. 202, 205, 708 P.2d 977 (1985).

**22-3611. Judgment on appeal.** If upon appeal to the district court the defendant is convicted, the district court shall impose sentence upon him and render judgment against him for all costs in the case, both in the district court and in the court appealed from.

History: L. 1970, ch. 129, § 22-3611; July 1.

Source or prior law:

63-403.

Judicial Council, 1969: These sections relate to appeals from courts of limited jurisdiction. This procedure was formerly governed by article 4 of chapter 63, K.S.A.

#### CASE ANNOTATIONS

1. Cited; error to dismiss complaints because municipal court refused to appoint and compensate counsel for indigent defendants' appeals. City of Overland Park v. Estell & McDuffett, 225 K. 599, 602, 592 P.2d 909.

2. Cited; the right to a speedy trial is applicable to criminal cases appealed to district courts from municipal court convictions. City of Overland Park v. Fricke, 226 K. 496, 500, 601 P.2d 1130.

3. State may reassert original (more serious) charge if defendant appeals conviction of lesser charge based on plea bargain. State v. Burkett, 231 K. 686, 688, 648 P.2d 716 (1982).

4. Cited; absence of defendant or counsel at misdemeanor appeal trial (22-3405), where untimely request for jury (22-3609) made discussed. City of Overland Park v. Barnett, 10 K.A.2d 586, 593, 705 P.2d 564 (1985).

**22-3612. Criminal appeals from district court; attorney general to invoke county or district attorney's assistance; costs.** In representing the interests of the state in appeals from criminal actions in the district courts of this state to the supreme court or court of appeals or in other post-conviction actions arising from criminal prosecutions, the attorney general shall invoke the assistance of the county or district attorney of the county in which the action originally commenced. The reasonable costs of such assistance shall be allowed and paid by the board of county commissioners from the county general fund for any services rendered by such county's county or district attorney pursuant to this section.

History: L. 1977, ch. 119, § 1; July 1.

### Article 37.—RELEASE PROCEDURES

#### Attorney General's Opinions:

Release procedures; parole authority and procedure. 79-183.

**22-3701. Pardons and commutations.** (1) The governor may pardon, or commute the sentence of, any person convicted of a crime in any court of this state upon such terms and conditions as he may prescribe in the order granting the pardon or commutation.

(2) The Kansas adult authority, hereafter referred to as the authority, shall adopt rules and regulations governing the procedure for initiating, processing, and hearing applications for pardon, or commutation of sentence filed by and on behalf of persons convicted of crime.

(3) No pardon or commutation of sentence shall be granted until more than thirty (30) days after written notice of the application therefor has been given to the prosecuting attorney and the judge of the court in which the defendant was convicted. Notice of the hearing on such application shall be given by publication in the official county paper of the county of conviction not more than thirty (30) days nor less than fifteen (15) days prior to such hearing. The form of notice shall be prescribed by the authority. If the applicant executes a poverty affidavit, the cost of one publication of the notice during a twelve-month period shall be paid by the state; if more than one notice of application is published during any twelve-month period the additional cost of publication shall be paid by the applicant.

(4) All applications for pardon or commutation of sentence shall be referred to the authority. The authority shall examine each case and submit a report, together with such information as the authority may have concerning the applicant, to the governor within one hundred twenty (120) days after referral to the authority. The governor shall not grant or deny any such application until he shall have received the report of the authority or until one hundred twenty (120) days after the referral to the authority, whichever time is the shorter.

History: L. 1970, ch. 129, § 22-3701; L. 1972, ch. 317, § 79; L. 1973, ch. 339, § 58; July 1, 1974.

Source or prior law:

62-2216.

Judicial Council, 1969: This section incorporates the provisions of former K.S.A. 62-2216 with the following exceptions: (a) The board is charged with responsibility for

developing procedure  
pardons and commut.  
notice is required.

#### Law Review and Bar J.

"Kansas Diversion: Editorial Opportunities," 348 (1981).

#### Attorney General's Opinions:

Release procedures; pardon by governor of pardoned ex-felon is no enforcement officer. 85-165.

#### CASE 1

1. Referred in determining as to eligibility for parole tendered. Hicks v. State,

**22-3702. Form** be in writing, signed by the great seal of authority for the person named there.

History: L. 1970, July 1.

Source or prior law:

62-2217, 62-2221, 62-2218.

**22-3703. Report.** The governor, the legislature, the houses of the legislature, the pardon by him with a statement of was convicted, the amount of fine, and the which such pardon was.

History: L. 1970, July 1.

Source or prior law:

62-2217, 62-2218.

**22-3704. Reprint** cases where the death posed the governor's ment of the executive limited time. At the the sentence of the case.

History: L. 1970, July 1.

Source or prior law:

62-2219.

**22-3705. Reduction** error may, when he visible, commute a case by reducing the

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except in cases where the penalty of death has been imposed. In such cases, upon written request of the county or district attorney, the attorney general shall represent the State in appeals and other post-conviction proceedings.

COMMENTS TO MEMBERS OF SENATE JUDICIARY COMMITTEE

RE: SENATE BILL #473

FEBRUARY 17, 1994

Good morning. I'm here this morning to testify in favor of Senate Bill #473. I support this bill over the House version as I strongly believe imposition of the death penalty should be reserved for those who intentionally kill in a premeditated fashion. As felony murder can sometimes involve an accidental killing, I am not in favor of a bill which allows for imposition of the death penalty on a felony murder basis.

Some support the death penalty for reasons of retribution. Others support it for its potential deterrent effect. My reasons for support of this bill are more clinical. I simply believe that some offenders continue to impose incredible dangers while incarcerated. For example, in 1991, there were over 8,100 assaults on staff by inmates in the United States which resulted in injuries to correctional officers. In that same year, fifty-two inmates were murdered by other inmates. In calendar year 1993, two correctional officers were murdered in Kansas by inmates. It is interesting to note that one of the inmates, Lajuan Clemons, charged in the killing of the Lansing guard, was serving a life sentence for a contract shotgun slaying which occurred in 1990 in Olathe. I believe he clearly drives home the point about the predatorial nature of some inmates.

Another predatorial inmate is Richard Grissom. Grissom, who has murdered at least four people, will continue to impose an incredible escape risk and danger to others throughout his life.

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It's also interesting to note when Grissom was interrogated on his arrest in Dallas, Texas, in July, 1989, he stated that the victims' bodies were located in Kansas "because they don't have a death penalty." I can't help but wonder whether or not we would know the location of the victims in that case if the leveridge of the death penalty were available to be used.

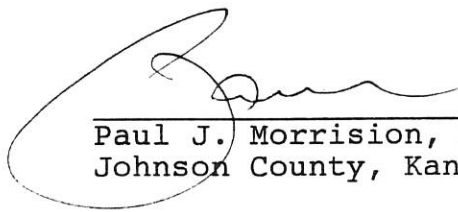
Opponents of the death penalty frequently cite costs as an argument against its passage. The studies I have seen consistently inflate the true costs (such as the 1993 Duke University Study) and consistently fail to take into account any savings to the system resulting from cases that do not have to be tried because of availability of the death penalty. They also normally refuse to consider the fact that appellate litigation continues endlessly even in cases involving non-capital litigation.

Racial disparity is often cited as an argument against the death penalty. It's interesting to note that many statistics used which cite disparity are from years ago when much greater disparity existed. The new generation death penalty legislation has significantly lessened that problem. For example, in 1991, roughly 60% of the inmates on death row in the United States were white.

I am favor of this piece of legislation because it is so narrowly drawn. I believe that the death penalty should apply to very, very few criminals offenders. In fact, it should apply to very, very few murderers. Those that it does target are the worst of the worst. They will always victimize others and pose

dangers to the community. A strong argument can be made that we cannot tolerate their existence.

Thank you for your time.



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Paul J. Morrision, District Attorney  
Johnson County, Kansas



Speak Out for Stephanie

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Peggy Schmidt, mother of Stephanie Schmidt who was brutally raped and murdered 3 days before her 20th birthday this last July 4th. Stephanie was just beginning her adult life and she was planning for a great future; but our government allowed for all her plans and our dreams to be destroyed. We raised our children to believe that our government was designed to protect and serve, that we had protection as citizens for people repeating their crimes. THE LAW MAKERS OF OUR STATE let us all down.

Stephanie was murdered, and her murderer was known by our government to be extremely dangerous—yet he was given an early release—mandated by law to be given a 2nd chance: a second chance with no monitoring, no safeguards, no concern for what he might do. This was a big mistake—a deadly mistake for my daughter.

Yet today, you are struggling with a decision on passing a death penalty. You have concerns over costs and more especially, you fear making a mistake. Where was your concern when this killer was released as a mandate by Kansas Law. Did you not worry about making mistake then?

Don Gideon took my daughters life...why would you be concerned about his? Because of your fear, he has life imprisonment. He also has an appeal to his sentence—just in case YOU made a mistake. He killed my beautiful daughter, but you continue to feed him, cloth him, provide for his medical needs, and other comforts. Yet you say it costs more to execute him. That is wrong! It only costs more to continually appeal his case with ridiculous abuses of the judicial system.

I am not asking for justice. If that were the case, Don Gideon should be made to suffer like he made Stephanie suffer. That would be "an eye for an eye." But no! I do choose to rise above this criminal element and ask that the state of Kansas impose a death penalty that is far more humane, considerate and compassionate than any criminal act these animals impose on their victims.

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Why do we continue to focus on the rights of criminals instead of the rights of those who they kill, rape, rob, and destroy. These criminals steal the rights of innocent people and families and are rewarded by the state and my government for their theft and destruction. My future and my families future has been shattered by the same man you have chosen to protect.

Look at the newspaper headlines. All the murderers have been given some form of early release. They are all repeat offenders. They deserve to die.

Many of you have not walked in our shoes and you can never understand my rage and hurt. I have lost both of my parents through illness, and I have dealt with the grieving process. But this time I have lost my daughter, and her death defies any grieving process. Parents are not supposed to go to church to bury their children.

Kansas wants and needs a death penalty with limited appeals. This great state of Kansas is outraged and ready for common sense changes. I urge you to vote for the death penalty in the state of Kansas with limited appeals. To vote any other way is to guarantee more deaths, more Stephanies, more dreams and families destroyed. Please, don't wait to walk in my shoes, don't wait for your child or grandchild to be killed by a state released repeat offender. Don't wait! Stop the killings by implementing capital punishment in Kansas.

Peggy Schmitt



## Speak Out for Stephanie

Mr. Chairman and members of the committee:

My name is Gene Schmidt and I am the father of Stephanie Schmidt who was brutally slain this summer by a repeat offender. A repeat offender who was released by my government with full knowledge of his past, of his potential, and full knowledge that he would very likely repeat his offence. My government was very much aware that they were making a mistake in letting this person go. They knew innocent lives were in danger, and innocent lives might be taken. But in this instance, the government did not fear making a mistake, it was not concerned about innocent lives being destroyed.

I find this awareness particularly alarming in light of current legislation on the proposed death penalty. I have listened to many of the representatives and citizens argue for and against the proposed capital punishment; and it angers me immensely that it gets reduced down to one or two root problems: either the fear of the one basic concern, the one thing that seems to be the ultimate factor in making any decision: cost; or the moral fear of making a mistake and executing an innocent "criminal" life--a criminal life that many times has been given two or three chances before.

As I roam these hallowed halls, I continue to be amazed at what I hear: it costs too much to incarcerate criminals; it costs too much to execute them; it costs too much to enforce our rules. Therefore, why don't we just let them go? Why do we even bother arresting them? Why put them in prison? And guess what? That doesn't work either. But, no one has to be responsible. We can just keep justifying our judicial system by keeping our revolving door policy on criminals.

There is no just compensation for the brutal, malicious, inhumane destruction of good citizens, children, and families. As much as I abhor the killing of any human being, **I feel the death penalty is an establishment of a rule, a communication to a mind that does not think like you and me.** An element of life that is by best definitions, different. The criminal is far more extreme in that crime is a way of life, not an occasional aberration. It is very misleading to claim that the criminal wants what the responsible person wants, that he ~~values~~ <sup>values</sup> the same things that a responsible person values. More importantly we must understand that the criminal is the problem, not society.

The numbers introduced as costs have been an insult to the intelligence and patience of the citizens of Kansas. In one case, a noted law instructor even introduced incorrect figures only to say, after his error was noted, that he must have "misquoted." I am appalled. It costs too much! That's because we need a serious revision in the appeal process, not in the death penalty. Narrow the appeals in the number allowed and in the length of time for appeals. By so doing you will eliminate the abuse of the justice system and you will strengthen Kansas law. But most important of all, you will eliminate the same costs and unnecessary delays which are really more cruel and unusual punishment than the penalty itself.

Cost of execution? What about the cost of shattered lives of victims? What about medical costs of victims and victims families? What about funeral expenses? All these are 100 times those of a criminal because of the tremendous trail of victims they leave behind. Costs are invalid arguments used to perpetuate unnecessary appeals, and an inadequate and misguided justice system geared to helping the guilty instead of protecting the innocent. We just keep looking for technicalities instead of determination of innocent or guilt.

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One of the most frequently heard arguments against the death penalty is the fear of making a mistake: executing an innocent life. Isn't that typical of the reverse mind set employed by our upside down concept of justice? We are so focused on protecting the career criminal, the murderers, and the rapists; we are so afraid that these confessed doers of destruction, malice, and criminal violence might wrongfully be put to death that we build in automatic appeals and safeguards to protect them. We are so focused on the wrong doers of society that we totally ignore those who can vote, of those who try to make this world a little better, of those who end up being sacrificed, and especially, of those who are innocent.

What kind of message are you sending to me--a citizen without a record, a citizen who votes to keep you in office, a citizen who cares about family life and the backbone of our society. What kind of message do you send me when you are more concerned about the potential execution of a criminal and totally ignore the execution of the innocent victim: the victim who was not given any court date, no legal defense of rights, no chance for appeal; the victim who is brutally and inhumanely given the death penalty by the very criminal you protect. I'll tell you what kind of message you send to me: my government does not care about me. You tell me that my government does not care about the good people of this country.

Fear of executing an innocent person...my daughter was executed. My daughter was innocent, she had done nothing wrong. All she did was to ask for a ride home with a co-worker: a co-worker who my government "mistakenly" and knowingly released from prison--a criminal who gave the death penalty to my daughter. When are you going to accept that the death penalty already exists in Kansas? The death penalty is in the hands of the criminals. And, by voting "No" on the death penalty **you are voting to definitely execute innocent lives in the largest of numbers.**

If you push your green button in favor of the death penalty there is a very minute, extremely, remote possibility that an innocent might be put to death. But if you push the red button against the death penalty, you are for sure executing thousands of innocent women children and responsible citizens to death. Push your red button, and you leave the death penalty in the hands of those who will choose to use it frequently and indiscriminately--at will, and with no conscious or feelings of remorse...just like the killer of my daughter. How many more Stephanies do you plan to kill with the push of your red button? How many more innocents are guaranteed to die with the push of your red button?

I ask you to please choose the green button. The button for capital punishment. The button that will save hundreds of lives more that it can ever take. The green button for greater good. The green button that the citizens of Kansas are crying for you to push as the weep at the grave sides of their loved ones.

*Gene Schmidt*



#5

TESTIMONY OF CARLA J. STOVALL  
SENATE JUDICIARY COMMITTEE  
SB473 AND HB2578  
FEBRUARY 17, 1994

**IT IS TIME!!** It is time to give to the people of the state of Kansas what they are demanding. And that is the death penalty. As I hope you know, I am a candidate for Kansas Attorney General and have traveled the state extensively in the last year. Unequivocally, I can tell you the majority of the people in Kansas want, no, are demanding, the death penalty from this legislature. I personally support HB 2578 over SB473.

I have long been a proponent of the death penalty. I first became aware of it when I was in high school and read In Cold Blood. Hanging seemed appropriate for Smith and Hickcock who were convicted of killing the Clutter family.

I became a stronger supporter of the death penalty as a prosecuting attorney and, then most certainly, as a member of the Kansas Parole Board. We have convicted killers in our Kansas prisons who should have been sentenced to death--but instead they are still able to eat and sleep and breath and walk and run--simple things that their victims will never be able to do.

Finally, I feel compelled to tell you that I support the death penalty because my best friend was murdered April 8, 1991. She was a graduate of Illaf Methodist Seminary in Denver, Colorado and was four months away from being ordained as a minister in the Methodist Church. Regina was shot 5 times in her church parking lot after having taught a Monday night Bible Study class. The utter senselessness of that act of brutality is impossible for me to comprehend to this day and I, like other family and friends of murdered victims, will never stop grieving over my loss of her.

We know the death penalty will not bring any of our loved ones back to life. But the death penalty will make a statement as to the value that Kansans place on life. We value life so highly that when you take another person's life--know that you have forfeited yours. This is the ultimate restitution. We deserve a system which provides for nothing less.

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*attachment 5-1*

#6  
February 17, 1994

Dear Senator,

I am writing to you about the hearing concerning the Capititol Punishment issue. I ask that you consider this fairly and not from the aspect of what is popular, or from personal religious view points. I have faith that you take your position of trust and responsibility seriously, and as a duty to represent all of your constituents. I understand that you will have to make a very hard decision, but I ask that you poll those that you represent and seriously consider their edict, then ask yourself- How much is a victims' life worth?

I personally was involved in a murder trial that took place in Shawnee District Court in October of last year. I found it a very disheartening experience that totally disillusioned me. My daughter was Jenna Scott who was murdered in Topeka Kansas on January 27, 1994. She was only 18, and my only child.

I ask that you consider the bill to be debated as a whole, not just the portion that deals with Capititol punishment. It provides some teeth to punish those who choose to disregard the moral and ethical laws that we as a people have in place to provide for a safe society for all.

It is my personal belief that when a person chooses to disregard a law that has been deemed as necessary by the majority, then that person is gambling. The individual is gambling that they can win and beat the system. This brings about disintegration. The word Justice becomes a joke. There is a saying that you can get away with anything if you have enough money. Money=Justice. How much money are we as a people willing to spend to ensure that Justice is delivered to those who have gambled that they can beat the system.

As it stands now, many cases are plea bargained to a lesser offense to save money for the county. The perpetrator has the resources of the state behind them if they can't afford an attorney. If they can afford an attorney, then they usually have enough money to obtain Justice. The County attorney is restricted to the resources that are available in their county. If the county is poor, then it is less likely that a trial of any length will occur. They cannot afford it.

I ask that you remember that you are not just dealing with the financial burden that will occur if a convicted murderer receives the punishment of death by lethal injection. You must remember that individual chose to murder, personally decided to be judge, jury and executioner of the selected victim.

The victim, the forgotten, an individual who did not receive the benefit of appeal, or plea bargain. The victim, who was a living, breathing, human being. The victim who was denied a future. What price tag do you put on the loss of a victim? What price tag do you put on Justice?

Sincerely,

*Juanita Dorell*  
*Delphos Kansas 67436*

*State Judiciary*  
*2/17/94*  
*attache 6-1*

## LIFE

She sits on the bench as the  
Day goes by,  
And closes her eyes and thinks  
About life.  
She thinks about when she was  
Young, and what a dancer she  
Was, dancing across the stage  
For everyone.  
She remembers when she was married  
In her wedding gown so white,  
She thinks of her honeymoon and  
How she loved her husband that  
Night.  
She thinks about her first child,  
How tiny and perfect it was.  
And how she thanked the Lord  
Above.  
She thinks when she was a little  
Girl, getting her first doll, and  
How how her present was the best  
Of all.  
She remembers her first date  
With the most popular guy in school.  
And how everybody thought, she  
Was cool.  
She thinks about her first dance,  
She danced with a guy whose name  
Was Lance.  
She thinks about when she had  
To leave home, and remembers  
Feeling all alone.  
She remembers meeting her man,  
How he made her feel special as he  
Was holding her hand.  
She thinks about her first kiss  
As they were standing in the snow  
And the air was crisp.  
She remembers when her mother  
Died and oh how she cried, and  
Cried.  
She remembers the first time  
Her daughter brought home a boy  
And it just filled her heart with joy.  
She thinks about when her daughter  
Had to go away. And how she  
Cried for days.  
She remembers her daughters'  
Wedding day. And how she really  
Hated to give her away.



She remembers her first grandchild  
And how she held him in her arms  
Like a precious vial.  
She thinks about how she's going to  
Die and whether or not she'll go up  
To the sky.  
But now, she's just sitting here  
Thinking about life and enjoying  
It with delight.

Jenna Scott

Nov. 1990

Offender: Age 25  
Crime: First/Second Degree Murder

*Figures from 1970s. \**  
Amount

Government Service:

Housing to age 65: (40 years at \$22,000.00 per year)	\$ 880,000.00
Appeal from District Court to Supreme Court (Five years to completion)	75,000.00 *
Habeas Corpus (12 x \$75,000.00)	900,000.00 *
TOTAL	\$1,855,000.00 -

Housing for 10 years

One appeal to Supreme Court plus one habeas corpus	220,00.00 *
One appeal from District Court to Supreme Court (Five years)	75,000.00 *
One habeas corpus with appeal (Five years)	75,000.00 *
Execution costs	50,000.00
TOTAL	\$ 420,000.00

\*Statistics concerning the deterrence effect are misleading and beg to question, because:

1. Murderers do not commit the crime with the thought of how much time they are going to serve or whether they are going to be sentenced to death. Their thoughts are not about consequences at all.
2. Murderers kill because:
  - A. They are disturbed with the actions or activity of a specific person;
  - B. They are disturbed about issues in their life and act out indiscriminately;
  - C. They intend to profit from the murder.
3. One of the issues that deterrence does not address is the issue of recidivism. An individual who is executed will not, without doubt, re-offend.

EXAMPLE: Police Officer Jerry Ivey murdered in Salina, Kansas. Murderer released by the Kansas Parole Board and re-offends committing rape.

4. Murderers are not eligible for parole and there is no chance of recidivism.

February 17, 1994

Dear Senator,

I am writing to you about the hearing concerning the Capitol Punishment issue. I ask that you consider this fairly and not from the aspect of what is popular, or from personal religious view points. I have faith that you take your position of trust and responsibility seriously, and as a duty to represent all of your constituents. I understand that you will have to make a very hard decision, but I ask that you poll those that you represent and seriously consider their edict, then ask yourself- How much is a victims' life worth?

I personally was involved in a murder trial that took place in Shawnee District Court in October of last year. I found it a very disheartening experience that totally disillusioned me. My daughter was Jenna Scott who was murdered in Topeka Kansas on January 27, 1994. She was only 18, and my only child.

I ask that you consider the bill to be debated as a whole, not just the portion that deals with Capitol punishment. It provides some teeth to punish those who choose to disregard the moral and ethical laws that we as a people have in place to provide for a safe society for all.

It is my personal belief that when a person chooses to disregard a law that has been deemed as necessary by the majority, then that person is gambling. The individual is gambling that they can win and beat the system. This brings about disintegration. The word Justice becomes a joke. There is a saying that you can get away with anything if you have enough money. Money=Justice. How much money are we as a people willing to spend to ensure that Justice is delivered to those who have gambled that they can beat the system.

As it stands now, many cases are plea bargained to a lesser offense to save money for the county. The perpetrator has the resources of the state behind them if they can't afford an attorney. If they can afford an attorney, then they usually have enough money to obtain Justice. The County attorney is restricted to the resources that are available in their county. If the county is poor, then it is less likely that a trial of any length will occur. They cannot afford it.

I ask that you remember that you are not just dealing with the financial burden that will occur if a convicted murderer receives the punishment of death by lethal injection. You must remember that individual chose to murder, personally decided to be judge, jury and executioner of the selected victim.

The victim, the forgotten, an individual who did not receive the benefit of appeal, or plea bargain. The victim, who was a living, breathing, human being. The victim who was denied a future. What price tag do you put on the loss of a victim? What price tag do you put on Justice?

Sincerely,

*Juanita Dorell*  
*Delphos Kansas 67436*



He had written a letter to his parents telling them he did not want a headstone-murderers did not deserve one. If they thought he really needed one then just a small one. He wrote that he knew what he was doing was wrong, but for once no one was going to tell him what to do.

Mr. Bailey was tried on 1st degree murder and found guilty of 2nd degree murder. His sentence is 15-life. This makes him eligible for parole in 1999. I lost my only child; my immortality. I lost my grandchild. He took two lives but was only tried for one. Tell me, where is the Justice?

#17

I have attempted to evaluate carefully the Bible passages that are most clear on the issue at hand. I have been an ordained pastor, and have a Master of Divinity degree from a conservative Evangelical School of Theology seminary, and a BA degree from Wheaton College, a conservative evangelical Christian school.

God clearly instructed, through Moses, the nation of Israel that a deliberate killer of innocent life "must be put to death" (Exodus 21:12; Numbers 35:30-34). This instruction is recorded just one chapter after the Ten Commandments are recorded (i.e., in Exodus 20), and this context thus indicates that the prohibited killing in the 10 Commandments involves a prohibition against the unprovoked, deliberate killing of INNOCENT human life. The better translation of the Hebrew word in the 10 Commandments would be "You shall not murder," as is found in some of the newer, more accurate translations. Also, not at the beginning, but early in human history, God instructed not only Israel, but also the ancestral family of all races, that in regard to the deliberate killer of innocent life, "by mankind shall his blood be shed" (Genesis 9:6). This is to establish and uphold the highest price and value for innocent human life (Genesis 9:5).

As for the New Testament Word of God, while teaching that vengeance and wrath ultimately belong to God (Romans 12:19), the Apostle Paul, in God-breathed Scripture, goes on to explain that God intends to exercise such through human government, which "does not carry the sword [NOT WHIP] for nothing" and is to be "an avenger for wrath on the one who commits evil" (Romans 13:4). Likewise, the Apostle Peter said one of government's functions is "for vengeance on evil-doers" (1 Peter 2:14). Christ gave entrance to Paradise to a repentant criminal, who admitted he deserved to be executed for his crime; but Christ didn't stop or criticize his execution. And soldiers who asked about how to live in God's Kingdom were told not to quit their jobs, but rather not to abuse their positions of authority (Luke 3:14).

The death penalty is the price the deliberate killer of innocent life must pay for violating God's commandment "you shall not murder." The executed murderer is obviously "deterred" from repeating the crime later, either in prison or upon release or escape, or from causing prison riots. To prevent the convicted murderer from murdering again is one way to show love toward those who do not deserve to be killed.

The tax cost of supporting and guarding a murderer has been estimated at between \$17-30,000/yr. And if the death penalty deters even just a few murders, that would be invaluable. It could be just one valuable deterrent, among others that are needed. Of course, our justice system must seek for truth and careful determination for all of innocence, self-defense, or guilt.

My purely personal view, is that the insanity defense should not count, especially since it can so easily be claimed, and psychiatrists can be duped by some con artist murderers.

Robert Wagenaar  
PO Box 964  
Chanute, KS 66720

3164312948

*State Judiciary*  
*2/1/94*  
*attachment 7-1*

#8

Testimony in Support of  
The Death Penalty

By Bob Fairchild

If you didn't know it, Kansas has never been without the death penalty. My daughter, and her family were sentenced and put to death, because they offered help to a person, when he asked for it. We as citizens of Kansas are just asking that the murders are given their rights back. The Right to be put to death for their brutal crimes.

I have sat through the hearings on the House Committee and Floors and heard all of the comments against the death penalty. As you know they are religion, cost, deterrent, and putting people to death; And you as representatives will be the ones putting people to death by voting for this bill. The only way this could be a valid statement, is to have the death penalty bill be retroactive. By passing this bill and making it a law in which the criminal has the final decision to abide or disobey. And when the criminal decides to disobey this law the punishment should be as severe as the crime committed.

As for the religious objection to the death penalty, I submit to the committee a copy of a letter I received after the Bishops of Kansas expressed their opinions on the death penalty. The letter shows that the Bishop's opinion are not the teachings of the Catholic Church. Also during our two week petition drive for the death penalty we were contacted by Ministers of other faiths to get the petitions for their congregations to sign.

Will the death penalty be a deterrent, I say yes. There is not one of you on this committee that can argue with this fact. When you put one of these violent murders to death, he or she will never be able to kill again. With the death penalty becoming law it will keep some criminal from committing a violent murder. If this bill stops one murder your time and our time will have been well spent.

*Senate Judiciary*  
*2-17-84*  
*attachment 8-1*



I feel that arguing about the cost of the death penalty is a great injustice to the victims of murders. The value of the victims and their lost contributions to society far out weigh the cost of the death penalty.

I stand here before you today representing the 21,000 people of Kansas who signed these petitions for the reinstatement of the death penalty. We are asking you to support and pass the death penalty bill.

For the past twenty to twenty-five years you have tried the rehabilitation and the soft approach to crime, but the criminal and crime has flourished in this climate. The citizens of Kansas are 80 to 90 percent in favor of the death penalty. Again I urge you on the committee to support and pass this bill.

#8

**ST. JOHN'S CHURCH - CLONMEL**

18630 W. 71ST STREET SOUTH  
VIOLA, KANSAS 67149  
545-7171 794-2784

(Copy of letter sent to Bishops)

February 1, 1994

To Kansas Bishops: Keleher, Fitzsimons, Gerber  
Schlarman, Strecker, Forst

Dear Bishops:

I read with interest and shock your statement on the death penalty as it appeared in The Catholic Advance, January 28, 1994.

My response to your statement is enclosed. Could we please obtain some clarification?

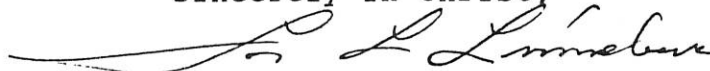
There was a time in America when Catholic Bishops, Priests, and Laity, believed and taught the same thing.

Are the bishops being guided by the same Holy Spirit that guided the Church in the past?

Clarification on this matter would help priests and laity to think that you bishops are still in the same Church with them.

We thank you with the assurance of our prayers.

Sincerely in Christ,



Fr. L. Linnebur  
Pastor

---

Some people have asked for addresses of the Bishops:

Bishop Eugene J. Gerber  
424 N. Broadway  
Wichita, KS 67202

Bishop James P. Keleher  
2220 Central Ave. -Box 2328  
Kansas City, KS 66110

(Retired)  
Bishop Ignatius Streck  
(Same as Bishop Kelcher  
and ask to forward)

Bishop George Fitzsimons  
Box 999  
Salina, KS 67402

Bishop Stanley Schlarman  
910 Central Ave Box 849  
Dodge City, KS 67801

Bishop Marion Forst  
(same as above)

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Statement of Kansas Bishops appeared  
in The Catholic Advance, Diocese of Wichita,  
January 28, 1994---

THE PUBLISHED STATEMENT OF KANSAS BISHOPS AGAINST THE  
DEATH PENALTY DOES NOT REFLECT THE COMPLETE TEACHING  
OF JESUS CHRIST.....

The Gospel of Matthew, Chapter 28 in the Bible,  
concludes with the following instruction to the eleven  
disciples:

"Full authority has been given to me both in heaven and  
on earth; go therefore, and make disciples of all the  
nations. Baptize them in the name of the Father, and of the  
Son, and of the Holy Spirit. Teach them to carry out  
everything I have commanded you. And know that I am with  
you always, until the end of the world."

The particular statement of Christ "Teach them to carry  
out everything I have commanded you" indicates that the  
disciples were to teach what Christ taught them.

It is clear then that the teaching of the Church is a  
continuation of Christ's teachings. This has been the  
understanding in the Church from the beginning and through  
the centuries. The Church expressed itself as such in its  
teachings and its catechetical instructions.

One of the most notable catechisms to express the  
teachings of Christ and His Church was the Catechism of  
The Council of Trent, initiated by the Council, and issued  
by Pope Pius V in 1566. In explanation of the Fifth  
Commandment -which forbids killing and also commands us to  
foster charity and peace to all men including our enemies,  
it makes two exceptions to killing: First, "It is not prohibited  
to kill animals; for if God permits man to eat them, it is  
also lawful to kill them." Secondly, "Another kind of  
lawful slaying belongs to the civil authorities, to whom is  
entrusted power of life and death, by the legal and  
judicious exercise of which they punish the guilty and  
protect the innocent." .... "The end of the Commandment is  
the preservation and security of human life."

Truth does not change. If the Church taught that  
criminals could be put to death in the past, it still does.

In the published statement by the Kansas Bishops there  
are three paragraphs which would imply that the Popes,  
Bishops, Priests, and Catholic people, in the past, really  
did not follow the teachings of Christ as completely as they  
should have. And the people who hold for the death penalty  
today are not as Christian as they should be.

We quote below the three paragraphs each followed by  
our response: (1) "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?" Our response: The simple answer is yes. The  
Church has stated so in the Catechism above, and in the many  
Catechisms from that time to the present day. And what the  
Church teaches is what Christ teaches.

(2) "We oppose the "Death Penalty" to follow the example  
of Jesus, who taught justice and lived the forgiveness of  
injustice." Our response: Apparently the past Popes  
and Bishops did not follow the example of Jesus.

(3) "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).  
Our response: The impression given in this paragraph is that  
the teachings of Christ are really separate from what the  
Church teaches.

It has been a clever trick of the Devil, clergy, and  
people, to use passages of Scripture to suit their cause.  
But we in the Church know that the whole of Christ's teaching  
is found in the teaching of the Church, not just Scripture.  
Let us pray that the Kansas Bishops will clarify their  
statement.

-Father L. Linnebur  
Pastor  
St. John's Church, Clonmel, Ks.  
February 1, 1994



# The Catholic Advance

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## Kansas bishops oppose state death penalty

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.

### 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).

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 that 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.

### Why we oppose capital punishment

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.

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

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