

House Corrections and Juvenile Justice Committee

February 19, 2019

PROPONENT TESTIMONY HB 2282

Chairman Jennings, Vice-Chair Delperdang, Ranking Highberger, members of the Committee:

My opposition to the death penalty is grounded in my faith. There are other conferees that can speak better to that issue than I. This afternoon I wish to express my perceptions formed by serving 26 years as a Judge of the District Court.

I learned very quickly that clear-cut easy decisions were not the norm. I learned that sworn testimony was not necessarily the truth. I learned that both sides would seek to mislead me.

Our criminal justice system is imperfect because humankind is imperfect. Therefore, in our criminal justice system there are no absolutes, with one glaring exception: the execution of a human being, the carrying out of the sentence of death.

The over-riding goal of criminal justice is to determine the truth. In seeking the truth there numerous obstacles that are confronted by the fact finder:

- 1 Conflicting testimony – choosing who is lying and who is telling the truth; the fact finder must choose whom to believe.
- 2 Eye witness identification – “Look, I know what I saw!” Perhaps not. Studies have shown how unreliable eye witness identification can be. Kansas has adopted a cautionary jury instruction that instructs the jury that eye witness identification must be considered in the light of six factors that can affect accuracy of identification PIK 51.110
- 3 False confession – “I would never confess to something I hadn’t done.” It happens due to a variety of reasons: lies by law enforcement during interrogation, false promises, lengthy interrogation and isolation.
- 4 Secret jury deliberations – jurors following popular misconceptions that shift the burden of proof to the defendant. (He wouldn’t be here if he hadn’t done something) or “Well, somebody has to pay for this heinous crime.” Surprising length of deliberations resulting in a unanimous verdict are often suspect.

Throughout my judicial career I had a quote taped to my desk from an unknown source: “When faced with a decision, make the best decision possible with the information you have at the time. The point of absolute certainty never arrives.” The burden of proof in a criminal case is beyond a reasonable doubt. It is not certainty.

HOW CAN WE IMPOSE THE ABSOLUTE CERTAINTY OF DEATH WHEN WE DO NOT REQUIRE THE ABSOLUTE CERTAINTY OF GUILT?

Thank you for this opportunity.

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