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### Is the Death Penalty a Necessity?

I am a Columbus business and trial lawyer and have studied and written about the death penalty for over 15 years and am also a member of the board of trustees of Ohioans to Stop Executions. I am here to speak of favor of S.B. 101 and repealing Ohio's death penalty.

I've listened to the prosecuting attorneys from Trumbull and Cuyahoga counties testify before this committee in support of the death penalty. Their message is simple: we need to execute the "worst of the worst." Their position is simple: certain murderers deserve to be executed because the murders they commit are more heinous than others. Yes, some murders are more gruesome, more horrible and more revolting than others. I agree.

This "worst of the worst" argument is an emotional appeal, and it's not surprising we hear it. Many of the decisions we all make are based on emotion and the subliminal thoughts we all carry. Cold, hard logic frequently does not guide us.

This "worst of the worst" perspective is akin to what we heard from Mark Robinson, the North Carolina lieutenant governor who ran for governor last month (and lost). While campaigning—in a church—he addressed the matter of crime and said, "Some folks need killing! It's time for somebody to say it. It's not a matter of vengeance. It's not a matter of being mean or spiteful. It's a matter of necessity!"

If any of you share Mr. Robinson's mindset, I am not here to change your mind. That would be a fool's errand. That kind of deep-set emotion cannot be changed. Instead, I will ask you to ponder whether Mr. Robinson is right. I am going to ask the members of this committee to examine whether the death penalty is actually—as Mr. Robinson puts it—"a matter of necessity."

So, let's look at this premise—it's a matter of necessity to kill certain people—and compare it with life without parole as we review the five tenets of the criminal justice system: 1) retribution, 2) deterrence, 3) rehabilitation, 4) incapacitation and 5) restoration.

1. Retribution. The Death Penalty is the clear winner here.
2. Deterrence. The Death Penalty has no advantage here. Studies have shown that homicide rates do not increase when states repeal the death penalty. It's not hard to understand why. Murder is a matter of someone either being out of control emotionally or completely without regard for the law. People in that state of mind are not going to be thinking about the consequences of their actions.

In general, we have to question how effective any form of deterrence is. Let's remember, we have 45,000 men and women behind bars in state prisons. How many of these people thought through the consequences of what they were doing when committing a crime? People who are enraged or lawless enough to kill are not thinking about the possibility of going to death row.

3. Rehabilitation. It goes without saying that rehabilitation is not an issue when we execute an offender. On the other hand, people who serve life sentences can be rehabilitated.

I know this from personal experience. I serve in a prison ministry called Embark, where once a month I travel to the Marion Correctional Institution and meet with a group of men who are eligible for parole. Many of these men have been in prison for 30 years or more, meaning many of them have committed murder.

These men have transformed their lives. They have accepted responsibility for their crime, they are taking classes, and they want to be productive members of society. I have been responsible for guiding three graduates of our program after their release. The first man I assisted, Sam, had been incarcerated for 36 years for killing a taxi driver. Now, he's employed by Franklin International, here in town.

Of course, someone who is incarcerated to life without parole will not have the opportunity that Sam had—to be released and reenter society. Still, there is benefit in a person serving life without parole being rehabilitated if only because he might serve as an example for younger incarcerated men.

4. Incapacitation. We need to protect society from murderers, and both life the Death Penalty and life without parole equally fulfill this need. But here, we get to examine the cost. We know with certainty that the death penalty results in much greater time and expense, and the majority of time and expense is a consequence post-trial proceedings.

So, why not get rid of post-trial proceedings? I'll give you six: Ricky Jackson, Kwanme Ajamu, Wiley Bridgemen, Joe D'Ambrosio, Derrick Jamison and Dale Johnston who, collectively spent 173 years behind bars before they were exonerated. I've met these men. Ricky Jackson alone was on death row for 39 years.

5. Restoration. This is somewhat of a new approach to dealing with crime, and it consists of looking at what can be done to assuage the pain of the family members of the victims.

Prosecuting attorneys will tell you that the death penalty is the ultimate way of holding a murderer accountable and that executing the murderer—killing him—brings a sense of justice to the family members who have lost a loved one to murder. For some people, I suppose this is true, but I'm not sure it's universally true, and the reason has to do with the 20 years or so of post-trial proceedings that accompany a death sentence.

If executing a murderer takes 20 years, then for 20 years the victim's family has to deal with the murder that created their immense pain. Think about this: closure for these people can easily take 20 years, and we know from experience that we cannot dispense with those post-trial proceedings for fear of killing an innocent person.

Let's look in comparison with a murderer who is sentenced to life without parole. That person's case is finished within two or three years of sentencing. After that, the murderer's name will not be the subject of news articles. In essence, he will disappear, and the survivors of his crime will know he will die in prison. In comparison to what happens when a death sentence is awarded, this man's case is closed relatively quickly, and the family will have closure relatively quickly.

In sum, the Death Penalty enjoys an advantage only when it comes to retribution. But is it a matter of necessity to execute murders in light of the time and expense involved and the delay in getting closure that accompanies the Death Penalty. It's not.

Along with submitting my testimony, I submitted a paper titled, "The cost of the death penalty." It is a compilation of all costs associated with the Death Penalty throughout each phase of a case. I prepared this paper with the assistance of two of my colleagues on the OTSE board, Professor Emeritus Margery Koosed and David Stebbins, who spent years defending individuals in death penalty cases.