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# Assembly's Final Report

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# Final Report



## Citizens' Assembly for Critical Thinking about the United States



Eastern Kentucky University  
Spring 2010

### **What should we do about the DEATH PENALTY? Keep it? Change it? Abolish it?**

All members of CACTUS, divided into five subcommittees,  
participated in the writing of this report.



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## FOREWORD

Each CACTUS brings new excitement along with new challenges. CACTUS 2010 was exciting because it was larger than in past years, more freshmen enrolled than in previous years, and our topic “What should we do about the death penalty? Keep it? Change it? Abolish it?” was by far the most profound, with implications touching on topics such as social justice, safety, equality, religious and ethical arguments, the Bill of Rights, and federalism, to name just a few. This presented us with two particular challenges.

First, would it be possible to achieve any sort of consensus on such a potentially polarizing topic? Citizens’ assemblies, by definition, are based on the concept of deliberation and consensus building. But students do not enter the Assembly with a “clean slate,” and we correctly anticipated that some would have very strong feelings on this topic. Moreover, when building models for change, there was less of a range of options. Unlike CACTUS 2009 in which possibilities included lowering the drinking age to 18 (or below), 19, or 20, or even raising it above 21, when considering the death penalty, at some point the decision still had to be made, regardless of other sets of options, as to whether or not certain categories of individuals should be put to death—no middle ground there!

Second, but not unrelated--part of the concept of CACTUS is that members of the Assembly should feel more like part of a community of citizens and less like students in a classroom. In past years, we have tried to accomplish this not just by opening each session with the national anthem, but by finding ways to have fun with the topic such as mixers, humorous songs, jokes, etc. Obviously, regardless of one’s position on the topic, the death penalty is much too serious to approach lightly. Moreover, we knew there would be some members of the Assembly whose lives had been affected by the murder of friends or relatives or who knew persons who were charged with capital offences.

For the most part, we need not have worried about either of these matters. The Assembly members treated each other and the topic itself with respect and listened empathetically to each other’s stories. They were generally open-minded, worked together to build the best model to “change” and the best model to “abolish” the death penalty, and they seriously considered arguments for the status quo. The process was so non-adversarial that I could not say with certainty which direction the final decision would take. And we did find ways to have fun—for example, the “CACTUS Dance” made its appearance—performed by the Leadership Team and some brave Assembly members (while others whipped out their cell phones to record the event for posterity). And we planned refreshments around the “southwest” theme suggested by our acronym (lots of salsa and nachos), but did give a nod to our topic by serving “death-by-chocolate” cookies on several occasions. While we were disappointed that the Music Department did not provide any student musicians for our national anthem ceremony, we were able to rely on Youtube for a variety of renditions by the appropriately-named “Cactus Cuties,” among others, and we also enjoyed the vocal talents of a member of the EKU Library staff, an EKU alumna and several brave Assembly members, plus one CACTUS violinist.

CACTUS 2010 would not been a success without the contributions of my talented and hardworking Leadership Team. Two of our four small group facilitators, Breanna Morgan and Jessica Gapp, had been CACTUS members in previous years and a third, Tony Crachiolo (“Tony the Elder”), returned to facilitate for a second year. Coming from a business and non-profit background, he graciously shared his facilitating and motivational skills with the rest of the team.

The fourth facilitator and CACTUS Graduate Assistant, Tony Listermann (“Tony the Younger”), was new to CACTUS but was a fast learner. When he assumed his duties in Fall 2009, he quickly began to reorganize the office, write careful play-by-play, instructions to help future CACTUS Graduate Assistants, research the death penalty, and help publicize the CACTUS 2010 topic to recruit students.

And once again, a special thanks to my husband and colleague Dr. Glenn Rainey, who served as CACTUS Co-Chair for a second year. His CACTUS duties ranged from lecturing, researching, organizing, writing, reviewing, editing, and grading to providing valuable input at our leadership team meetings, and helping with the technical side of our sessions and of administration of the course. I am particularly grateful for his hard work in lining up our excellent array of guest speakers.

This Final Report was written and edited by CACTUS members, all of whom served on a Final Report subcommittee coordinated by student facilitators. For most students, this is a new type of exercise. They are used to writing their own thoughts but collective writing to represent a group of thirty-seven was a new experience for most. Because our deliberations and final decision were not completed until the last possible minute, some parts were composed and compiled under considerable time pressure. Moreover, while some students worked hard on their parts, others dragged their feet. Because this exercise may be one of the most valuable skills for CACTUS members for use in future careers, we continue to seek way to encourage the production of a truly polished product.

Meanwhile, the preparation of this document for presentation as a public report required that a balance be struck between the right and responsibility of the students to prepare their report in their own words, and our responsibility as Directors to ensure that the report would be clearly and accurately understood by the lay reader. To meet our own responsibility in this regard, we undertook to edit the document, correcting some spelling and typographical errors, merging some parts that contained overlapping material, and clarifying important details or filling in gaps where they had been omitted, through either brief editorial changes in language or with footnotes. Throughout this work, however, it was our policy to keep our corrections and additions to a minimum so as to maintain the Report’s flavor and most of the original writing as a group project undertaken by University students.

We think this year’s report provides a good basic description of the Assembly’s three phases and the process of reaching this year’s final decision. More information about CACTUS can be found on our web page [www.cactus.eku.edu](http://www.cactus.eku.edu).

Jane Rainey,  
CACTUS Project Director and Co-Chair

The third iteration of CACTUS, during the spring semester of 2010, was filled with the informed and critical thinking about differing moral and empirical perspectives that we now know to expect. It entailed the extended process of discovery that has characterized previous Assemblies -- the shared realization that an issue which initially seemed simple, even mundane, is upon close examination extraordinarily complex and nuanced. This process of discovery proved particularly challenging and revealing in consideration of social policy regarding the death penalty. The topic proved far more complex than we had originally anticipated, and is probably much more complicated than people who have not studied it are likely to realize. In

confronting this topic, the Assembly had to understand and attempt to resolve the encounter between strong emotional and normative perspectives on one hand, and complex issues of social cause and effect on the other. Few subjects upon forced examination are likely to be as emotionally charged as the death penalty; both powerful personal moral convictions and broader social and political ramifications are at stake. Yet the related issues of cause and effect, and the methodologies used to analyze them, are just as complex and omnipresent. The Assembly grappled with all of this, and performed thoughtfully and with civility throughout its work.

The moment that will probably remain most outstanding in my memory of this assembly occurred at the end of a discussion with a panel that I moderated that included a Commonwealth's Attorney, an attorney and former Director of the Kentucky Administrative Office of the Courts who serves as Commissioner of the Circuit Court and writes jury instructions, and a judge with a distinguished background that included service in the Department of Public Advocacy, as Secretary of the Kentucky Justice Cabinet, as Commissioner of State Police and as Director of the Administrative Office of the Courts. After the panel discussion was over and the Assembly had adjourned, and everyone else had left the room, the panel stayed at their table, discussing the importance of such a course and remarking on its approach to developing students' analytical skills, and the judge commented, "this, this development of critical thinking, is exactly what we need."

It was an honor and a pleasure to once again serve as co-director for the Assembly.

Glenn W. Rainey, Jr.  
Co-Director

*The CACTUS Team:*

Dr. Jane Rainey, Project Director and CACTUS Co-Chair  
Dr. Glenn Rainey, CACTUS Co-Chair  
Tony Listermann, Graduate Assistant, Project Coordinator  
Tony Crachiolo, Facilitator  
Jessica Gapp, Facilitator  
Breanna Morgan, Facilitator

## THANKS TO:

### Guest presenters:

Ted Shouse, Kentucky Department of Public Advocacy

Gordie Shaw, Commonwealth's Attorney for the 14th Judicial Circuit (Bourbon, Scott, and Woodford Counties)

Judge Paul Isaacs, circuit judge for Bourbon Scott and Woodford Counties

Don Cetrulo, former Director, Administrative Office of the Courts and co-author of *Kentucky Instructions to Jurors*

Dr. Marla Sandys, Department of Criminal Justice, Indiana University, Bloomington

### EKU Guest presenters:

Dean Allen Ault, College of Justice and Safety

Dr. Lynnette Noblitt, Department of Government

Dr. Diane Vance, Department of Chemistry and Director, ECU Forensic Science Program

Dr. Joe Gershtenson, Department of Government and Director, ECU Institute of Public Governance and Civic Engagement

Dr. Paul Foote, Department of Government

### Faculty-staff participation in public hearings:

Dr. Randall Swain, Department of Government

Nancy Davis, Department of Government

Elizabeth Isaacs, Department of Government

Dr. Gregg Gunderson, Department of Government

Dr. Mark Konty, Department of Criminal Justice and Police Studies

### Clerical Help:

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Nancy Davis, Administrative Assistant, Department of Government

### Miscellaneous:

Ben Valle, Graduate Assistant, Department of Government – for staff support as well as appearing before the Assembly in the Public Hearings phase

Pamela Bingham – for providing our story boarding equipment

### Tech Support:

Jonathan Croley, Graduate Assistant, Department of Government

### General Support:

Dr. Sara Zeigler, Department of Government

Dr. Joe Gershtenson and the Kentucky Institute for Public Governance and Civic Engagement

Dean John Wade, College of Arts and Sciences

Kate Williams, Director, Quality Enhancement Programs

EKU President Doug Whitlock

Guest musicians:

Cheri Tolle, ECU '85, '87

Margaret Foote, ECU Library

Inspiration:

The Government of British Columbia, and Premier Gordon Campbell

British Columbia Citizens' Assembly on Electoral Reform

Ontario Citizens' Assembly on Electoral Reform

## **INTRODUCTION**

CACTUS is a model citizens' assembly intended to provide students with the opportunity and guidance to become more politically informed and engaged and to apply the skills of critical and creative thinking to their roles as citizens in American democracy. At the start of each meeting, in a display of patriotism we stand and show reverence for our nation's flag, showing our dedication as citizens to the critical thinking that is involved in being a citizen of a democratic state.

## **DEMOGRAPHICS**

### **The CACTUS Facilitators**

Dr. Jane Rainey is the CACTUS Project Director and Assembly Chair. She grew up in Atlanta, attended college in Baltimore, and graduate school at Emory University in Atlanta. The courses that she teaches are on Russia, Canada, and Europe, as well as politics and religion in the United States. She has also served on lots of committees and on Faculty Senate. Together, with her husband Dr. Glenn, she has studied and written papers on both of Canada's Citizens' Assemblies. Dr. Jane is also an organist and choir director at the Episcopal Church of Our Saviour in Richmond, Kentucky. She enjoys gardening, cooking, traveling, and listening to classical music. She also likes to clog. Along with Dr. Glenn, she is part of a dance group in Wilmore and enjoys dancing to everything from Appalachian fiddle music to bluegrass to pop music.

Dr. Glenn Rainey is the Co-director of CACTUS. He teaches political science and public administration. His research and teaching interests include human resource management, organizational theory and behavior, and undergraduate courses in American Government, public administration, and human resources policy and administration.

Tony Listermann is Project Coordinator and Member Liaison and a small group facilitator for CACTUS. He is a graduate assistant who attended ECU for his undergraduate degree where he earned a BA in political science. He is currently in the Master of Public Administration program. He will be graduating this summer.

Tony Crachiolo is another facilitator for CACTUS. He is a graduate student in the Department of Government's Master of Public Administration program. Currently he is employed as a Graduate Assistant by the Kentucky Institute for Public Governance and Civic Engagement and he is doing research on recycling for the President's Office at ECU. He has a working background as a corporate consultant.

Breanna Morgan is the third facilitator in CACTUS. Breanna was born in Ft. Bragg, North Carolina. She lived there for about six years and on the East coast until the age 14. At the age of 14, she moved to Mount Vernon, Kentucky with her grandmother and lived there until she graduated high school. She currently lives in Richmond, Kentucky where she is majoring in Political Science and minoring in Psychology at Eastern Kentucky University. Some of her hobbies are going to sporting events, reading anything by Nicholas Sparks, playing with her dog, Buddy, and spending time with friends and family.

The fourth facilitator, Jessica Gapp, is an English major and political science minor. She was an Assembly member in CACTUS 2009. Her activities at ECU include working as a Peer Educator for the University's Health Education Action Team (H.E.A.T.). As part of her role in that organization, she developed a program on Sexually Transmitted Infection called "Safe is Sexy" that is used on ECU's campus. She has been an active member of a sorority and has also been active in many service activities including an inner city project in her hometown. She will graduate in May 2010.

## **CACTUS Demographic Information**

Thirty-three students in the Assembly completed the demographics survey. The results will be summarized here. A full detailed list of the survey results can be found in Appendix I at the end of this report.

The students of the Assembly hail from several different states and from various Kentucky counties. The median age of a CACTUS member is 20.5 years old. The class is divided into a majority of 55% females and 45% males. The majority of the students are Caucasian (31 members) with one person abstaining and one person a minority of Caucasian/Latino background. The class level was split with 31% of the class being freshmen, 27% sophomore, 18% juniors, and 21% seniors. There are 15 political science majors in the Assembly, though the majority came from a variety of majors and minors. A large majority of the Assembly followed some type of religion. Nineteen of the current thirty-three CACTUS members are currently employed while attending school. Before entering CACTUS members of the Assembly had an extensive range of ideas about the death penalty. One-third of the members held an undecided opinion on the death penalty, while 24% were in favor of capital punishment and 15% were against it. Another 24% of the assembly ranged somewhere in the middle of mostly for or mostly against. There are several other statistics that can be found in this report that include party affiliation, the amount of people who have served on a jury, those who have been personally affected by murder or the death penalty, and the marital status of the members of the Assembly.

## THE LEARNING PHASE

Capital punishment has remained a controversial issue throughout the history of the United States. The majority of the population seems able to take a standpoint either in favor or in opposition to the death penalty, but rarely seem to understand why they feel the way they do. Often, people lack the knowledge of historical context, the system in which it is implemented, and several other aspects of the punishment. CACTUS has made it a goal to look beyond personal opinions and geographic locations, and make an effort to understand the history of the death penalty in America and the major controversies surrounding it. Our journey began in what we call the Learning Phase, in which we attempted "to become well informed as to the history of the death penalty, current state and federal laws, monumental court decisions and their applications, and the proposed alternatives and their rationales" (section B of the Mandate—See Appendix 2). This phase consisted of readings from three critical books (See Appendix 4 for bibliographical information) and several notable speakers who spoke of personal experiences with the "machinery of death." The learning portion of our agenda is crucial in understanding the decision that we have made and our basis for doing so.

### **Key Readings**

Arguably the most beneficial book to the Assembly's learning was *The Death Penalty: America's Experience with Capital Punishment*, written by Raymond Paternoster, a professor of Criminology and Criminal Justice at the University of Maryland, Robert Brame, an Associate Professor in the Department of Criminology and Criminal Justice at the University of South Carolina, and Sarah Bacon a professor for Florida State University. The distinguished authors provided vast a amount of information on constitutional and legal issues, justifications for and arguments against the death penalty, public opinion polls, as well as numerous other vital aspects

of the research process. The following is a summary of some of the main ideas of the book:

The three major periods of Capital Punishment were are follows:

**A. The Early Period 1608-1929.** During this period, executions were predominately done in public settings, on the local level. A person could be sentenced to death for a large number of crimes, especially in the south where a culture of honor persisted. Southern colonies were much more aggressive in imposing the death penalty and were especially hard on slaves. During this period the historic Salem Witch Trials occurred in Salem, Massachusetts. Hundreds were accused of witchcraft and twenty suspected witches were executed. During the latter years of the period the punishment evolved. By the late 1800's people were pushing for a more humane and practical form of execution, hence the formation of the Gerry Commission. Also, the *Kemmler* case defined cruel and unusual punishment this way: "Punishments are cruel and unusual when they involved torture or a lingering death; but the punishment of death is not cruel..." (Paternoster, p. 19) There began to be a movement to new methods of execution—electrocution progressively became more popular than hanging. Statistical data shows that the death penalty is not a recent phenomenon, but rather it has been around since the earliest history of our nation and in some historical periods it was frequently used.

**B. The Pre-modern period 1930-1967.** In 1930 capital punishment began to take on a decidedly different character. There began to be more accurate data on the number of executions. Also, executions in the Pre-modern Period became less of a local and more of a state affair. The primary method of execution was predominately electrocution and death eligible offenses lessened significantly, resulting in the fact that 98% of all defendants executed during this time committed either murder and/or rape.

**C. The Modern Period:** The Modern time period, from 1976 to the present is the most important part to the Assembly because it concerns how capital punishment is carried out in our current lifestyle. We must look into capital crimes, capital statutes, characteristics of executions, crimes that may receive the death penalty, methods, what states do carry the process out, and lastly, what are the distinguishing differences of the modern period. The Modern period seemed to take out petty things such as robbery, but one trend that continued for a while was use of the death penalty for armed robbery, rape, and kidnapping. Capital crimes over time have decreased, as well as the number of people executed through capital punishment. A big change during this time was that courts (especially the U.S. Supreme Court) rather than legislatures played the leading role in deciding under what circumstances the death penalty could be used.

The states further south, such as Texas, are more likely to give someone the death penalty. This is how it has been throughout all the periods of time and still is so today in the Modern era. From 1977 to 2005 Kentucky executed two people while Texas had taken 355 lives. This shows the mentality of the South's judicial systems compared to other geographic areas. The most common form of execution in the Modern period is lethal injection with the electric chair being the next choice. This period almost totally threw out hangings and firing squad methods. Also, in this period, people were more often taken off of death row by being found not guilty after appeals. This time period was also a step towards more efficient and better ways to carry out the process.

Opponents believe that the criminal justice system is flawed, and this extends to the use of capital punishment. There have been findings that some innocent people have been convicted of crimes they did not commit and have been sentenced to death. Those that are later found

innocent have been exonerated. This means that they have been let off of death row and their conviction is lifted.

When considering the death penalty as a possibility for a punishment of a crime, aggravating and mitigating factors are now considered important. An aggravating factor is a feature or characteristic of an offense or of an offender that the legislature has decided makes the crime more serious than other crimes and that therefore deserves capital punishment.

Aggravating factors vary from state to state. Some factors include killing more than one person, killing in the course of committing another crime, killing a police officer, and a killing by an offender with a previous criminal history. A mitigating factor is something about the offender or the offense that makes a crime less serious or the offender less blameworthy. Therefore, this does not entail that capital punishment is required.

### **Common Supports for Capital Punishment**

Some of the common justifications for the death penalty include retribution, cost, incapacitation, and general deterrence. Retribution in context with capital punishment is the common belief that an offender who committed a heinous crime 'deserves' to be put to death, meaning in this way that capital punishment is permissible as an appropriate punishment for murder. There is a difference between retribution and revenge in this case. Revenge is motivated by anger and tends to be the desire someone has to inflict harm or injury to another person because of something that was done to them. Retribution is not a private act but an act on behalf of a civil society. Immanuel Kant, a German philosopher, believed in retribution and said that the only morally permissible punishment for murder is that the offender's own life be taken.

Cost is another common justification for capital punishment. When considering the death penalty, many people wonder whether executing someone is more or less expensive than another

form of punishment. Our research tends to show that the death penalty is often more costly than punishing someone with life in prison without parole. This is because those on death row are automatically granted an appeal and can have many appeals, which causes a very high amount of court costs.

Incapacitation is another argument in favor of capital punishment. This argument says that the only sure way for society to be safe from those who have committed murder is to execute them. The threat that a convicted murderer may kill again is not large, but it is real. An example is that of Kenneth McDuff and Roy Green. In 1966 in Texas, these two men kidnapped a teenage girl at gunpoint and her male friends. McDuff and Green killed the two males, then raped the female and brutally choked her with a broomstick. Both men were convicted. Green was sentenced to twenty years in prison while McDuff received three death sentences. However, due to overcrowded prisons, McDuff was released in October of 1989. After he was released, McDuff was involved in several abductions and murders of many women. He was convicted for the murders of Colleen Reed and Melissa Northrup and was given two death sentences. Kenneth McDuff was executed in the state of Texas on November 17, 1998. This example shows that there is still a chance that those convicted of heinous crimes could be released back into society.

Lastly, general deterrence is considered a justification for the death penalty. The principle of deterrence states that people are inhibited from committing crimes by the certainty, severity, and swiftness of punishment. The idea of deterrence is that if it is known that capital punishment is a consequence of committing a heinous crime, the general public will refrain from committing such crimes. Although statistics about deterrence have been disputed, it is still a common justification used among many proponents of the death penalty.

## **Race and Capital Punishment**

Chapters seven and eight of Paternoster were both extremely important because they inform the reader of the idea that the legal system has targeted minority groups since the beginning of capital punishment in the United States. Specifically, historical data shows that African Americans have been "disproportionately singled out by the law, arrested, tried, convicted, and more severely punished than whites" (Paternoster, 160). There is no exception when it comes to the administration of capital punishment. Historically, the law and capital punishment have targeted minority groups more so than whites. Early history of our country shows that violent punishment for a wide range of crimes was imposed on slaves. Even though the Thirteenth Amendment abolished slave codes and gave some freedoms to former slaves, the years following the Civil War only increased racial tension. Jim Crow Laws were then established to replace the Slave Codes and Black Codes that were abolished. These laws included restrictions on African Americans, such as where they could live, go to school, work, and other aspects of their lives.

The racial imbalance in capital punishment ranges from the initial arrest by an officer to the state's decision on whether to pursue the death penalty to the jury's decision on whether to convict someone. Prior to 1972, black offenders tended to be treated more harshly in the criminal justice system than white offenders. More recently, however, research has shown that the race of the victim is more important than the race of the offender. Now, those who kill whites tend to be treated more harshly than those who kill nonwhites.

Racial discrimination can be hard to prove. In *McCleskey v. Kemp* the Supreme Court dismissed claims of racial discrimination made against the state of Georgia. The Court argued that evidence of racial disparity in the administration of capital punishment by the state is not sufficient enough to prove racial discrimination. This claim was dismissed because of lack of

proof. The court wanted to be shown that officers of the state acted with discrimination toward a particular defendant.

### **Problems in Administering the Death Penalty**

According to supporters of the death penalty, the criminal justice system "works" because of stories of the exonerated being proven innocent of a crime and therefore not executed. Roger Keith Coleman is an example of one being exonerated. He continuously proclaimed his innocence while on death row. The facts presented in the case were confusing and used to point to his guilt. Opponents of the death penalty say the system of capital punishment is "broken" and use the example of those exonerated as evidence to support this view.

### **Keynote Speakers**

Dr. Allen Ault was one keynote speaker who spoke to the Assembly. He came to be the Dean of the College of Justice and Safety at Eastern Kentucky University after retiring as chief of the Special Projects Division of the National Institute of Corrections in the U.S. Department of Justice. Dr. Ault also has served as commissioner of the state Departments of Corrections in Georgia, Colorado and Mississippi He was a warden of a maximum-security prison. He taught at the University of Colorado for two years, and he chaired the Criminal Justice Department at Georgia State University from 1979 to 1981. From 1995 to 1997, he was chief of the National Academy of Corrections in Boulder, Colorado.

While working in the prison system, Dr. Ault witnessed what life is like on death row. He worked with inmates of many different races, intellects, ages, crimes, and personalities on death row. Dr. Ault spoke of how an inmate changes from the isolation and time on death row. He told the Assembly of how he had seen many executions and though he could not remember all of their names, he still can see all of their faces. When asked if he agreed with the death penalty he

responded that it is extremely difficult for someone with a conscience and who has some ethics. He explained that the electrician that turned the power on and off of the electric chair would look at the job as an "electrical process" and avoid looking at the inmate. However, he said that for the staff of the prison, performing these tasks took a toll on them, even though it was part of their job.

Another speaker that we had at CACTUS was Dr. Paul Foote, a Professor of Political Science at EKU. While at the meeting, he spoke about the Supreme Court's rulings about the death penalty. Before he began his speech, he asked us if we should view the phrase "cruel and unusual" as how the framers of the constitution would, or as it had evolved in contemporary times. He also discussed the three approaches to judicial decision-making, which are: original intent, *stare decisis*, and judicial attitudes.

One important case that Dr. Foote discussed was *Furman v. Georgia* (1972). The legal question in the case was as follows: does the imposition and carrying out of the death penalty by the states constitute cruel and unusual punishment in violation of the 8th and 14th Amendments? The decision, with a 5-4 vote, was in fact that it did constitute cruel and unusual punishment *as it was used at that time*. The *Furman* case was monumental because it was the first Supreme Court case to hold that a state capital punishment law was unconstitutional. It also suspended the death penalty in the U.S. and took 600 prisoners off of death row.

Dr. Foote also discussed *Gregg v. Georgia* (1976), which was in response to *Furman v. Georgia*. This case tried to decipher whether Georgia law violated the 8th and 14th Amendments by imposing the death penalty for murder. The Court said that Georgia law was not in violation. This case was significant because the sentencing phase of the bifurcated trial was separate from the guilt phase of the trial, which allowed the jury to hear evidence at sentencing that might not

have been admissible during the trial.

Moreover, Foote discussed *Atkins v. Virginia* (2002). He stated that Atkins was sentenced to death, but the jurors found out that he had an IQ of 59, which suggests impaired mental capacity. Despite this fact, Atkins was still sentenced to death. The legal question in this case was as follows: are executions of mentally retarded criminals cruel and unusual under the 8th Amendment? The court said yes, because the 8th Amendment prohibits excessive sanctions due to evolving standards of decency. The analysis that was made was that the states cannot execute mentally retarded persons, but the court acknowledged that there are broad definitions of what constitutes mental retardation. The states were then left to develop precise standards and procedure for determining who qualified under the new rule.

Ted Shouse, from the Kentucky Department of Public Advocacy in Frankfort, came during the Learning Phase. He talked about use of the death penalty in Kentucky and what makes a crime “death-eligible.” For example, if a man simply murders a woman, that is not a death-eligible crime, but if he also steals her wedding ring, then it is.

We also had a panel consisting of Mr. Gordie Shaw, Commonwealth's Attorney for the 14th Judicial Circuit (Bourbon, Scott, and Woodford Counties), Judge Paul Isaacs, circuit judge for Bourbon Scott and Woodford Counties, and Mr. Don Cetrulo, legal scholar and constitutional law expert. An important piece of information we learned from this panel was that if a prosecutor wishes to get a sentence of life without parole he must actually first seek the death penalty.

One speaker, Dr. Diane Vance, was a professor at our university who is the director of the Forensic Science Program. She talked about DNA and how what we see on television on shows like CSI isn't how evidence is really taken care of. Through her experience in the field, she knew specific statistics about how much of each kind of evidence (biological, fingerprints,

firearms, hairs) are collected at crime scenes and used in capital cases. Her presentation opened up a whole new window to the Assembly because DNA is such an important factor when dealing with capital cases, so it was important and possibly changed the minds of many to learn that DNA can be wrong.

Dr. Marla Sandys from Indiana University Bloomington talked about capital juries and how difficult it can be for jurors to understand the instructions they receive. She played a video that demonstrated how instructions can be very long and given in complicated legal language. After hearing her, Assembly members generally felt that this was a problem that should be addressed whether or not the death penalty is involved.

Dr. Joe Gershtenson of our Department of Government talked to us about methodology and helped us understand the statistics about the death penalty in our textbooks. Dr. Lynnette Noblitt who is a QEP Coach and in the Department of Government talked to us about the Paul and Elder critical thinking model and how we could use it to think about our task.

## **THE PUBLIC HEARINGS PHASE**

After a long period of learning facts and statistics, as well as reading articles for and against the death penalty in our books, we began the public hearings phase of the Citizens' Assembly for Critical Thinking about the United States (CACTUS). While our readings for class presented us with facts about capital punishment such as cost, wrongful convictions, and inhumane ways of putting people to death, the public hearings were a chance for people to give their opinions on the death penalty—whether they had solid evidence to prove their positions or not. Some people who presented to us were University professors, students

seeking extra credit for a class or just wishing to speak, and people from the wider community.

All wished to sway our thinking as a body. While many of these hearings were based on emotion, a great number of them also used facts and statistics, much like what we went over in our texts for the class. These guest speakers talked about the cost of the death penalty, convictions of innocent people, racial discrimination, retribution, and the death penalty in historical context. Many expressed specific ideas about how they think the death penalty should be changed and what other options we have if we decide to completely abolish the death penalty.

Having so many diverse speakers allowed the Assembly to see many different perspectives. The Assembly took this into consideration during our deliberation. One of the more heart-wrenching stories we heard was the first-hand experiences of a woman who had hometown friends being murdered in small towns in Missouri and Iowa where she was living at the time. The woman who spoke of these terrifying experiences was affected on an emotional level. She is a strong believer in the death penalty. The Missouri killer was sentenced and put to death. The Iowa murderer received life without parole, and she noted that it costs the Iowa tax payers around twenty-five thousand dollars a year to house this man who has been convicted of capital murder. This is something that is completely unacceptable to her. She feels that the living conditions of some prisons are better than most low-income families in Kentucky.

We had a few professors come and speak to the Assembly. Many had the same idea and opinion about the death penalty, while others had specific facts about the subject.

One speaker, a professor at Eastern Kentucky University, Dr. Randall Swain, made the

interesting point that there is a political aspect to the death penalty. He argued that individuals who receive death sentences tend to be from groups that are less politically powerful--minorities, the poor, and the uneducated. He believes that it's perfectly valid to consider who is getting the death penalty and who is getting life or less through this lens. He noted that we do not tend to see much outrage when these people are sentenced to death, let alone convicted of crime. And because of our own preconceived prejudices and stereotypes, we almost expect it. The examples he cited at first were examples from ancient history, most notably from the Roman Empire. Other great examples in history include the Soviet Union, Ba'athist Iraq, and Nazi Germany. If you were a political enemy, you could expect to be put to death in the event of capture. He concluded that the death penalty is, to some degree, a political tool used by the majority to control the minority.

One of the more persuasive speeches for some students was given by a professor of International Relations, Dr. Gregg Gunderson. According to him, the United States should abolish the death penalty. He stated that he believes the abolishment should be a national change, because so many other countries have abolished the death penalty and look down on America because we have not followed suit. Furthermore, it causes many negative feelings toward the United States from nations that are not on the best terms with the United States. Lastly, he spoke of how America's dependence on trade imports and exports makes us dependent on good relations with other countries, which would improve greatly if we abolished the death penalty. This theory reminds us of the Golden Arches Theory.

Many of the public hearings speakers talked about their opinions on the death penalty. Most of these guests were against the death penalty. They believed the death penalty to be inhumane in the methods used, too costly, morally and ethically wrong, and a source of

international displeasure toward the United States. Even though more guests disagreed with the death penalty than the others, there were still a few who wanted to keep the death penalty but possibly change it so it isn't as flawed and is more fair to everyone.

One guest speaker talked about limiting the amount of appeals so offenders are not sitting in prisons for years taking up taxpayers' money. Other guest speakers talked about how they would execute the offender themselves because they believe the most heinous crimes deserve the death sentence. Some of these guest speakers, as mentioned before, were simply students at ECU who were doing this for class credit. Others, however, had a genuine interest in the issue of capital punishment; it was not hard to tell these individuals from those who had little to no interest in capital punishment.

When these speakers came in to our Assembly in the lecture hall, there was a panel set up next to them on the stage. This panel consisted of students from the Assembly and was charged with the duty of asking the speakers questions concerning the subject. Some questions were for clarification and some challenged the speaker on points of fact or process. When the questioning process started, the panel was the first allowed to ask questions. When they had nothing left to ask, and if there was time for more questions, then the other students in the Assembly were allowed to question speakers. Panel questions generally led to a greater understanding of how the speaker felt about the death penalty. It was, perhaps, the best part of the public hearings because it allowed our guests to elaborate upon and defend their positions.

In addition to the many guest speakers that come and spoke to our class, we were also able to get many people's opinions on the death penalty from outside of the ECU community. Many people posted comments on the death penalty on the CACTUS website. Overall, most of the people that posted to the CACTUS website were against the death penalty. The first

comment that we read about came from a personal experience. This person's brother was murdered in 1986. His brother and a co-worker stumbled upon the scene of a double murder and were murdered themselves. The man stated that there is no justice that will bring back their departed love ones. He believes that there is no reason to keep on killing for those who are a murder victim's family.

Another person posting his thoughts and feelings on the death penalty via the CACTUS website spoke from the experience of being a wrongly convicted inmate on death row. He described how he felt during the two years before, to his great fortune, a police officer confessed to the crime that he was wrongly convicted for. He mentions trying to get on with his life but is constantly reminded that he was on death row, and how it made him feel, given that he was serving a death sentence for something he did not do. He also proceeded to discuss the difficulties of his life, post-exoneration. He talks about having a high degree of difficulty finding a job, and his family being stigmatized, citing how his mother was treated since his conviction, and how all of these things he has to deal with are, in his eyes, cruel and unusual. Once again, this is an individual opposed to the death penalty.

Another individual posted his personal experience with the death penalty, citing his brother-in-law's death in the line of duty as a Virginia State Trooper. However, this was also an opinion in opposition to the death penalty. His wife opposed the execution and began a line of communication with the killer. The communication became a friendship. Eventually, the couple believed that the man that was to be put to death was a completely reformed individual. Although he was still executed eight years later, this couple opposed the death sentence to the very end.

Another writer expressed an opinion that the death penalty is based solely upon vengeance. The writer expressed that this has a brutalizing effect on our society. Citing that the end result of the death penalty is just as permanent, just as final as the murder itself, it does not do anyone any real, honest good. She questions whether or not rehabilitation is viable.

We were able to find someone in favor of the death penalty on the public discussion page. He challenged abolitionist claims of wrongful convictions by citing the rise of DNA evidence.<sup>1</sup> He noted that if someone is wrongfully convicted; they at least have the opportunity to prove their innocence in appeals. He also argued that the appeals process, as it stands, is acceptable for determining if someone is guilty or not. He argued that it seems like we also forget about the victim's family in our focus on fair trials and defendants' rights. We also, in his view, forget that the victim in this trial was not given his right to life. He rejects the notion that the system is imperfect. He wrote that we cannot have a perfect system because humans are not perfect, and that we have no idea what a perfect system looks like because we have no precedent for it. He also argued that the death penalty and life in prison without parole are no different in terms of their levels of effectiveness as a deterrent.

A final person of interest on the discussion board was yet another opponent of the death penalty. She took the point the previous individual discussed above made about deterrence and uses it another way. She posits that if the death penalty is not a deterrent, perhaps it should just

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<sup>1</sup> Directors' note: The members of the Assembly had previously heard Dr. Vance, Director of the Forensic Science program, explain that DNA evidence is in fact available in only a small percentage of criminal cases, and that individualization based on that evidence -- that is, identification of the specific individual from whom the evidence originated -- can be accomplished only in an even smaller percentage of cases. The methodology currently in use, she explained, makes it easier and more likely that an individual can be *excluded* as the source of evidence than that a specific individual can be confirmed as the source. It is a common development in Citizens' Assemblies, often noted by the members themselves, that by the time they begin to receive significant public input they often understand the issues in more detail and depth than many of the lay commentators.

simply not be used at all. She wonders why we should keep a system that kills people but doesn't do one of the key things it is predicated on. Citing costs and inconsistencies as well, she argued that these issues are part of a system that is broken, that doesn't do its job, and is not justice to anyone involved. Killing a person in the name of justice, she wrote, does not remedy the initial transgression, as restitution would recompense a robbery victim.

Examined as a whole, the overwhelming majority of people who spoke or wrote to us are opposed to the death penalty. They presented interesting points of view, passionately expressed personal experiences, and gave us a clearer picture of where the community stands regarding the death penalty. Although they were unable to provide any information that we had not already encountered in our study of the death penalty they did provide us with personal perspectives—an important consideration in our future deliberations.

We feel there was a sizeable representation of public opinion on both sides of the death penalty debate. It's a complex debate with no simple answer. No matter what we, the Assembly, chose it would result in some people being upset. Some will be upset that abolishing the death penalty will make us seem softer on crime. Some will be upset that maintaining the death penalty will continue to present the ever-present possibility of wrongful execution as well as force tax payer money to pay for exceedingly high inmate costs associated with keeping an inmate on death row. Some will be upset at modifications because of either restrictions on the death penalty being imposed or perhaps even restrictions being lifted or softened. For some, this will remain a deeply personal issue.

We have been educated on the issue; we have heard the community speak on its feelings about the death penalty. Now we move on, taking what we have learned and what we have heard, and use it to formulate our course of action. The information from the learning phase

will help us make an informed decision and community feedback will influence our deliberations to craft a decision that is most digestible to the public and elected officials.

## **THE DELIBERATION PHASE**

On April 14, 2010 the deliberation phase of the Citizens' Assembly for Critical Thinking about the United States (CACTUS) began. The day's objective was to reflect on what to do about the death penalty, to keep it the same, modify it, or abolish it and the details that each would entail. As part of their participation in the Assembly, citizens will critique the concept of deliberative democracy as well as trying to arrive at a consensus on what to do about the death penalty.

One of the most intricate parts of this exercise has been extensive research into the topic at hand. Each Assembly member did extensive research which included both the ins and outs of constitutional law concerning the cruel and unusual punishment clause, the evolution of the death penalty in the United States, the statistical research concerning economic and racial disparities inherent in the system, and first hand testimony from participants in that system.

Also explored in the Assembly members' readings were essays from proponents from all sides concerning the topic. The Assembly broke up into small groups each led by an Assembly facilitator. Each Assembly member was randomly assigned to a group designated by a color, and group membership changed each week. After discussing the death penalty each group joined back in the Grise room to discuss where each group stood on the issue.

When it comes to the death penalty we essentially have three choices; keep it, change it, or abolish it completely. This seems simple enough since you only have to pick one of the three choices. We all know that the fewer the choices you have then theoretically the choice

should be an easier one to make. On the first day of CACTUS we all quickly learned that this was not going to be the case at all. Picking from these three choices would take a lot of thought, debating, and compromising, since with each of these three choices there are many little objections that go along with each choice.

Looking at the choice to keep the death penalty, it is probably the simplest of the three choices to pick from. Since keeping it truly does not involve any huge changes to the current system, all we would do is say this looks like it is working so simply leave it alone. With this option we may want to put in the clause that the issue of the death penalty should be looked at and addressed ten years from now. In a nutshell keeping the death penalty simply means that we walk away from the issue and do nothing to it.

The most difficult option is changing the death penalty. Our challenge was how are we going to change it, and in what way could we possibly change it so that everyone would more or less agree to the change. Another huge hiccup with changing it is whether we are going to change it in such a way that we almost entirely abolish the death penalty and only use it in the most extreme cases? Or do we change the way that the courts view the death penalty in regards to limiting the number of appeals that the prisoner can receive, the type of legal counseling that they receive, life without parole, and the issue of dealing with the mental health of the individuals who must inflict the cocktail that will put another person to death. So it is easy to see how this can turn into something that is very difficult to attempt to tackle since there are so many little options and choices that can go along with the big option of "changing it."

The third option is abolishing the death penalty. This too is a difficult option to deal with, but not as difficult as choosing the option to change the death penalty. If we decide to go

with this option then we need to look at other countries that have abolished the death penalty, and learn from them what worked and what didn't work. If we decide to go with this option we also need to look at what type of quality of life these people should have as they sit behind bars for possibly the rest of their lives.

The issue of deciding what to do about the death penalty is one that is very taxing to say the very least. Anyone who can just come up with an answer on a whim is someone who has not truly looked at the history and the nature of the death penalty. Evidence for how difficult the task is of figuring out what to do about the death penalty is shown in every CACTUS class meeting and on every discussion board post.

The members-only discussion board on Blackboard was a significant part of the death penalty debate. It also had an impact on the learning and deliberation phases. Each student was required to do the related readings assigned by the professors and then post their thoughts about the issue. Thus, every single member of CACTUS could be involved in the debate and was able to voice an opinion about particular topics. Some of the discussion board questions were derived from the material that several speakers talked about in class. There were interesting debates over the major points that the speakers made, such as the DNA evidence, the death penalty as a “political tool,” an executioner's personal experience, real life stories involving victims’ friends’ feelings about the death penalty, etc. Moreover, one of the issues that raised intense debate was execution of juveniles. For instance, some members of the Assembly thought that it is an absolutely horrific idea to sentence minors to death, while others thought that younger people should be held accountable for their actions because they can make reasonable decisions. Furthermore, members actively discussed the issue of federalism. In many discussion board debates the concern that came up constantly was:

should it be state or federal law? The majority of the people want the death penalty policy to become a federal law so the law is fair to everyone in the nation, while others want to empower states and let them make the decision to represent their constituents more accurately. Overall, discussion board was a great tool to learn from others and engage in critical thinking. Everyone's opinion was important, and it was a major contribution of helping the Assembly reach consensus on decision making.

So the next obstacle we had to tackle was the many more specific options. As an Assembly we have had many options to review if we were to change the death penalty. The first option was deciding whether to implement our policy nationally or only in the state of Kentucky. If it were implemented nationally, there could be a few different routes to doing it such as to make it an amendment to the Constitution or it could be a law passed that could have a constitutional hook and give incentives or consequences to the states for having or not having the death penalty. It would be much easier to pass a law solely in the state of Kentucky, and it would also be much easier to pass it as a law nationally without making it an Amendment to the Constitution.

Some options that the Assembly discussed on what to do to change the death penalty are broken up into 3 categories: change the punishment, change the court process, and change the process of the execution. The only option that fell into the category of change to the punishment is that people who are convicted should have unqualified option to receive life without parole, rather than the death penalty. This could set up the possibility to let the person out of prison if evidence comes up that would exonerate them.

The second category of different ways to change the death penalty is to change the court process. This has many more options than either of the other two categories. The changes we

discussed were to limit the number of appeals, mandate education or training for the jury, increase funding for public defenders, limit the use of DNA as concrete evidence, create a committee to decide whether the crime is eligible for the death penalty, and have an elected public defense attorney similar to an elected prosecutor. Limiting the number of appeals would give fewer appeals to each individual, but would end the problem of taxpayer dollars being wasted on useless court costs. As we have researched and heard from speakers we have found, as an Assembly, that jurors are not properly educated on how to make a decision. It has been discussed that these instructions need to be clarified for justice to thrive in our court rooms. A few members also discussed that we should increase the funding for public defenders, because as the Assembly found out, some public defenders are paid very little and don't really try because they seem to have no incentive. There have also been talks about how DNA evidence should be used and some feel that if this were used more widely, it might keep some innocent people out of the hot seat. One of the last ideas for changes to the court process is setting up a state-level committee that determines whether or not an accused person is eligible for the death penalty. This could reduce the stress for prosecutors to handle publicity and to get the issue of death or life without parole off of the prosecutors' hands and a panel of experts can decide. The last and final suggested change to the court process is to elect a public defender similar to the election of the prosecutor. If the position of a public defender were more revered and better funded, then people who had the position would take more pride in their work and work harder to help keep innocent people who can't afford a big-name attorney from being unfairly prosecuted. This would help address the socioeconomic bias of convictions, because if the defendant has a good lawyer then he is more likely to be acquitted.

The third and final category involves options that would change the actual execution itself and those affected by it and those being executed. These options are to set a national standard for the method of execution, psychological therapy for executioners, a test for psychopathy in the convicted person, and use of a robot executioner. Some Assembly members wanted to set a national standard for the method of execution, which would eliminate an electric chair in some states, because it could be considered by some as cruel and unusual. Another issue that came to the table after hearing Dean Ault's speech is that there should be psychological therapy for executioners. It has to be hard to kill people that you are told to kill, and he told the Assembly that it was difficult and finally caught up to him. An option that could cancel this out would be a robot executioner; if this were implemented then no one would have to deal with the pain in killing other humans. The last option is to test for psychopathic conditions in the convicted persons. Dean Ault felt very strong about this and he felt this way because he says he saw people that he thought could change and did before their execution, and there were others that would not change and it is impossible to rehabilitate them. Then determine the sentence that the convicted person would receive. Science has given us the ability to see a person's brain to determine whether or not they are psychopathic, but most people agreed that this needed to be more carefully researched before it was actually used.

The end of the semester came relatively quickly and a decision had to be made. The first vote was whether we should decide to address the issue via national mandates or tackle the issue at the state level only. By a vote of 23-5 the assembly chose to address the issue through the national level. Next, we were given a chance to vote on several different modifying options. In a story-boarding exercise, Assembly members were given four

stickers each to place on issues that we felt were important. Among the numerous options, Assembly members used their stickers to indicate support as follows: keeping the unqualified option for life without parole (24)<sup>2</sup>, mandating education/training for jurors (22), increased funding for public defenders (13), testing for psychopathy and adjusting the punishment accordingly (6), setting a national standard for method of execution (4), psychological therapy for executioners (3), limiting the number of appeals (8), limiting the use of DNA (2), creating a committee to decide death penalty eligibility (4)<sup>3</sup>, electing public defenders (3), and using a robot to carry out the executions (7).

As the process of deliberation continued we narrowed the options down and eliminated those with little support, and had a second vote using the same sticker method. After we deliberated on whether to abolish or modify we voted by secret ballot on the option of replacing the death penalty with life without parole with an overwhelming number of 27. We also indicated our preferences about different recommendations for the abolishment of the death penalty as follows: use Amendment 14 sections 1 and 5 as a constitutional hook (12)<sup>4</sup>,

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<sup>2</sup> Directors' note: During the learning phase, a representative of the Kentucky Department of Public Advocacy had explained that under Kentucky law a prosecutor must seek the death penalty before life without parole can be made available as a sentencing option. States vary considerably in their laws regarding the conditions for imposing life imprisonment and related opportunities for parole. The term "unqualified option" in this context implies a simple and direct option for imposing a sentence of life without the possibility of parole, free of exceptions or qualifying contingencies.

<sup>3</sup> Directors' note: the committee referenced here is an extension of an idea proposed by a representative of the Kentucky Department of Public Advocacy, who suggested that a state-level committee might be created to review cases and decide on the issue of death-eligibility for defendants, thereby reducing the influence of emotionally charged press and public attention on decisions by local prosecutors. A Commonwealth's Attorney who appeared before the Assembly disagreed with this suggestion and with the ideas the prosecutors are unduly influenced by emotional pressure in their decision, and stressed the importance of local opinion and consultation with victims' families as factors in the decision about how to prosecute a capital case.

<sup>4</sup> Directors' note: That is, a constitutional justification that might survive appellate review.

use a constitutional amendment abolishing the death penalty and replacing it with life without parole (18), create "incentives" for state compliance (31). Next, there were some issues that we felt were still important to mention although not necessary in our final recommendation.

Thirteen Assembly members wished to note that rehabilitation should be focused on in the prison system, while sixteen voted that jury education and better funding for public defenders should be considered regardless of the outcome.

Finally, with all of the options narrowed down and voted on we moved the assembly to the final vote. By a secret ballot vote of 26-10 the assembly voted to abolish the death penalty versus modifying it. Next, we voted to abolish the death penalty versus keeping the status quo by a vote of 28-7 with one officially abstaining. Once we decided to abolish the death penalty, the final vote was whether to leave a replacement option to the states or create a uniform life without parole sentence for all states. With a vote of 23-3 and several abstaining, we voted to leave the replacement option to each individual state.

A referendum ballot (Appendix III) was sent by e-mail on May 7 to all members of the university with an explanation for the CACTUS decision. People had until 1:00 P.M. on May 12 to cast their ballots. The results were announced at the CACTUS closing ceremony. The CACTUS recommendation was defeated by a vote of 455 to 415. Certificates and t-shirts were awarded to CACTUS members, group pictures were taken, and the Assembly came to a close with pizza and death-by-chocolate cookies.

## APPENDIX 1 - CACTUS Statistics

### **Median Age - 20.5**

#### **Gender**

Male - 15 = 45%

Female - 18 = 55%

#### **Currently Residences**

Richmond, KY

Eaton, KY

Lexington, KY

Louisville, KY

Winchester, KY

Monticello, KY

London, KY

Owensboro, KY

#### **Hometowns**

Manchester, KY

Morehead, KY

Louisville, KY

Columbus, IN

Wayne Co.

Clark Co.

Floyd Co.

London, KY

Allegany, MD

McCreary Co.

Ft. Myers, FL

Memphis, TN

Irvine, KY

Crestview Hills, KY

Hazard, KY

Franklin Co.

Union, KY

Owensboro, KY

#### **Race**

White - 31

White/Latino - 1

None - 1

### **Class standing**

Freshman - 11 = 33%

Sophomores - 9 = 27%

Juniors - 6 = 18%

Seniors - 7 = 21%

### **Majors**

Environmental Health Science

Political Science - 15

Special Ed, LBD

Corrections

CIS

Criminal Justice

Prelaw/History

Double Major

Undeclared

Occupational Therapy

History

Business Management

Psychology

**Political Science** = 45% of class

**Other** = 55%

### **Minors**

Political Science - 3

History - 1

Spanish - 2

American Sign Language - 1

English 2

Communication - 1

Journalism - 1

None - 21

### **Religious Affiliations**

None - 7 = 21%

Christian -14= 42%

Southern Baptist -1 = 3%

Catholic - 3 = 9%

Christian Protestant - 2 = 6%

Zen - 1 = 3%

Open - 1 = 3%

Agnostic - 3 = 9%

**Currently Employed**

Yes - 14 = 42%

No - 19 = 57%

**Opinion of Death Penalty before attending CACTUS**

Undecided - 11 = 33%

In favor - 8 = 24%

Against - 5 = 15%

Mostly Against - 2 = 6%

Mostly In Favor - 6 = 18%

**Party Affiliations**

Libertarian - 3 = 9%

Independent - 4 = 12%

Republican - 10 = 30%

Democrat - 15 = 45%

Other - 1 = 3%

**Has known anyone who was a victim of murder**

Yes - 12 = 36%

No - 20 = 60 %

No Answer - 1 = 3%

**Served on a jury**

Yes - 2 = 6%

No - 30 = 91%

No answer - 1 = 3%

**Has had a family member convicted of murder**

Yes - 1 = 3%

No - 31 = 94%

No answer - 1 = 3%

**Knows anyone who has been convicted of murder**

Yes - 2 = 6%

No - 30 = 91%

No answer - 1 = 3%

**Marital status**

Single - 29 = 88%

Married - 1 = 3%

Divorced - 0

Engaged - 1 = 3%

Living with significant other - 2 = 6%

Widowed - 0

## **APPENDIX 2 - CACTUS Mandate 2010**

A. The 2010 Citizens' Assembly for Critical Thinking about the United States (CACTUS) must study arguments and proposals for keeping, changing or eliminating the death penalty, identify and analyze the perceived issues and problems leading to the proposals, including arguments in support of the death penalty as now it now exists in the United States. The Assembly must then decide whether the death penalty should be kept as it currently exists or that a change is warranted, and if so at what level or levels of government or through what type of Constitutional amendment the changes should be implemented; and if the recommended change is to eliminate the death penalty, whether other provisions should be mandated in conjunction with eliminating the death penalty.

B. In carrying out this mandate, the Assembly must:

First, become well informed as to the history of the death penalty in the United States, current state and federal laws, Court decisions, relevant Constitutional provisions, and their applications, and the proposed alternatives and their rationales.

Second, study the use or abolition of the death penalty in other countries.

Third, consult with other citizens in the Eastern Kentucky University community of students, faculty, and staff, as well as interested members of the broader community, and provide them the opportunity to make submissions to CACTUS in writing and/or orally at public hearings;

Fourth, develop at least one alternative model based on keeping but changing the death penalty, and at least one alternative model based on abolishing the death penalty; and then debate and decide between them;

Fifth, re-examine the current status of the death penalty in the U.S. and then debate and decide between the status quo and the chosen alternative model.

C. If the Assembly recommends adoption of a change in the current policy governing the death penalty, the new policy must be described clearly and in detail in the final report and if a law or laws or a Constitutional amendment would be required at the state or federal level, proposed language for these must be included.

D. If the Assembly recommends keeping the current policy and laws governing it, the final report must explain the reasons for judging this policy to be preferable to the alternative model most favored by the Assembly.

E. The decision described in section A must

a. be limited to the determination of the appropriateness or inappropriateness of the death penalty and any qualifying factors and

b. take into account the potential effects on the Constitution, the federal division of powers, and the role and cost of law enforcement, and be consistent with the basic principles of representative democracy.

F. Issues that arise in deliberations or public hearings that are beyond the scope of the mandate but that the Assembly may believe to be relevant to the process may be addressed in the final report.

G. Whether or not the Assembly chooses to replace or alter the current laws and policies, it must produce a clearly-worded referendum question to this effect to be voted on by the university community and a clearly-worded explanation to be posted with the referendum question.

H. The Assembly should make its decision and approve a referendum question no later than April 22, 2010, and should complete and approve its final report no later than April 28, 2010.

I. The referendum question must be posted no later than April 28, 2010, and voting will continue through noon on May 5, 2010. The decision of the voters shall be announced at the last meeting of the Assembly on May 5, 2010, or no later than May 7, 2010.

## Appendix 3 – Referendum Question

The student members of the 2010 Citizens' Assembly for Critical Thinking about the United States (CACTUS) have studied and deliberated about the death penalty all semester, considering whether to recommend keeping, changing, or abolishing the death penalty in the United States. Having reached agreement on a recommendation for action, the Assembly hereby invites all members of the University community to vote on whether to implement the following recommendation:

By a final vote of 28 to 7 the Assembly recommends that the United States Congress seek by law to abolish use of the death penalty in the United States, encouraging discontinuance of its use in all states that have not yet abolished the death penalty through such incentives as the Congress may determine, and dispensing with its use by the Federal Government of the United States, in accordance with the Constitutional authority and responsibility of the Congress to:

1. Establish justice;
2. Guarantee the equal protection of the laws;
3. Ensure and protect due process of law;
4. Interpret the meaning of "Cruel and Unusual Punishments" forbidden under the Eighth Amendment to the U.S. Constitution, under the authority granted to Congress in Section 5 of the 14<sup>th</sup> Amendment;
5. Provide for the common defense, through the maintenance of legitimacy and respect for the United States among the community of nations.

### MAJOR REASONS DISCUSSED IN THE ASSEMBLY FOR RECOMMENDING ABOLITION OF THE DEATH PENALTY INCLUDE:

Differences in numbers of executions, and the types of crimes being punished, between rich and poor, between the races, and across local and state governments;  
Evidence that innocent people are executed;  
Legal representation for death eligible defendants is often poor;  
The death penalty and all the appeals are more costly than alternatives such as life imprisonment;  
The death penalty doesn't have the deterrent effect on murder that people think it does;  
The death penalty hurts our reputation and respect for the United States in a world where most other nations have abolished it;  
The unnecessary mental distress caused to those who must carry out executions.

\_\_\_\_\_ I SUPPORT the CACTUS recommendation to abolish the death penalty.

\_\_\_\_\_ I OPPOSE the CACTUS recommendation and prefer to keep the death penalty.

## **RESULTS:**

The results of the Death Penalty Referendum are as follows:

A TOTAL OF 870 votes were cast.

415 (48%) SUPPORT the CACTUS recommendation to abolish the death penalty.

455 (52%) OPPOSE the CACTUS recommendation and prefer to keep the death penalty.

## **APPENDIX 4 – Readings**

There were three required books for this year's CACTUS:

Bedau, Hugo and Paul Cassell, eds., *Debating the Death Penalty* (New York: Oxford University Press, 2004).

Henningfield, Diane Andrews, ed. *The Death Penalty: Opposing Viewpoints* (Detroit: Gale Cengage Learning, 2006).

Paternoster, Raymond, Robert Brame, and Sarah Bacon, *The Death Penalty: America's Experience With Capital Punishment* (New York: Oxford University Press, 2008).

Students also were assigned some shorter readings on critical thinking, deliberation, and deliberative democracy, and consulted various web sites relating to the death penalty.