STATE OF NEW JERSEY

NEW JERSEY DEATH PENALTY STUDY COMMISSION

_______________________________

NEW JERSEY DEATH PENALTY STUDY :
COMMISSION HEARING :
_______________________________:

State House Annex

Trenton, New Jersey 08625-0068

Wednesday, September 13, 2006

1:15 p.m. - 5:40 p.m.

GUY J. RENZI & ASSOCIATES

Golden Crest Corporate Center

2277 Route 33, Suite 410

Trenton, New Jersey 08610

609-989-9199 or 800-368-7652 (TOLL FREE)

www.renziassociates.com
COMMISSION MEMBERS

JAMES H. COLEMAN, JR.

JAMES P. ABBOTT

EDWARD J. DeFAZIO

KATHLEEN GARCIA

KEVIN HAVERTY

EDDIE HICKS

THOMAS F. KELAHER

BORIS MOCZULA (ATTORNEY GENERAL’S DESIGNEE)

JOHN F. RUSSO

RABBI ROBERT SCHEINBERG

YVONNE SMITH SEGARS

MILES S. WINDER, III

MIRIAM BAVATI, COMMISSION STAFF

GABRIEL NEVILLE, COMMISSION STAFF
<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senator Raymond J. Lesniak</td>
<td>5</td>
</tr>
<tr>
<td>Sandra Place</td>
<td>10</td>
</tr>
<tr>
<td>Patricia Harrison</td>
<td>17</td>
</tr>
<tr>
<td>Jo Anne Barlieb</td>
<td>20</td>
</tr>
<tr>
<td>Richard Pompelio</td>
<td>27</td>
</tr>
<tr>
<td>Robert Del Tufo</td>
<td>41</td>
</tr>
<tr>
<td>Senator Robert J. Martin</td>
<td>51</td>
</tr>
<tr>
<td>Patrick Murray</td>
<td>67</td>
</tr>
<tr>
<td>Vicki Schieber</td>
<td>86</td>
</tr>
<tr>
<td>Juan Roberto Meledez-Colon</td>
<td>103</td>
</tr>
<tr>
<td>Dan Carluccio</td>
<td>110</td>
</tr>
<tr>
<td>Marilyn Flax</td>
<td>134</td>
</tr>
<tr>
<td>Marilyn Zdobinski</td>
<td>136</td>
</tr>
<tr>
<td>Jonathan E. Grades</td>
<td>151</td>
</tr>
<tr>
<td>Sharon Hazard-Johnson</td>
<td>173</td>
</tr>
<tr>
<td>Brian Kincaid</td>
<td>185</td>
</tr>
<tr>
<td>Anna Rivera</td>
<td>203</td>
</tr>
</tbody>
</table>
CHAIRMAN COLEMAN: Welcome everyone.
The New Jersey Death Penalty Study Commission is now conducting a public hearing and this session now will come to order.
Can you hear me in the back?
(Off the record.)

CHAIRMAN COLEMAN: The New Jersey Death Penalty Study Commission is now in session. We are conducting a public hearing.
Before commencing with today's business, and we have 17 persons who have signed up to speak to us today, I'd like to call your attention to the fact that on August 16th we had a work in session and the transcript of those proceedings are available on the New Jersey Legislative Home Page. If you need any assistance with respect to that, please contact one of our staff members.

As Commissioner Howard would do, I'd like to welcome everyone here, and we appreciate your presence. And your large turnout is indicative of the importance of the assignment we are undertaking. Reviewing the New Jersey Death Penalty Act is a very serious undertaking and we really appreciate your appearance and
participation in order to try to move this
process forward.

The first person whom I will call on
today to be a presenter is Senator Lesniak from
Union County.

Because of the large number of
persons who will be giving testimony today, and I
believe the number currently is at 17, we will
ask you to not exceed ten minutes in your
presentation. And we are hoping that you might
allow a few minutes of that for some -- I'm
sorry -- for some questions that a member of the
Commission may wish to ask you. We will keep
time.

So, Senator Lesniak, would you
proceed, please.

MR. LESNIAK: Justice, I'm a little
bit of an unusual politician, I only need a few
minutes. And my respects to you, one of Union
County's finest, and Commission members.

In 1982, I voted to reinstate the
death penalty in New Jersey. I was wrong. Thank
God, no one has been executed to date. And thank
God, no innocent person was executed. As the
saying goes, There but for the grace of God...
We now have an opportunity to right that wrong. It is not my intention to debate the moral aspects of the death penalty. I believe it is immoral. Others disagree. That's a debate that should take place in another forum.

I'm here to voice my opinion that the death penalty should be replaced by a life sentence without parole; that the death penalty is not a deterrent to murder; that its cost in tax dollars is wasteful spending; and that there is no way to create a foolproof system to prevent the execution of an innocent person.

My heart goes out to every family devastated by the murder of a loved one. They have every right to be angry and to express that anger. But I'm certain that deep down not one of them would want to act out of that anger. As a society, we should not act out of anger either.

You've heard the mounting evidence, and you will hear more today, I have no doubts, that the death penalty is not a deterrent to murder.

You've heard, and will hear, that the cost of the death penalty, due to costly State and Federal appeals mandated by the New
Jersey Constitution and the Constitution of the United States, far exceeds the expenses of life imprisonment.

And, you've also heard that hundreds of innocent people have been sentenced to death, and no doubt some of them have been put to death because human beings make mistakes.

What I want to emphasize is that there is no foolproof system to avoid convicting an innocent person. Eyewitnesses often are mistaken and people strangely confess to crimes they did not commit. To paraphrase one of our Founding Fathers, Benjamin Franklin, it's better that 100 guilty people are set free, than one innocent person suffer.

I'm not asking that anyone be set free. I'm just asking that, rather than the death penalty, which is irreversible when executed, that we not play God. Let's just instead require that people convicted of murder spend the rest of their lives in prison with no possibility of parole.

Thank you, Justice, thank you members, and I certainly would answer any questions you may have.
CHAIRMAN COLEMAN: I thank you Senator for your presentation.

Does any member of the Commission have any questions for the Senator?

Having seen none, you're excused.

Thank you.

Do you have one?

COMMISSIONER GARCIA: Senator, with all due respect, I would just like to say that what's immoral is what these murderers did to their victims. And in this State, unfortunately, we don't even execute the blatantly guilty, no less the innocent, because of the technicalities in the system.

People have been -- their cases have been overturned because of technicalities, in large part; in most cases, not due to the fact that they're innocent. So I really don't think, at least in New Jersey, that we have to have a big concern in that area. What's immoral is what the system does to the families, the survivors.

Thank you.

MR. LESNIAK: Well, that's not a question, but I would concur that that certainly is immoral. But I do disagree on whether there
is such a thing as a blatantly guilty person.

A person may be guilty, but there's no system in place known to man that can ensure that guilty people -- that innocent people are not found guilty. There's no perfect system. And as Justice Coleman knows very well, due process requires that every act of Government have a legitimate and rationale purpose. And since it's clear that the death penalty has never been a deterrent, and the imposition of the death penalty has throughout this country resulted in innocent people being executed, I believe that the death penalty violates due process of the Constitution as well. That's not your charge, I admit that. Your charge is to whether the death penalty, as constituted in New Jersey, is good or bad, and I would suggest that there is no good purpose and there are plenty of bad purposes.

Thank you.

CHAIRMAN COLEMAN: Are there any other questions?

Thank you, Senator.

MR. LESNIAK: Thank you, Justice.

Thank you, members.

CHAIRMAN COLEMAN: Sandra Place.
MS. PLACE: Good afternoon.

CHAIRMAM COLEMAN: Would you turn your microphone on.

MS. PLACE: I come to you this afternoon as a survivor of violent crime. As you can see by my notes, everything is dated. If I do not compartmentalize what has happened to me since my mother's murder, I'm not sure I can address it in this format.

April 26th, 1996, my daughter Taylor's first birthday; it's also her grandmother's murder day. What should have been a time for joy and celebration quickly became a day of immense pain. Just one year earlier, she was at my side when I gave birth; what irony to have her brutally murdered one year to the day later.

September of '98, the State versus Mildred Place's murderer begins. At this point, I feel I'm justified in not saying his name. There have been far too many times that I've had to address the case with his name only. He will be here identified as Mildred Place's murderer. The trial goes on for weeks, and due to the brutal nature of the crime, the prosecutor has
asked me and barred me from the courtroom. And
at the time, I didn't have a full understanding;
now I do and I will be forever grateful that
those images are not in my memory.

October 9, 1998, 12 jurors make the
heart rending decision for the death penalty.
They did not make this decision lightly. They
held hands, they shook and cried when the verdict
was read. This was the same response my family
had. Such a verdict was as hard for us to hear
as it was for them to present. The boogieman
isn't going to hurt us anymore; he's going to
death row. What a thing I'd love to tell me
children; he can't hurt us anymore.

February of 1999, the Star Ledger
reports that legislation moves to speed up
executions in New Jersey. While this may be
interpreted by others as good news, what it means
to myself and my family is that the Supreme Court
is going to be working just as quickly to come up
with ways to overturn the few death penalty
sentences that have been handed down.

April of 1999, the death sentence
has been affirmed. At this point, I start to
feel more secure in the sentencing. He is being
watched 24 hours a day and the notoriety of being on death row means that any changes should and will be known by me and my family, either by the court system or by the media.

November 29, 1999, the killer's attorneys argue before the Supreme Court that the client is deserving of a new trial due to an error on the Judge's part. The request has been denied; again, my security continues to increase.

February 14, 2002, killer spared by high court. Mildred Place's murder was not deemed heinous enough for the penalty of death to her killer. Heinous is defined as monstrous, atrocious, terrible and dreadful. My mother was beaten, sodomized, tortured and finally strangled. What else was the Supreme Court looking for to fulfill their meaning of heinous?

At this point, security has been shattered again.

On April 26, 1996, I joined a club that wants no new members. I became a victim of violent crime.

On October 9, 1998, I became a member of a club with a very limited number of members, survivors of homicide awaiting death row execution of their loved one's killer.
On February 14th, I became a member of a club with an ever-growing membership, survivors of overturned death penalty sentences. My family did not advocate for the death penalty. We put our trust in the legal system and prayed for the jurors to make the decision that was right for them. These 12 men and women whom the judicial system chose and approved, made a life changing decision. Their decision not only impacted the life of my mother's killer, it impacted my family and friends as well.

New Jersey Supreme Court, without hearing the evidence or enduring the details of the horrific crime, felt justified that the sentence should be vacated. This was determined on Proportionality Review; crimes of somewhat similar nature did not receive this penalty, so neither should my mother's killer. This review process, as it is called, could be described as punishing on a curve.

My mother was brutally murdered. All aspects fit the stringent criteria for the death penalty. Twelve citizens working within the parameters of the law determined that the
crime was heinous enough for capital punishment.

Opponents to the death penalty received a moment of victory; however, it is short-lived. My mother's killer will one day see release. What kind of victory is that?

Mildred Place was the first victim, now justice was the second.

Well-meaning friends and family assure us that the sentence will be commuted to life in prison and it will all end. This naivety is common when it comes to penalties for homicide crimes; many think that a life sentence is truly that. There's only minimal understanding of New Jersey's definition of life. My mother's killer has his life and will also get a life outside of prison.

As a result of the death penalty being overturned and not being commuted to a true life sentence, I face the dreadful task of telling my children about the nature of their grandmother's death. This is necessary, as one day they may need to be the ones advocating for justice. I've spent the last ten years trying to protect my children from this horrific tale and I foolishly thought that if their grandmother's
killer was on death row or ultimately executed,
they wouldn't have to learn of the fallibility of
the justice system, or suffer from it.

I can hear my mother saying, put
your trust in God, not man. God does not sit on
the Supreme Court, man does.

September 13, 2006, ten years and
four months since the murder, it is another of
Mildred Place's grandchildren's birthdays; the
grandson she never got to meet.

I find myself sitting here in the
State House trying to describe to a panel the
impact the death penalty has had on me and my
family.

Nearly eight years since the jury
delivered the verdict of death, I am still forced
to focus on my mother's killer. If the killer
were given life without parole, and I mean a true
life sentence, I would not be here. I would not
be forced to discuss the killer and the verdict
and the ways in which my life has been affected.
Each court date, each appeal, each write-up in
the newspaper, revisiting and revisiting the
pain, each event keeping me that much further
from the curative process I and my family so
greatly deserve.

If I were asked to speculate what
the difference would be in my life, I would say I
would be eight years further in my healing
process. Who knows what that would mean. Would
I finally feel safe and secure again; would I
laugh more easily; would I be able to walk into a
dark house without panicking; would my children
have the freedom to ride their bicycles around
the block; would I stop seeing my mother's killer
in the park or near my children's schools; would
I be living and not simply existing?

All this wondering doesn't really
matter. The day my mother's killer gets
released, it starts all over again.

I respectfully request that any time
that I have left over from my speaking, would be
given to Rich Pompelio.

If you have any questions?

CHAIRMAN COLEMAN: Thank you,

Ms. Place.

Does any member of the Commission
have any questions for Ms. Place?

Does any member of the Commission
have a question for Ms. Place?
I see your light on.

COMMISSIONER GARCIA: I'm sorry, no.

CHAIRMAN COLEMAN: Thank you. You may step down.

Patricia Harrison.

You may proceed, Ms. Harrison.

MS. HARRISON: My name is Patricia Harrison. I am the sister of Jacqueline Harrison. I became a victim of crime on August 24, 1987 when my sister Jacqueline was brutally and sadistically murdered in Pemberton Township, Burlington County, New Jersey. The murder was as gruesome and as heinous as one could imagine. The details are public information and would turn the stomach of even the coldest human beings.

Not only am I a victim of this murder, so are my five siblings, our parents and Jackie's two daughters. And now, two generations later, Jackie's grandson and soon to be second grandchild are also victims, because she would have undoubtedly touched them in the same positive manner that she touched everyone else.

After the 19 years of her absence, I think of her and the joy that she brought to me.

Her meaningless death leaves a void in my daily
life. This void permeates through her immediate family. Family gatherings during holidays, which are normally festive and full of cheer, are diminished because of this void in our lives. This sadness almost always turns to anger when we realize that the individual who did this to us is still living and has the opportunity to feel the happiness and the joy and all the other wonderful emotions that define our species.

The people who commit such a crime, including those incarcerated, continue to have an opportunity to experience a meaningful and fulfilling and, indeed, a happy life. Even if they are removed from society, they can enjoy literature, they have movies, a host of social events. The last time my sister Jackie had the opportunity to enjoy any of that was 19 years ago. Her killer continues to enjoy many aspects of life.

Our grieving will probably never end. Clearly, the crime goes far beyond snuffing out another human life. Handling death of a loved one is always difficult, but handling the death of a loved one for a senseless reason and living with the brutality involved in Jackie's
death is a lifelong burden that is suffered by all the victims of a murder, particularly, when the murderer continues to experience life itself. Prior to the death of my sister, I viewed capital punishment differently than I do now. I looked at it objectively and felt that the important thing to do with dangerous criminals was to remove them from society and try and rehabilitate them. Since I am viewing this issue subjectively -- since then - excuse me - I am viewing this issue subjectively and I feel quite differently. Those of you who are trying to be objective today should walk in my shoes or the shoes of the many living victims of this crime, only then could you experience the unfairness and grief caused by missing a loved one while having the knowledge that the killer continues to enjoy life.

It seems to me here that the issue goes beyond simply administering some punishment to a murderer. The issue must address the responsibility that society has towards the victims of crime. Simply taking the murderer out of society for a long period of time does not address the lifelong emotional problems created
by the crime. Our society was built on understanding and helping our neighbors. In the case of a brutal murder, the best way for society to help the victims is to give them the knowledge that the murderer is no longer experiencing the joys of life that he has ended for another human being. Thank you.

CHAIRMAN COLEMAN: Thank you, Ms. Harrison.

Is there any question?

Thank you.

Jo Anne Barlieb.

MS. BARLIEB: Good afternoon. My story begins 21 years ago. It was July 1985 when Cynthia Barlieb, a 25 year-old mother of four, was brutally shot to death. She was a clerk for a local Cumberland Farms convenience store. Her and my father had recently bought their first home and my mom had worked part-time earning extra money to pay bills. I was eight years old and had three younger sisters. Melaney was five, Kristin, three, and Kimberly, 15 months old. It was a Sunday, at 12:30 in the afternoon, when her assailant boldly walked into the store, intent on committing armed robbery. As she worked the
store alone, he made idle conversation with her
until the other customers had left, at which time
he locked the front door and flipped the open
sign to closed. Cindy fatally refused his
demands to open the register. She was punished
with a shot to her chest. Frustrated with his
inability to open the register, he shot her twice
more as she laid face down at his feet; one shot
in the back of her neck and a final shot to the
back of her head. He hadn't finished with her
yet; barely still alive, he dragged her body to
the back of the store and hid her inside the
walk-in cooler. The killer attempted to cover
his tracks and then fled the scene. Eventually,
it was his arrogance, partnered with a small
reward, that led to his capture; thus began my
family's involvement with the criminal justice
system.

The defendant was tried and
convicted of capital murder, then sentenced to
death by lethal injection. At the time, my
sisters and I were too young to know anything
about the trial. Over the years, I became none
the wiser. It was enough for me to know that the
man who viciously took my mother's life was on
death row. After all, he literally deprived her
of everything; left four little girls without
their mother and bruised many hearts that still
ache for her to this today.

I was introduced to our so-called
justice system in 1993 when I first learned that
the killer's death sentence was overturned by the
Supreme Court. Subsequently, the State moved to
retry the penalty phase of the case, once again
seeking a death sentence. In search of justice,
I committed to attend every portion of that
second trial. Our family was forced to relive
the nightmare. We sat through the gruesome
evidence and vivid testimony that tore at our
wounds. Even more aggravating, was that the jury
could not know Cindy as a real person. Her dead
body was only evidence of the crime and any
personal information about the victim was
withheld so as not to bias the jury. It was the
State versus the defendant. Cindy was a murder
victim, and as a result, lost every single one of
her basic human rights. The killer, on the other
hand, is entitled to every single human right in
the book, and then some. We heard how bad his
childhood was and that he was a model prisoner
and so forth. Thankfully, that wasn't enough.
The jury once again sentenced him to death, and
for the time being, it seemed that justice had
prevailed.

Sure enough, justice was undone
eight years later when another appeal made it to
the Supreme Court. During the second trial, it
was found that one of the jurors knew that
Cynthia Barlieb was a mother of four. At the
time, the judge had this juror replaced and
resumed the trial. Apparently, the justices felt
that the judge was wrong and should have declared
a mistrial. This, of course, wasn't fair to the
defendant, so his second appeal was granted and
the death sentence, once again, overturned.

For the third time, our family
braced for yet another trial. This time around,
thanks to the victim advocates and resulting
legislation, I was able to read a victim impact
statement to the jury. This was a major
breakthrough; we could finally share personal
information about Cindy's life. Ironically, that
same information is what caused the appeal to
begin with. Also as a result of the impact
statement, the defense fought to have me barred
from the courtroom as a witness. It was
eventually ruled that I could attend the trial
with my family, and all over again, we relived
our trauma.

Ultimately, we were failed by the
justice system. The jury was deadlocked, and by
default, a life sentence of 30 years was imposed.
With 16 years already served, there was no
comfort in knowing that he would be eligible for
parole in 14 years. Frankly, it's an insult, a
slap in the face. We are damned to continue this
charade each time he becomes eligible for patrol,
and I cannot even stomach the thought of his
release.

I'd support the death penalty if the
State of New Jersey could limit the appeals
process and actually utilize it. Unfortunately,
I sit here following a more realistic approach in
favor of abolition. I can testify from
experience that our current system is most unjust
for the victims and their loved ones. I can only
hope to save other families from the grief of the
never-ending appellate process. I promote the
substitution of the death penalty only with a
life sentence that truly means life in prison
with no possibility of parole.

My family has struggled with the system for 21 long years and our battle for justice is far from over. Given the option, I would be grateful to adopt this alternative sentence, in lieu of our tragic situation in the criminal justice system.

Thank you for hearing my statement.

CHAIRMAN COLEMAN: Thank you, Ms. Barlieb.

Is there any question from any member of the Commission?

Ms. Garcia.

COMMISSIONER GARCIA: Jo Anne, thank you.

MS. BARLIEB: Thank you.

COMMISSIONER GARCIA: I'm going to try to keep what I say to questions, but as you know, and I both know, when you've gone through this, when it's a reality, not theory, it's very difficult to hear some of these things when it's so focused on the perpetrator and not the victim or the survivors, but I do want to ask you, would you agree that, over the last 21 years, that on a daily basis, what you struggle with is anger, not
only anger about the brutal murder of your
mother, but anger over the fact that the system
enabled him to escape justice and that he will be
one day walking the streets again?

MS. BARLIEB: I cringe to hear you
say that, but you're absolutely correct. I had
mentioned a slap in the face, and it continues to
be so.

COMMISSIONER GARCIA: And given what
you know today, what would you advise another
family that's facing the death penalty if they're
given that choice, or life without parole, if
that truly is what happens?

MS. BARLIEB: Without a doubt, I
would advise them to seek life without parole.

COMMISSIONER GARCIA: And lastly, I
don't want to embarrass you here, but I remember
that about five years ago you were chosen to
represent New Jersey at the Victim Assistance
Academy in Washington, D. C. You joined
advocates from across the State and part of your
assignment there was to bring a hat that
represented your state, and you won first prize
for that hat. Could you tell the Commission what
it said on your hat?
MS. BARLIEB: My hat said, New Jersey, a great place to live, just ask our death row inmates.

COMMISSIONER GARCIA: I think that says it all. Thank you.

CHAIRMAN COLEMAN: Thank you, Ms. Barlieb.

MS. BARLIEB: Thank you.

CHAIRMAN COLEMAN: Stephen Raymond.

COMMISSIONER GARCIA: Justice Coleman, I don't believe Prosecutor Raymond is here. I would ask that Richard Pompelio be able to cover matters that he would normally cover.

CHAIRMAN COLEMAN: Richard Pompelio. You may proceed, Mr. Pompelio, when you're situated.

MR. POMPELIO: Thank you, Justice Coleman, members of the Committee. My name is Richard Pompelio. I am an attorney; I'm a crime victim. In 1992, I established the New Jersey Crime Victims' Law Center, which is dedicated and serves victims of crime in the criminal justice system on a pro bono basis. We are the oldest and one of ten in the country.

The Constitution of the State of New
Jersey states that victims of crime shall be treated with fairness, compassion and respect by the criminal justice system. The manner in which the courts of this State have dispensed justice with regard to the death penalty process, represents an egregious violation of the victim's constitutional rights. My words do not come easily; nevertheless, as a crime victim and a lawyer, I cannot sit by passively, as many, and be blind, indifferent or hypocritical to this unfortunate reality.

In 1989, a few days after my 17 year old son Tony was murdered, the county prosecutor told my wife and me that he would not seek the death penalty of our son's killer, because, quote, and I'll never forget those words, the crime was not heinous enough. The facts indicated otherwise; however, we were in such shock and pain that we just nodded a sheepish acceptance and resolved to the dictate that we were just given. If the death penalty had been pursued by the prosecutor and awarded by the jury, perhaps my family and I still would be in the criminal justice system today. This is a nightmare I could wish on no one.
When my son was murdered, I had been a lawyer for 17 years and thought I understood what the criminal justice system was all about. How wrong and perhaps arrogant I was to be so presumptuous. What has the criminal justice system become? Perhaps not much more than the mechanical processing of violators, with unreasonable requirements placed on judges -- trial judges and prosecutors to resolve cases.

To truly understand what the criminal justice system is all about, one must be the accused or the victim, because to that person, it is the reality of every waking moment of his or her life; there are no vacations, there are no days off.

Many assistant prosecutors throughout this State who actually work in the trenches each day, complain to me often that they are frustrated because they are mandated by numbers, and the name of the game is plea bargain. Our criminal justice system has become a platform for politicians to promote to their populous that they are tough on crime. It has become a forum for appellate judges to espouse the human rights principles that they have held
so closely. Unfortunately, too often they must
do so on behalf of a violent criminal who
committed the crime, but the cleverly articulated
right somehow greases his path to an unjust
freedom. Just ask the survivors, Susan Green,
Leon Hanjian, Rosetta Lucas, Donna Lucas, Stanley
Caswell and Esther Friedman, to name a few. The
killers of their loved ones were all found guilty
and sentenced to death, but today they all walk
the streets as free men, having served only an
average of 13 years in prison. And this list
goes on and on.

In 1980, President Ronald Reagan
commissioned a national task force to study the
effects of the criminal justice system on victims
of crime. After a two-year exhaustive study, the
task force reported, and I quote, Somewhere along
the way the system began to serve the lawyers,
judges and defendants and treat victims of crime
with institutionalized disinterest. The
treatment of crime victims is a national
disgrace.

I am not a cynic. Trained in
appreciating the richness and the splendor of our
American system of justice, and then thrust into
it personally with all its human factors, I maintain a burning and passionate hope that the words of the interpretive statement to Article 1, paragraph 22, of the New Jersey Constitution will someday have true meaning. When the Legislature approved, and 1.2 million voters of this State confirmed that crime victims shall be placed on equal footing with the accused, the words were never meant to be empty promises by the legislators and wishful thinking on the part of the citizens of this State. As Justice Marie Garibaldi opined in the 1996 landmark victims' rights case of State versus Muhammad, and I quote her, We know exactly what the founders of this constitutional amendment intended, fair treatment for victims.

Judges are trained as lawyers, and all lawyers are trained in understanding and appreciating the beauty of our Constitution and our Bill of Rights. We hunger and thirst for the opportunity to advocate and advance these rights, because that is the essence, that is the foundation for what we see as the purity of our democratic system. We all have justice in our hearts and a burning desire to achieve that
And then there is the death penalty and the process that has developed in our criminal justice system from it. The death penalty is an abomination. The author, Albert Camus, wrote, For centuries the death penalty, often accompanied by barbarous refinements, has been trying to hold crime in check; yet crime persists. Today his observation may be alternatively stated, For decades the death penalty in New Jersey, often accompanied by illogical refinements, has been trying to hold crime in check; yet crime persists and victims continue to be revictimized by the justice system that exists to protect them, at a cost to the taxpayers of millions of dollars each year.

The death penalty process in New Jersey over the last quarter century has been, in my opinion, the greatest failing of the justice system in the history of our State. It is the failing of those in power, the politicians and the judges, but it is a failing that has been spawned from good and righteous intentions, and also pride, a pride on the part of these people in power to do what they believe is right. The
system can no longer suffer the pride of those in power. The taxpayers of this State can no longer bear the cost of this failure. And as for the victims, well, truly, enough is enough.

Since the death penalty was reinstated in 1982, there have been 197 capital trials and 60 death penalty convictions, of which I believe 50 have been reversed to date. Many proponents of the death penalty were banking on wife killer Robert Marshall, an upper middle class white man, as the first execution in New Jersey. As we know now, Marshall, not only has escaped the death penalty, but he will probably see freedom and time to enjoy it. And his wife Marie is just a painful memory in the hearts of her sons.

What has death penalty jurisprudence been like in New Jersey over the past quarter century? The case of State versus Gerald is a good example. In 1982, Walter Gerald and his accomplice broke into the home of 89 year old John Matusz. When Gerald left, less than an hour later, he had savagely beaten John's daughter and his disabled son Paul, who ultimately succumbed to death. To make sure his elderly victim could
not identify him, Gerald stomped on his face and dropped a television on his head. Gerald was identified as the killer because the imprint of his sneaker matched the marks on the victim's face, the 89 year old victim's face. He pleaded guilty to the murders, and after the death penalty trial, the jury voted unanimously for death.

Six years later after the murder, the case came before the New Jersey Supreme Court and the death penalty was reversed, sparing the killer's life. On its own, without the defendant raising the issue, the court held that, and I quote the court's majority opinion, The jury could have determined that the defendant had the purpose or knowledge to cause serious bodily injury only, but not death. That is to say, under the facts I've just given you, the jury's decision was not clear as to whether Gerald intended, intended, to kill his victim or just cause bodily harm.

We've seen the Supreme Court apply the Gerald rule in cases like State versus Jackson, in which the death penalty was also thrown out on the same basis, under the following
facts which I've taken right out of the case, and
I quote, There was evidence of an attempted rape.
Defendant stabbed the victim, in the words of the
State, wildly, viciously, repeatedly, 53 times.
Defendant stabbed her 18 times in the genital
area with an obvious sadistic intent. After the
murder, he stole her car and drove around
casually with a man he happened to meet, drinking
beer and looking for marijuana. Defendant was
arrested two days later and confessed to the
murder.

The Gerald rule of intent imposed by
the New Jersey Supreme Court, which formed the
basis for other reversals, became so publicly
unsettling that the State Legislature felt
compelled to seek an amendment to the New Jersey
Constitution to reverse it. In 1992, 1.8 million
voters in the State of New Jersey approved the
constitutional amendment and sent the Gerald rule
packing.

CHAIRMAN COLEMAN: Mr. Pompelio,
your time, 13 minutes are up, so bring your
presentation to a conclusion.

MR. POMPELIO: You're the boss.

Thank you.
CHAIRMAN COLEMAN: You have 30 seconds to conclude, if you'd like.

MR. POMPELIO: I have five more pages, and the words are so important to me, sir, that I don't want to miss one of them, so I --

CHAIRMAN COLEMAN: Well, we have your written presentation.

MR. POMPELIO: I appreciate that.

Thank you very much.

CHAIRMAN COLEMAN: Does any member of the Commission have a question?

COMMISSIONER HICKS: I have a question.

MR. POMPELIO: Of me?

CHAIRMAN COLEMAN: Yes, there's one question of you from Mr. Hicks.

COMMISSIONER HICKS: I read your written presentation and I see the last page, I think you've made notice that you think the death penalty should be changed to life without parole; is that correct?

MR. POMPELIO: I'm sorry, sir?

COMMISSIONER HICKS: You believe the death penalty should be abolished --

MR. POMPELIO: Justice Coleman, can
I at least state, it will only take me a minute, what I'm recommending to this Board. May I please have that?

CHAIRMAN COLEMAN: Yes, that's the reason I gave you 30 seconds. You may have a minute.

MR. POMPELIO: Well, I'll try and do it in thirty seconds. Thank you, sir.

I respectfully seek the following: Abolish the death penalty now in favor of life in prison without parole. Take some of the taxpayer's money, which has been a quarter of a billion dollars since 1982, that continues to be wasted, and do the following: One, increase the services available to homicide victims; two, appropriate some of this money to help the nonprofit homicide organizations who do so much work for victims, but who are struggling to keep their doors open; three, fund the State scholarship program that I mentioned in my piece, and I didn't have a chance to speak on; and, four, increase funding to law enforcement and to county prosecutor victim-witness programs to enable them to expand the good work they do for survivors of homicide.
The reality is that we have spent a quarter of a billion dollars on the death penalty process alone, and I challenge anyone to show me where we have spent more than $1,000 on any death penalty victim from the taxpayers' money. Thank you.

COMMISSIONER GARCIA: I do have a question, Mr. Pompelio. I have a question, I think it's important, in that you have a unique position here, and I would hope that maybe we could invite you back, because nobody could provide us testimony that you do.

MR. POMPELIO: Well, I was only halfway through my statement.

COMMISSIONER GARCIA: I know.

I'm sure you're aware of the US Supreme Court decision regarding lethal injection. How do you envision that to impact survivors in the State of New Jersey, if we go on the way we have been?

MR. POMPELIO: I have absolutely no doubt that there will never be an execution in the State of New Jersey -- that there will ever be, I'm sorry. We are just sitting here playing with words and playing with taxpayers' dollars.
I don't know what direction the Supreme Court will ultimately go in, but it doesn't matter in my opinion. The New Jersey Supreme Court will never, at least in my lifetime, and any of yours, allow an execution to take place. That's the reality of it.

And what bothers me the most is that victims I represent, most of them are minority victims living in poor areas throughout the State. We have pockets of poverty in the State. And I will give you an example, the case of State versus Muhammad, the victims' rights case that is probably the leading one in this State, I represented the victim in that case. And when I went to visit her at her house, because there was no way she could leave her house in Newark to come and see me, when we opened the front door for me to leave, there was no room -- very little room between the door and the street, a very small sidewalk, and when you look out, there was the building in which her little girl was abducted, raped and murdered. And the truth was, she didn't have the money to leave that. And you talk about revictimizing a victim. If only we could take some of this money and do something
for the victims.

I don't know if I've answered your

question.

COMMISSIONER GARCIA: Thank you.

CHAIRMAN COLEMAN: Any other

questions?

COMMISSIONER SEGARS: Just one.

CHAIRMAN COLEMAN: Okay, please

proceed.

COMMISSIONER SEGARS: Sir, just for

a point of clarification, you are in favor of

abolishing the death penalty in favor of a life

sentence; yes?

MR. POMPELIO: Yes, Ma'am.

COMMISSIONER SEGARS: Thank you.

CHAIRMAN COLEMAN: Life without

parole, meaning natural life?

MR. POMPELIO: Meaning every single

minute of his life. I'm sorry if I didn't make

that clear.

Thank you very much. I appreciate

your time and the time you gave me.

CHAIRMAN COLEMAN: Has Stephen

Raymond arrived?

We'll next call on Former Attorney
General Del Tufo.

MR. DEL TUFO: Good afternoon,

Justice Coleman and members of the Commission.

Thank you for allowing me to appear here today to
talk about capital punishment.

I have some prepared statements or
prepared testimony which I think is being
distributed to you now. I do not intend to take
your time to read that statement, but just to
highlight some of the things that are there.

I have been practicing law for a
long time, maybe too long, and I've had the good
fortune to have some responsible law enforcement
positions along the way. And during my career, I
certainly have come across the arguments, pro and
con, with respect to the death penalty. And I've
had some experience, especially as an assistant
prosecutor, with cases of that type. I might add
that when I was Attorney General, I worked very
hard to have the victims' rights constitutional
amendment passed, and, indeed, had the pleasure
of working with Mr. Pompelio at that time.

In any event, I'm here to urge the
Commission to recommend to the Legislature that
the death penalty be replaced with the punishment
of life without parole. There's more discussion in this statement, but the reasons are really right on the first page.

To me, that type of sentence serves a number of purposes. It incapacitates a convicted capital offender. It's a certain punishment. It's sure and it's not subject to the delays and extraordinary dragging out of cases when you're in a case in which the death penalty has been imposed. And that deals with appeals and it deals with habeas corpus proceedings and it goes on and on for a long time. I think closure is important. I think closure is important. These people certainly can speak for themselves, but I think it's important to victims to have closure and not to see ten, fifteen years of proceedings and reversals and resentencing and things that keep the wound open.

The plain fact of the matter also is that the death penalty just costs us too much. It costs us a lot in resources. Certainly, very skilled resources have to be allocated to these types of cases and they take much more preparation than an ordinary case. And the dollar expense is extraordinary. I'm sure you've
heard, and Mr. Pompelio mentioned, that -- the
figure I've heard is that we've spent $250
million since 1982 on capital cases and have had
valuable resources who could be working on other
types of crime devoted to that endeavor.

Certainly, it has not been an
effective remedy if you say the death penalty is
supposed to put people to death. There has not
been anyone who has been executed, so we have a
$250 million bill, but certainly that law has --
I don't mean to be insensitive, but the law has
not ever being effectuated.

Also, and I hope this doesn't sound
insensitive, but I think it's a factor,
prosecutors and police are paid by local
Government, county and municipal. And in this
time of talk of property tax increases, that's
where the revenues come from to fund a
substantial portion of these expenses.

Very quickly, I agree with Professor
Fagan that the death penalty does not serve a
deterrent function. The only penological purpose
for it is retribution, and I think there are
other ways of expressing retribution.

My experience in law enforcement
supports this conclusion. I've worked in
prosecutors' offices and the Division of Criminal
Justice and as Attorney General, and what I have
come in contact with in these matters, is that
homicides are generated frequently by spontaneous
anger and emotion, many times in a family
situation, or really by severe mental impairment
or some type of victim of social forces.

I'm not saying that in terms of
sympathy for murderers, but simply that from a
deterrent standpoint, the homicides do not
generally have the calculation that a person who
is thinking and premeditating a murder might be
dissuaded because of the death penalty.

There's a section here, also, that
talks about how the selection of defendants to
run the capital gauntlet is an arbitrary one, and
a reference to Potter Stewart's comment in 1972,
that being selected as a defendant for a capital
case is as random and serendipitous as being
struck by lightening.

There's also a further section on
the expense and the diversion of resources. And,
in a word, and, again, this is insensitive,
perhaps, but I think it need be said, and I guess
Mr. Pompelio was saying that to some extent as well, it's just not a good investment for our society.

Now, there's a difference between life imprisonment as it was imposed over the years, with a life sentence without parole. We have a limited application of a life sentence without parole since 1997 or 1999. But I'm saying, across the board, in capital cases, this would be a very, very severe punishment. A defendant would have absolutely no hope of ever getting out, would not go before a parole board, would not get credit for time served. When the sun rises that defendant will be behind bars, and when it sets, they will behind bars until that defendant is a dead person.

In addition to the -- I think it would have just as much of a deterrent effect as if there isn't any deterrent effect of capital punishment. The prospect, a dreary prospect of spending your life behind bars, I think is something that if one thinks about it, they would think about that as well.

So I think, as you'll read in the statement, that type of penalty has collateral
merits, such as avoiding the possibility of
innocence being killed. And, frankly, I think
it's more consistent with what should be the
mores of a civilized society, not to engage in
premeditated killing because someone else has
killed.

So I would, for those quickly-stated
reasons, and for the more detailed commentary in
my written testimony, urge a recommendation to
the Legislature to substitute life without
parole, not a life sentence, life without parole
for the death sentence.

CHAIRMAN COLEMAN: Thank you,
Mr. Del Tufo.

Ms. Garcia.

COMMISSIONER GARCIA: Attorney
General, I want to thank you for your work with
the constitutional amendment when we were working
on that, for your support and help.

MR. DEL TUFO: Thank you.

COMMISSIONER GARCIA: Survivors just
can't trust the system at this point when you
have families that think that the person who
murdered their loved one is going to be executed
and they are faced with the reality that these
people are walking the streets. We heard testimony today where that is the case and will be the case. And we have Trantino out there giving the speeches in communities.

How can we assure survivors that, if we do this, that they will really actually leave that prison in a pine box and in no other way?

MR. DEL TUFO: If you substitute this penalty, you will not be dealing with sentencing types of issues, aggravating factors, mitigating factors. Mr. McCullo will correct me if I'm wrong, but there are lots of additional things that have to go into the sentencing and review process, proportionality, all kinds of things, that I don't think would be implicated with a life without parole sentence.

And I think that the statistics of life without parole, on the limited basis that it has been authorized in New Jersey, will show that there have not been any appellate proceedings and there haven't been a lot of reversals. And it just really needs to be absolutely clear that that is the penalty.

The dragging out of these proceedings has got to have a toll on families.
They cannot end this. They have to look and see things that you're talking about, and this person is walking around and the proceedings go on forever.

Also, I would emphasize that this is not a life sentence where a person is eligible for parole after 30 years, nor is it an 85 percenter, if I may use a colloquial expression; although, that's pretty substantial, that's 67 and a half years, almost as old as I am. And so it really means you're not getting out. I mean, that, to me, helps a lot of things across the board, but it seems to me, that's a very dire punishment.

COMMISSIONER GARCIA: And I think that's a big stumbling block, that that has to be the reality, that they're never out again.

MR. DEL TUFO: That will be what the Legislature says and that will be the sentence, how it's written, and that will be the way that it is. And I think you will avoid a lot of the collateral nonsense that takes place.

CHAIRMAN COLEMAN: Commissioner Haverty.

COMMISSIONER HAVERTY: Mr. Attorney
General, I just have a real quick question. When you're talking about replacing the death penalty with life in prison without parole, are you talking about essentially taking what is currently the death penalty statute and just simply changing the penalty to life without parole? In other words, those people who are death eligible under the statute that Commissioner Russo drafted when he was in the Senate, that would just be converted, rather than taking all homicides, as they're defined under statutes, and making those all life without parole?

MR. DEL TUFO: Well, I really -- I don't know if I fully appreciate the question. I really haven't thought about that.

COMMISSIONER HAVERTY: It wasn't very articulate, I'm sorry.

MR. DEL TUFO: I would substitute that penalty for a murder conviction, a first degree murder conviction or a felony murder conviction or anything that would be susceptible to the death penalty now.

COMMISSIONER HAVERTY: That's what I wanted to know.
CHAIRMAN COLEMAN: Are there any other questions?

COMMISSIONER DeFAZIO: Justice, may I?

CHAIRMAN COLEMAN: Yes.

COMMISSIONER DeFAZIO: General, there would still be an issue, though. Assume for the sake of argument that we had a statute substituting the death penalty with life without parole, there would be an issue about the Governor's power to commute a sentence, correct?

MR. DEL TUFO: Yes, and that's mentioned in my statement here. At the conclusion, I say that no one can promise that someone who has life without parole is not going to get out of prison, but that goes for a death sentence as well. The Governor can commute, you can have a reversal by an Appellate Court, you can have new evidence that shows that the person is innocent, but the statistics are that the reversal rate for life sentences now, even not life without parole, is significantly lower than the reversal in cases that involve death sentences, because they evoke more emotions and more issues. And, frankly, people who commit
capital crimes are not, I would think, the sort of people that a Governor is going to pardon or commute the sentence.

CHAIRMAN COLEMAN: Thank you,

Mr. Del Tufo.

MR. DEL TUFO: Thank you.

CHAIRMAN COLEMAN: Senator Robert Martin.

SENATOR MARTIN: Thank you.

CHAIRMAN COLEMAN: You may proceed, Senator.

SENATOR MARTIN: Thank you, Justice.

I welcome the opportunity to come before the committee. I understand you heard Senator Lesniak speak earlier. He and I are the prime sponsors of S-171, which was introduced at the beginning of this year. Although it's not the first time it's been introduced, it would repeal the death penalty and replace it with life imprisonment without the eligibility for parole.

In an earlier question, it would separate out certain murders under the aggravating standard that we have, which would make those in the category of life without parole as opposed to the current ones which wouldn't
rise to that level and would maintain the same
penalties.

I want to talk a little bit about
where I am with this and where I think the
Legislature will be with this with the task force
having done its mission.

I think that -- I'm not going to
talk about moral conviction. I am personally,
for religious reasons and other philosophical
reasons, against the death penalty, and I don't
want to emphasize cost, even though I think it
appears that there would be a substantial cost
saving. I am a sponsor of this legislation
because I think the death penalty, as currently
on the books in New Jersey, is essentially
unworkable. And I've spent some time thinking
about this. I've actually worked on a law review
article, which I have not completed because I was
waiting to see what would happen in this next
year.

But my approach has been largely in
thinking about why it's unworkable. I think that
the individuals, the players, if you will,
involved in the death penalty, there's so many of
them, and in almost every instance there is at
least some problems that they have in trying to get it right.

I'd just run through the parties as I see them. And if you think about it, I think you may agree with me. Certainly with defendants who are candidates for the death penalty, I think there's some serious questions about their mental abilities, or to put it the other way, mental disturbance, short of insanity, but raises questions about whether it's fundamentally fair to put them to a more -- to a higher penalty than others who have committed murder.

I think about the victims' families. I think there's real problems with the death penalty with it's so limited -- of course, it hasn't been implemented at all, but to the extent to which it brings them into this constant uncertainty for years on end, where they experience no closure. I think it has created nightmares for many of the victims' families, as you've heard testimony.

I think about prosecutors, both the prosecutor who is assigned to a particular murder trial, as well as the prosecutors' office. We run into questions about whether they are
overzealous, about how prepared the actual
prosecutor is who is presenting the case.
Perhaps more importantly, we have this issue
about the unevenness, given our current system of
justice in which the county prosecutors have raw
discretion in New Jersey and the ability that
they have to provide resources in deciding
whether to try somebody with capital punishment
as the potential punishment.

I think about defense counsel, both
the counsel who tries the case and defense
counsel that handles the appeals. Again, there's
a fundamental question about the resources
available for many defense counsel, on whether we
can, in fact, and do provide them with the
resources necessary to adequately defend the
person who is on trial.

I can tell you, I actually did serve
in the -- I represented a defendant about 20
years ago in a murder trial, in an appeal, and I
did not feel that, in looking at this case, it
was a horrendous murder, and the gentleman was
found guilty in the case of State v. Laska, but I
represented him on his appeal. And I felt that I
didn't get much in the way of resources and I
also had some real concerns about whether there
was adequate representation of him at the trial
level.

I also think that the jury may be
illprepared to really take on the issue of
whether somebody should be given the death
penalty. Surprisingly, perhaps, I was on a jury
in June. I sponsored the bill that required
every person in New Jersey to have to at least
have a possibility of facing a jury trial and I
got called into Morris County and was actually
selected to a jury and was the foreman, just by
random lot of being selected as Juror No. 1.

We were only dealing with a civil
case. It was negligence in a supermarket, a slip
and fall case, but I could see in our jury how
difficult it really was to make decisions about
fault and the penalty. We found fault and then
we had a serious discussion, with a wide range of
opinions, about how much penalty should be
imposed, in this case, on a supermarket.

I can't imagine, you know, what it
would have been like if we had actually been in a
criminal trial where we were facing the issue of
whether to impose the death penalty. And I think
with that degree of different voices, it does
become somewhat arbitrary as to what jury you may
get at any one given time. And the consequences,
of course, are enormous as far as the defendant
is concerned.

I think the public is also seriously
affected and would be clearly better served if we
abandoned the death penalty. It cannot be, I
think, seriously thought of as a deterrent. And
even if we maintain it and do use it, it will
still be used so sparingly that it will not
provide that benefit.

If we -- the public will be better
served if we abandon the possibility of any
mistakes. I think the public will be better
served because there won't be a frustration, at
least among some, as to why we never are able to
exercise the right under the statute. And, of
course, it could, not just for the sake of saving
money, but the resources, if we did apply them,
could be certainly better served, in my view, if
they were applied to victims' services.

My understanding is that there's not
very much because of the limited resources with
issues involving mental health and counseling
needs of victims, and that would be something I
would personally like to see, perhaps, this money
put to use for.

So those are my reasons. I would
just like you to know that there are some of us
in the Legislature who are ready and willing to
act. I think the legislation that Senator
Lesniak and I have put forward is well drawn,
thanks to the Office of Legislative Services. It
does, I think, deal with the issue in a fair way.
And I think if we get the signal from this task
force, I think legislators from both sides of the
aisle, in both Houses, I think, are ready to go
this route, recognizing that it's a better policy
and perhaps a better position, I think, in this
more civilized society, than what we have at the
present time. So I would be happy to answer any
questions.

COMMISSIONER RUSSO: Mr. Chairman,
may I?

Senator, Bob, I made some notes as
you were talking to compliment you on well
thought out reasons why you opposed the death
penalty. And I was going to compliment you,
particularly, until the last paragraph when you
said, it had nothing to do with cost. Because I think that this issue should not be discussed in terms of dollars and cents.

In your last statement, you said you would like to see this money used to help victims. And I would suggest to you, put a bill in, put a bill in. It has nothing to do, necessarily, with the death penalty. Whether you and the legislation abolish it or not, you can still do what should be done for victims of crime. That shouldn't be the reason for abolishing or not abolishing it.

I think that those of us that may disagree on this issue, as perhaps you and I do, I have only respect for that, because there's no right or wrong on this. We can only say what we believe is right. But to equate -- and I probably should have asked my friend, Bob Del Tufo, the same question, to equate this argument in dollars and cents, is, to me, horrendous. We're dealing with people's lives. It shouldn't matter what it costs.

There were people in the Legislature, some who are still there with you now, who argued at the time we passed this bill
that we should pass it because it would cost so
much to keep people in prison all of their lives,
that it would be cheaper to execute them. I
thought that was a terrible argument. I share
not that at all. I don't think it should be in
any way affected by what it's going to cost.

I think we have to make a judgment,
we on this Commission, you in the Legislature
now, as I did some years ago, whether we think
this is the right thing to do. I have a view,
I won't go through the reasons now, but I don't
think it ought to be in any way equated with
dollars and cents. It doesn't matter if it costs
$250 million, we're dealing with the ultimate
punishment, we're dealing with people's lives.

Senator Cardinale, as you know,
would abolish all appeals or most appeals, I
don't share that either. I think before we
should ever execute anyone, if we ever do, if we
have the death penalty, every right should be
given to them under the law, and it shouldn't
matter what it costs.

Now, I don't know whether that's
shared by any of my colleagues on this Commission
or by you, but for some reason, that's been the
reason given by so many people, some in this
room, who are against the death penalty if it
didn't cost a dime, so they use that as an
argument. Some, though, really just simply
believe that it is a valid argument. But with
the amount of money we spend and the amount of
money we waste in this State, that shouldn't be
the determining factor as to whether we should
have capital punishment, at least I think. And I
think basically that's your view. You sort of
threw in that last comment.

SENATOR MARTIN: I'm not afraid to say
I'm wrong. The logic of that last point was not
well -- was wrong.

I do think we have to pay more
attention to victims, and especially with mental
and other ways of counseling because of the
difficulties they've had. But the costs of the
death penalty, as I said at the beginning of my
remarks, was not why I am supporting this, and I
don't think that should be a determining factor.

I also, you know, would just --
while I have the chance, I know you have spent
more time thinking about this than anyone, as the
original sponsor, and I do respect you for it. I
would just say that some of us have changed our
positions over time. And it's not even,
necessarily, as you know in some cases, because
of some moral -- it's just that, given New
Jersey, and I think our real effort, as you have
tried to do, to get it right, I just don't think
we're able to pull that off. And when you have
people's lives at stake, I think we have to sort
of give that up, even though in some instances,
there are some individuals, if we could have done
it, it might have changed where we are.

MR. MOCZULA: Senator,
we've heard a number of references and testimony
to the protracted postconviction proceedings and
appellate proceedings in capital cases.

What's the rationale, however, for
believing that someone faced with the sentence of
life without parole would not engage in the same
type of extensive proceedings, if for no other
reason, but the person has nothing to lose?
They're sitting in prison, they have access to
the libraries, they can file, and, in fact, do
file. There's a very small amount of those
appellate proceedings that are capital in nature.
Murderers who receive noncapital sentences are
just as adept at repeated filings and
postconviction proceedings and appeals.

So I'm not sure if that logic works,
where if you remove the death penalty, then
automatically there will be a tremendous decrease
in the amount of postconviction and appellate
proceedings filed.

If that is the sentence, life
without parole, why wouldn't a person keep filing
and keep filing and keep filing? And as I
mentioned before, they have done so, many in the
State and in Federal courts. So where is the
savings? If we can somehow get a sense of where
the difference is.

SENATOR MARTIN: With respect to persons
who have previously been convicted and sentenced
with capital punishment, the legislation that we
propose would say, if they seek to have that
sentence reduced to life without parole, they
would forfeit -- voluntarily waive the right to
appeals. I'm not completely sure -- I'm sure
that would be litigated at some point, but it's
an attempt to recognize the problem, at least in
part, that you've raised.

I guess, and I don't know whether
Senator Russo would agree with me, but I don't begrudge somebody who is going to serve a minimum of 30 years without -- with a certainty that they would seek to have a full panoply of appeals. I would be willing to entertain, in this legislation, some ability, if we thought it was legal, to attempt to have that with a -- in some way a quickened pace. But given Federal, as well as State due process and other protections, I think that's a problem, but I don't think it's a problem that should defeat our attempt to change the death penalty to life without parole.

I mean, you may not gain that benefit out of this legislation, but I think there's many others that make it worthy for you to act.

CHAIRMAN COLEMAN: Is there any other question?

Yes.

COMMISSIONER HAVERTY: Senator Martin, not to put too many legal niceties on it, but isn't there a difference between the statute as it's written now, which provides automatic appeals to the Supreme Court of New Jersey, for example, when the sentence is death, as opposed
to if it's less than death and it's under a
different statute, the Supreme Court need not
necessarily hear an appeal from somebody who is
being convicted. Isn't that one area that might
have some type of closure on that?

SENATOR MARTIN: I agree. So maybe --
I mean, you've helped me to answer that question.
I appreciate it.

CHAIRMAN COLEMAN: And while you're
working on your law review publication, I think
you will find in virtually all of the death
penalty jurisprudence, the idea that the finality
of death permeates so many of the rulings, and if
not expressed, the inference is always clear, but
for the fact that this is a death penalty case,
the decision may not be the same.

SENATOR MARTIN: Justice, I agree with
you. I mean, to me, it is a difference between
night and day when you have a penalty like this.
And as far as the article, I want to make you
guys stars, so we'll see how that goes.

COMMISSIONER RUSSO: Did I
understand you to say that sometimes the court
would rule one way because it's a death penalty
case on the same issue, but a different way if it
was not.

SENATOR MARTIN: No.

CHAIRMAN COLEMAN: The case will always come to the court as a death penalty case, and the machinery of death is always examined because of that. There's no escaping it. It runs, and has for the last half a century, at least as I've looked at the cases. There's always the same there, that this is a death penalty case, and that will in turn have an impact on the ultimate determination that is made.

As someone has pointed out already, when you're looking at a murder case that is not a capital case, there is no automatic right of appeal to the Supreme Court. In a capital case in New Jersey, you even bypass the intermediate Appellate Court because the Legislature has deemed it to be so important, that you go directly to the State Supreme Court. That is a consistent theme that you find in legislation and in the death penalty jurisprudence.

SENATOR MARTIN: Just the attention it's given by the Supreme Court -- I was advised, and correct me if I'm wrong, Justice, but the chief
justice, I believe, has one law clerk who is
solely involved with looking at death penalty
cases. So the time and attention and resources
that the Supreme Court is giving it, suggests
that it is just fundamentally different, at least
from the court's eyes, than other cases,
including other murder cases.

CHAIRMAN COLEMAN: There are two law
clerks assigned to that. And to give you another
illustration, in State versus Marshall, there
were 522 or 32 issues raised. That shows you how
exhaustive the appeals are likely to be in the
death penalty area. And I've been around a long
time, I've never seen the number of issues
beginning to approach anything like that in
noncapital cases.

COMMISSIONER RUSSO: It should be
that way.

CHAIRMAN COLEMAN: Yes.

Thank you, Senator.

SENATOR MARTIN: Thank you.

CHAIRMAN COLEMAN: Has Stephen
Raymond arrived yet?

Patrick Murray.

CHAIRMAN COLEMAN: You may proceed.
MR. MURRAY: Thank you very much.

I'm Patrick Murray. I direct the Monmouth University Polling Institute. I've done some polling work on the issue of the death penalty over the past few years, and I've also taken a look at the death penalty polling that has been done since the 1970s in the State of New Jersey. I want to focus on polling issues and changes in public opinion over the past seven years, that's when most of the polling work has been done.

We found that in the '70s, up through 1982 when the death penalty was reinstated in New Jersey, that there was a little bit of polling work done, which showed support at about the 70 to 75 percent level.

From 1982 to 1998, there was no polling done in the State of New Jersey, or no public polling that was publicly available.

So starting in 1999, we have a wealth of polling data on this issue. And before I start talking about the numbers, I wanted to point out that most pollsters agree that when you talk about the death penalty and public opinion on the death penalty, that you're talking about
two dimensions. And one of those dimensions is support and principle and the other dimension is support as a preference, a policy preference in terms of criminal justice. And when you ask those questions, you get two different answers.

We find in New Jersey, since 1999, support for the death penalty in principle, meaning do you support or oppose the death penalty, has hovered around 60 percent, six in ten New Jersey adults support the death penalty. And that's consistently been a couple of points below the national average on this question.

But when we move on to the other question, which is the policy question, for cases of murder, do you prefer the death penalty or do you prefer life in prison without the chance of parole, we have seen, since 1999, a move away from the support for the death penalty as a preference to life in prison without parole.

So starting in 1999, we found that 44 percent supported capital punishment; whereas 37 percent preferred life without parole.

Moving through to 2002, there was a change through those years. And basically opinion flipped to being 48 percent for life in
prison without parole to 36 percent who still preferred the death penalty as the choice for punishing capital crimes. We asked that question again back in 2005 and found that that position had basically held.

And so -- we also found that this swing from a 7 percentage point advantage for capital punishment, or a preference for capital punishment, to a 13 point advantage or a preference for life in prison without parole, a 20 point swing, happened at the same time when we looked at the national data where there was no movement. So something happened in New Jersey, particularly between the years of 1999 and 2002, that public opinion, in terms of the role of the death penalty and the policy of criminal justice, had changed.

When we looked more closely at why this may have happened, we found a number of things, changes that occurred in public opinion. One of which was the number of people who felt that the death penalty was unfairly applied to certain groups, particularly to minority groups, African-Americans, as well as low income individuals, had increased by 10 percentage
points from 1999 to 2002.

We also found that there has been a declining belief nationally, and certainly in New Jersey as well, that the death penalty serves as a deterrent. A Quinnipiac poll in 2000 found that only 40 percent of the State believes that the death penalty deters others from committing murder. When we looked at the national trend, the national trend went from 62 percent in 1985 who believed that the death penalty was a deterrent, down to 35 percent in 2004 who still felt that the death penalty served as a deterrent to murder.

We also found that the issue of support for life in prison without parole or the preference for life in prison without parole versus the death penalty as a policy preference, may be impacted by belief in whether life in prison without parole means just that. And we found that only 12 percent of New Jerseyans said that they were very confident that a life sentence meant a life sentence, that the person would serve their time and die in prison; whereas 52 percent said that they were not confident, that they felt that the person would most likely
get out at some point in time, and that certainly
has an impact on the preference as well.

We also found that there's not a lot
of awareness about the death penalty and how it's
being imposed. For example, most people -- most
people believe that certainly innocent people do
get convicted of crimes, including capital
crimes, but don't put that into perspective with
what has happened. For example, most people do
not recognize or realize or have not heard of the
fact that more than 100 people have been released
from death row since the death penalty was
reinstated in the United States.

When they find out this information,
our polling indicates that a number of death
penalty supporters, about a third of them, move
their opinions. They say, well, now that I know
this information, I may rethink my position on
the death penalty.

Also another issue is cost. A poll
conducted in 2002 found that 71 percent of New
Jersey residents believed that imposing the death
penalty on convicted murderers costs less than
keeping them in prison for life.

When we went back and asked in 2005,
and said, well, what would happen if, in fact, the death penalty cost more? Then we found that two-thirds of New Jerseyans felt that the money that's being spent on prosecuting death penalty cases probably could be better spent on services for victims of crimes or on other measures to fight crime, such as extra police. Only one in four New Jerseyans, that's 24 percent, felt that even if the cost were greater, that the money should continue to be spent on death penalty cases and prosecuting capital punishment. And those are the quick facts about the death penalty and public opinion.

In some, we have seen some movement in the death penalty, in terms of a preference. We haven't seen any movement in principle. The New Jersey number has been below the national number, but hasn't really moved. What we really have seen is in preference. And the preference seems to be attached to issues of fairness, in terms of how it's applied, and issues of equity and also issues of effectiveness, of whether it actually works or does anything overall in terms of criminal justice.

Now, the death penalty is an emotive
issue. Crime is an emotive issue. Most people
do not think about these issues until it affects
themselves or there's a high profile case. And
you will see public opinion, if you look at
public opinion, certainly, if you ask about death
penalty on Sadam Hussein or Osama Bin Laden,
you're going to see higher support for those
cases. And also when people start hearing about
DNA, we see numbers spike as well, as when people
are released because of DNA evidence that
overturns a prior conviction.

But what that means is that the
death penalty is not something that people think
about mostly. It's when you first ask them about
it, the issue is an emotive response, meaning we
need a punishment that fits the crime, and that's
what most people think of off the top of their
head when you ask about the death penalty. When
they start talking about it, they say, well, life
in prison without parole is one possible
punishment that would fit the crime, if I could
be guaranteed that life in prison meant life in
prison.

So there's a lot of ambivalence in
the public about it, but there has clearly been a
movement in New Jersey over the past few years,
and that movement has stabilized in terms of a
switch in preference as a criminal justice
policy.

And I have -- any questions I'm
willing to address.

CHAIRMAN COLEMAN: Does any
Commissioner have a question?

Mr. Hicks.

COMMISSIONER HICKS: During your
polling, Mr. Murray, do you find the people who
are in favor of death penalty are very
compassionate about the death penalty as opposed
to people who are opposed to it?

MR. MURRAY: I would categorize it
this way, and this is my personal read of public
opinion, it's not technically statistical, but
having looked at a lot of death penalty data,
both in the State and nationally, I would say
that probably about 25 percent of the public are
solidly strongly in support of the death penalty.

There are probably another third of
the public say that the death penalty is an okay,
they're fine with that as a punishment, but if
presented with evidence that it doesn't work or
if it's not effective, that they would move their opinion.

There's probably another 20 percent who oppose the death penalty, prefer life in prison without parole, but hold that belief, but not particularly strongly.

And there's probably another 20 percent who are morally opposed to the death penalty, and even if the death penalty was effective, cost more than life in prison -- cost less than life in prison without parole, would still oppose the death penalty.

So I would say it ranges. Probably there's equal amounts. There's probably about 20 percent who are solidly opposed to the death penalty on moral grounds, and 25 percent who are solidly for the death penalty regardless of the cost or effectiveness.

CHAIRMAN COLEMAN: Ms. Segars.

COMMISSIONER SEGARS: Yes, in terms of who you poll, how do you select the pool of individuals; is it across the board along racial ethnic groups, socioeconomic groups?

MR. MURRAY: Sure. I should explain that. The numbers that have been put into my
testimony, I reviewed all polling data that was done, so we're looking at polling data that was done by -- in New Jersey, it was done by three different groups that included the Star Ledger/Eagleton poll, Blaustein Center for Survey Research at Rutgers University and the Quinnipiac University Poll. All of those have done surveys in New Jersey, and asking basically the same questions and using basically the same methodology, so that we can compare across those trends across time.

I conducted two of those polls personally myself. The methodology was basically the same, which was a random sample -- a random digitized sample, a telephone sample of New Jersey household, the same poll that's used in almost every media poll that's reported in the State, which is representative and weighted to be representative of all age groups proportionally; races, proportionally; educational levels, proportionally; gender, proportionally; as well as region, proportionally. And the sample sizes range from 800 to 1,000 in each of those different polls, so they have basically the same margins of error throughout each of those polls.
COMMISSIONER SEGARS: Do you know or did you ask the question if any of the people who you were questioning were victims of crime?

MR. MURRAY: I think one of the polls might have included that, but I don't remember which one. So I didn't included it, because I would have only had that in one poll, so I couldn't have actually shown a trend in that as well.

CHAIRMAN COLEMAN: Commissioner DeFazio.

COMMISSIONER DeFAZIO: Do you realize that when the more specific questions are asked, and when I say "more specific," I mean fact sensitive questions are asked, for instance, I'm not a polling expert at all, so you're going to have to help me from using incorrect language, you would agree with me if the question was asked, would you support the death penalty for Timothy McVeigh, the percentage would rise astronomically?

MR. MURRAY: Yes.

COMMISSIONER DeFAZIO: You would agree with that.

So what I'm asking is, I believe
that we received from our esteemed Committee
staff here, Commission staff, some information
that revealed that, if a more specific question
is asked, like if somebody was convicted of
murder and this person was a serial murderer who
killed a kidnapped victim after the ransom was
paid, once again the percentage that would
support the death penalty under those
circumstances rises.

MR. MURRAY: My guess is that, if
you asked about specific cases, and specific
cases -- you mentioned Timothy McVeigh, I
mentioned Sadam Hussein and Osama Bin Laden --

COMMISSIONER DeFAZIO: I would tend
to keep it on the national level.

MR. MURRAY: The reason why I
mentioned those is, there have been polls on all
three of those individuals, including Timothy
McVeigh, and, yes, the number has been higher on
that. And as I stated, the initial response that
most people have to the death penalty is an
emotive one. It's an eye for an eye, a tooth for
a tooth. And in individual cases, they may, in
fact, support that. But if they were looking at
it as a larger policy issue and not focusing on
specific cases, but looking at how it's administered overall, then preferences, as a policy issue, may change.

Now, I'm not saying that you have to make an opinion on public opinion -- or make a decision on public opinion for one way or the other. There are those two different views that exist in public opinion. There has been certainly a movement in New Jersey towards a preference for life without parole for a variety of reasons. Specific cases may present different results for support of death penalty in that one specific case, certainly, but it's difficult to look at that, as well as decide a policy, when people are trying to look at the policy as an overall policy of how it may affect them in their pocketbook or how it may affect them in their personal lives.

COMMISSIONER DeFAZIO: Well, just to follow-up, though, you made an interesting point, that underlying all of this is the theory that the punishment should fit the specific crime. And when you say "specific crime," that doesn't mean that all murderers should be subject to eligibility for capital punishment. So that's
why I was just thinking that the more specific questions in polls where you would try to discern public opinion based on the various, let's say, aggravating factors in the case, public outrage, whatever.

MR. MURRAY: Yeah. And to go back, somebody asked me, the question before was, how would I characterize the support for public opinion. I would say there are certain people that support the death penalty for every case, and there are a certain percentage, and probably almost an equal percentage, of people who would oppose the death penalty in any circumstance. And then there's the vast majority in between who would move depending on the different situation, which includes both the specifics of a case, as well as the overall policy issue and the costs and benefits and so forth.

COMMISSIONER DeFAZIO: Thank you very much.

COMMISSIONER HAVERTY: Did I understand your testimony a little bit earlier, because you went through it so quickly, it was a great presentation, but just across the board on all of these different aspects of polling, is New
Jersey trending away from the national average on this?

MR. MURRAY: Yes.

COMMISSIONER HAVERTY: And we're trending more towards favoring a preference of life without parole?

MR. MURRAY: Right. As I said, the two questions that most pollsters asked, the principal question, which is, do you support the death penalty or oppose the death penalty, there's been very little movement in that, both New Jersey and nationally.

Then in the preference question, which is, which one do you prefer, life in prison without parole or the death penalty for most capital cases or what could be capital cases; that there has been no movement nationally in that, but there has been movement in New Jersey towards preferring life in prison without parole. And that movement occurred basically from 1999, when this started to be discussed much more in New Jersey, to 2002, and that has held steady since 2002.

COMMISSIONER HAVERTY: Do you have any information at all about whether or not
events in other places have affected that? For example, I think it was in 2000 or 2001 when Former Governor Ryan in Illinois had a moratorium on all executions because of his expressed concerns about the failure of the death penalty to be properly met. Did that have any impact on the thinking in New Jersey?

MR. MURRAY: That may have. None of the polls asked that specific question, whether they heard about that moratorium or whether states had done it. But we did see -- there's polling numbers from 1999, there was a poll done in 2000 and another one done in 2002 on this question, and we saw the trend cross, that, in 1999, there was definitely more support for the capital punishment over life without parole; in 2000, that support was even; and then in 2002, that number had switched. And so I think a lot of things had come into play, and that was probably one of them.

CHAIRMAN COLEMAN: Ms. Garcia.

COMMISSIONER GARCIA: Couldn't the reason that people support the death penalty in cases like Timothy McVeigh be due to the fact that they feel more vulnerable themselves to that
sort of victimization?

CHAIRMAN COLEMAN: Ms. Garcia, would you speak a little more loudly, so that the people in the rear can hear you?

And, Mr. Murray, when you respond, will you respond so that the people can hear you?

MR. MURRAY: Sure.

CHAIRMAN COLEMAN: Thank you.

COMMISSIONER GARCIA: And when it comes to murders every day, I think we just naturally, and I can speak from experience, you never ever think this is going to happen to you.

MR. MURRAY: I can't respond specifically to that, because I haven't seen any polling that says that this will happen to me, and that's why I support capital punishment in this particular case or not. I've done a number of different survey research projects on criminal justice, including prisoner reentry into the community. And the reason why I bring that up is that's something that could affect people as prisoners come back into the communities, but they tend to come back into certain communities and not into others. And we found that, yes, when people feel that it's not going to affect
them at all, their opinion is going to be less emotional or it's going to be a motive of the movement.

And so my feeling is that, for most, for Timothy McVeigh, it's not so much that they feel vulnerable, that the fact that people were vulnerable and that somebody took advantage of that vulnerability on those people is what they may be reacting to and not their own vulnerability or the feeling that putting this person to death will make them feel safer personally. It's more as, they did something that was heinous and so we need a punishment that fits that crime.

CHAIRMAN COLEMAN: Yes, Rabbi.

COMMISSIONER SCHEINBERG: Is there data on what portion of people in New Jersey have the death penalty pro or con as an issue on which they would make voting decisions?

MR. MURRAY: Yes, that's been asked I think once or twice, and it's somewhere down around ten percent of voters look at that as one of the foremost issues that they make a choice on. And it's almost evenly split pro and con on that. I think maybe it's six percent pro death
penalty to four percent against death penalty
make a decision on the death penalty in their
vote choice.

CHAIRMAN COLEMAN: Yes.

MR. MOCZULA: Two

questions, one follows up on Prosecutor DeFazio's
questions, I think it's implicit in your answers,
but I just wanted to confirm. You did not ask in
these polls, do you favor the death penalty were
it limited to particularly heinous or
extraordinary murders; it was a general question
on favoring the death penalty?

MR. MURRAY: That's correct. None
of the polls that were covered in New Jersey had
asked that question.

MR. MOCZULA: In fact, the
system, as we have it here, as the Prosecutor
mentioned, is not applicable to all murders, it's
applicable to a certain set of murders.
The second question is another one
about the type of inquiry you made. Did you ask
the question, do you favor the death penalty
versus life without parole, but with the
possibility of executive clemency?

MR. MURRAY: No, we did not ask that
question.

MR. MOCZULA: Thank you.

CHAIRMAN COLEMAN: Any other questions?

Thank you, Mr. Murray.

MR. MURRAY: Thank you.

CHAIRMAN COLEMAN: Vicki Schieber.

MS. SCHIEBER: Good afternoon. My name is Vicki Schieber, and I am the mother of a murder victim, a daughter who was tragically taken from us in May of 1998. I serve on the Board of the Murder Victims' Families for Human Rights, a national nonprofit organization of people who have lost a family member to murder or to a State execution, all of whom oppose the death penalty. And there are murder victims' families in all 50 states in our organization.

Discussion of the death penalty typically focuses on the offender, the person convicted of the murder. My focus, and those of other murder victim family members that I'm representing today is on the victims and their surviving families.

Shannon Schieber, my daughter, was murdered by a serial rapist in Center City
Philadelphia in 1998. Here in New Jersey, especially in Southern New Jersey, many of you likely saw the frequent press coverage of this very high profile crime. Shannon was the light of my life and of my family's life. She was a gift beyond incredible words. She was not only brilliant, she was beautiful; most importantly, in the inside. She graduated with top honors, national merit scholarship, president of the student body at her high school, got accepted to almost every Ivy League school in the country and was accepted and took on Duke University. And at the age of 22, she got a full scholarship with stipend to the Wharton School of Business in Philadelphia. We were so incredibly proud; what a gift. I tell you this because you need to understand the enormousness of this loss and what this does to a family.

We would ultimately learn that there were four women in this three- or four-block area of Philadelphia where Shannon lived in Center City that were sexually assaulted in that nine or ten months prior to her murder, all using the same MO. Although the Philadelphia Police now claim they had linked these other cases, they had
not warned the community.

CHAIRMAN COLEMAN: Your microphone is off.

MS. SCHIEBER: Oh, I hit it, I apologize, I'm sorry.

The neighbors were then notified some nine months after Shannon's murder, largely due to some investigative reporting excellently done by The Philadelphia Inquirer.

The assailant then attacked again in the same neighborhood in August of '99. It took the police 17 months to successfully process and link the series of assaults and link them to all the six victims.

From August of '99 until late in 2001, we would hear nothing of the stalker, rapist and murderer. Then it was announced that a DNA link had been made between Shannon's case and a series of assaults in Fort Collings, Colorado during 2001. Following these leads in Colorado, and with the information provided by the Philadelphia Police, the Fort Collings Police arrested Troy Graves on April 23, 2002. He ultimately pled guilty to assaulting, raping and murdering Shannon and committing 13 other sexual
assaults in those two states.

Losing a loved one in your family is
a tragedy of unmanageable proportions. The
effects on the family and the wider community
extend well beyond that initial shock and trauma.
The most common assumption is that families who
suffer this type of loss will support the death
penalty. Prosecutors will sometimes say to a
grieving family, we will seek the death penalty
in order to seek justice for your family.

This equating of justice with the
death penalty also relies on a second assumption;
that victims' families believe that only the
death penalty can provide justice. These
assumptions are so widespread and so
unquestioned, that survivors who oppose the death
penalty are sometimes questioned about their
beliefs in a way that suggests, well, don't you
want to have justice for your loved one?

I'm here today to tell you that
these assumptions are false. Many victims'
family members oppose the death penalty for a
variety of reasons. My husband and family
represent this growing, and for the most part,
underserved segment of the crime victim
population. We believe that the death penalty is harmful and already interferes with a difficult healing process. For us, that harm is exacerbated by our belief that responding to one killing with another does not honor our loved ones.

The death penalty does not help to create the kind of society that we want to live in, where human life and human rights are valued. We also recognize that an execution creates another existing grieving family, and causing pain to another family does not lessen my own.

No one should infer from our opposition to the death penalty that we did not want our daughter's murderer caught, prosecuted and put away for the rest of his life. Our daughter's assailant is where he belongs today, and we rest assured that he will never again perpetuate this crime on another young woman. He has life without the possibility of parole.

Now, the notion that only the death penalty is justice for murder victims' families is also false and very harmful for other reasons. The supposed justice of the death penalty is only available to a small percentage of victims'
families. What about the families of victims of
the most heinous cases in which the death penalty
is not sought or not imposed? What about the
families of victims where it is imposed, but then
reversed on appeal? What about the families of
victims that are morally opposing the death
penalty but are forced to endure long capital
trials regardless of their beliefs?

In other words, if the widespread
assumption is that the death penalty is justice
for murder victims' families, why do we keep
failing to achieve justice and why do we keep
hurting and dividing those families and ignoring
their needs?

Assumptions about victims and
justice feed notions about other things. It was
also mentioned today about the word closure.
Providing closure to victims' families is so
frequently invoked in these discussions in murder
victims' family members, we refer to it as the C
word. It's a joke about the C word. But I can
tell you with all seriousness that there is no
such thing as closure when a violent crime rips
apart the life of your child, no such thing as
closure. I see her every day in every wedding
I've gone to that I will never have and I see her
every day in going to church and seeing other
people with young children and I will never have
her grandchildren. There is no closure. And it
certainly isn't given to anybody, who believes as
I do, through the death penalty.

Indeed linking closure for victims'
families with the execution of the defender is
problematic for two additional reasons. First,
the death penalty is currently applied to only
about one percent of convicted murderers in this
country. If imposition of that penalty is really
necessary for the victims' families in healing,
then what of the 99 percent who are not even
offered it? Secondly, and even more critical
from a policy perspective, a vague focus on
executions is the potential source for closure
for families too often shifts the focus away from
steps that can help the victims' families in the
aftermath of a murder. The danger for this is
especially present when capital appeals go on for
decades and decades, and with every court
decision, that murderer's name and face is
flashed all across the headlines. Where are the
victims in this process and how are they served
through this?

The murderer of my daughter's face six weeks after he was caught has never been in a picture or flashed on the news, nor have I ever had to go through that, and he is get a just punishment.

I understand that there are several people on this Commission who have also lost a loved one to murder; and although we may not see eye to eye on this issue, I am confident that we would all agree that more must be done to help surviving family members. That's a worthy goal, and something that this Commission should address as a part of its deliberations on whether there are suitable alternatives to the death penalty.

My family and I believe that we, as a society, must move beyond these vague sentiments about being tough on crime or seeking justice for victims through the death penalty and look closely at what actions we can have and develop that will prevent violence and help victims heal in the aftermath of this violence. We need - really need - to create a new paradigm about crime that establishes a goal, an aspiration for healing for both the individuals
and for our society. That focus would be on the
needs of the victims, instead of the desire of
some for blind retribution without regard to any
of the harmful consequences of the death penalty
which you've heard about a lot today. By
focusing on the needs of the victims, we believe
we truly honor the meaning of justice.

I would like to conclude by saying,
especially to those of who you do not support the
death penalty -- I'm sorry -- to those who do
support the death penalty or who maybe are
ambivalent about it, that you have an important
opportunity here to assist in creating a helpful,
healthier paradigm for victims and for all of
society. You may continue to believe that
murderers should be executed, and there's little
maybe I can do to change your mind about that,
but I do ask, please, that you consider that the
existing paradigm, with its focus on the
murderer, hurts many victims and continues to
hurt them long after their loved one is gone.

If your goal is, as I believe it
should be, to do what is best for the victims,
you should recommend an end to the death penalty
in New Jersey, and I am here to support the
belief that life in prison without the possibility of parole is a goal that would be very, very welcomed by many murder victims' families that I represent today.

Thank you.

CHAIRMAN COLEMAN: Thank you.

Is there any questions?

Mr. Hicks.

COMMISSIONER HICKS: Unfortunately, Ms. Schieber, I am a member of your club, and it's a club that on one would ever want to be a member of, and I can understand your pain.

MS. SCHIEBER: Yes, thank you.

COMMISSIONER HICKS: My daughter was murdered six years at the age of 26, and she leaves behind two young children.

I know the challenges that I face, me and my family face, and I was wondering if you could tell us the challenges that you face when this type of tragedy happens. And also what actually could the Government or State, in your case it was in Pennsylvania, but it's similar, could have done to make things easier for you and your family?

MS. SCHIEBER: I'm sorry, I couldn't
hear the last part of the question, please.

COMMISSIONER HICKS: What could the State do for you and your family to make it easier for you to get over -- as you said, there never is any closure, I understand that, because it's never over, but what could the State do for you to ease your pain?

MS. SCHIEBER: Well, one of my goals has been, and I'm committed to do this as long as I live in honor of my daughter, and she is very strongly supportive of it, is to abolish the death penalty. As it exists in this country, it is very painful the way it is imposed in this society. I don't think this helps in any murder victims' families.

My situation was a little different, in that this person pled guilty because they had all of this evidence and this DNA evidence, and I only had six weeks between the time he was caught and put behind bars for the rest of the life. But this is not the situation for most of the members of the victims' families that I work for and represent. And what I'm asking on their behalf is that we, because of the problems that exist in the system now, eliminate it entirely
and have this life without the possibility of parole. It makes it much, much easier from the State's point of view in helping us. And then giving the support services through the State funding to give them extra help, give them support in trying to heal, and not go through all the machinations of going through long capital trials and all the pains that they have to endure.

And I can offer many of -- when I testified before the US Senate Judiciary Committee earlier this year, I had a list on the paradigm of various things that I would offer for them to try, and I would be happy to share that with you. In the short ten-minute cycle, I didn't have time to go through that.

COMMISSIONER HICKS: Thank you.

COMMISSIONER RUSSO: Ms. Schieber, it's a little delegate, but may I suggest, first of all, that the issue before this Commission is not whether or not more should be done for victims and their families. I think all of us would support that overwhelmingly. Perhaps, that's something when I was in the Legislature we should have focused more on; we didn't. That's
another issue. It's not an either/or. It's not that, if you support the death penalty, you're opposed to helping victims' families.

And let me say to you, my father was a murder victim, so I know a little bit of what you feel, it's been a long time, though. But it's not a question of what would help me or my family, or with all due respect, you or yours. What matters here is what's best for the good of society as a whole; and we may disagree on that. Brendan Byrne and I disagreed three times on this, and I only had respect for him on that issue.

One might oppose the death penalty in the view of what's best for society or not oppose it, and I would only respect that, as I've said so many times. It's not an either/or. It's not that we're going to substitute the death penalty with helping victims. We should help victims anyway, whether we have the death penalty or not.

So I would suggest that that's really the purpose of the death penalty is, not seeking justice for victims, so much as, I mean, that's certainly part of it, seeking justice for
society; is that the right thing, it may or may not be.

MS. SCHIEBER: But we believe that they're tied together very closely. In finding justice for that victim, we are also creating a much better society, and we believe that that happens through not having the death penalty system in this country, period, and I think that's absolutely right.

COMMISSIONER RUSSO: Legitimate point.

CHAIRMAN COLEMAN: Thank you.

Ms. Garcia.

COMMISSIONER GARCIA: Ms. Schieber, we haven't met, I just want to say that I'm very sorry about Shannon and what happened. I want to thank you for putting the focus where I feel it should be.

MS. SCHIEBER: Absolutely.

COMMISSIONER GARCIA: No matter what position you take, it's on the victim, not the perpetrator, and I thank you for articulating that so well.

MS. SCHIEBER: Thank you.

COMMISSIONER GARCIA: Wouldn't you
agree, however, that if you believe in the death penalty, and because you're here, I know that you're aware of the situation here in New Jersey, that the situation we have now, wouldn't you agree that that also -- that that is harmful to the survivors, even if they support the death penalty --

MS. SCHIEBER: Yes. I think so, yes. I apologize. I don't know much directly about the specific case you were dealing with. I am a member of a national organization and my daughter went to school in Philadelphia, but I actually live in Maryland, so I may not be knowledgeable, and I would like to preface it with that, about the specific case, but I think your point is well made.

COMMISSIONER GARCIA: But I think the point you were trying to make, that Senator Russo brought up was, what we're talking about, why we're here, we can't forget the impact that this system, the current system is having on the survivors.

MS. SCHIEBER: Absolutely. That's exactly right.

COMMISSIONER GARCIA: And what
position they're in.

MS. SCHIEBER: Yes. Absolutely.

Thank you very much.

COMMISSIONER HAVERTY: Ms. Schieber, thank you very much. I happen to live just outside of Philadelphia, so I remember very vividly what was going on with your daughter.

MS. SCHIEBER: Thank you.

COMMISSIONER HAVERTY: My best friend in the world, someone I grew up with, his mother was murdered. And his mother was like a second mother to me.

MS. SCHIEBER: I have a hard time hearing you.

COMMISSIONER HAVERTY: I'm sorry. I was just trying to say that my best friend in the world who was like a brother to me, his mother who was like a second mother to me was murdered as well. Interestingly enough, he was a police officer. And after his mother was murdered, they caught the murderer very quickly, and he confessed. He said that he did not want the death penalty at all, he just did not support it for the murder of his mother.

And I just wanted to thank you for
calling to attention the fact that there are
murder victims' families out there who do not
necessarily support the death penalty, just
because of the fact that they are murder victims,
and I just wanted to point that out. I thought
that that was --

    MS. SCHIEBER: Yes, it definitely
is. There's a broad range of reasons that we
brought before you. The last person who spoke
that gave the numbers and the statistics, there's
some that have very moral reasons, there's a
whole range of them, but I think we commonly
assume that murder victims' families immediately
want this death penalty, and I'm telling you that
there's a growing, growing representation around
the country of people who do not agree with that,
and we have been through the worst, we've been to
the hell and back.

    COMMISSIONER HAVERTY: I have
firsthand experience, she was savagely beaten to
death in the kitchen of her home.

    MS. SCHIEBER: It changes your whole
world. Thank you.

    CHAIRMAN COLEMAN: Mr. DeFazio.

    COMMISSIONER DeFAZIO: I'll pass.
CHAIRMAN COLEMAN: Thank you for coming, Ms. Schieber.

Juan Roberto Melendez-Colon.

MR. COLON: Before I start, I want to thank all of you for giving me the opportunity for me to speak here.

My name is Juan Roberto Melendez-Colon. I was born in Brooklyn, New York, but I was raised on the island of Puerto Rico.

I migrated to the United States as a young man trying to make a better life for myself, looking for the call for the American dream. Instead, I lived the American nightmare.

In 1984, I was convicted and sentenced to death for a crime that I did not commit. Almost 18 years later, to be precisely, 17 years, 8 months and one day, I was exonerated and released from death row, in the year January 3rd, 2002. I am the number 99 death row prisoner in the United States to be released and exonerated from death row since 1973. Right now, it's 123 of us who are exonerated and released from death row because of innocence.

I know that the State of New Jersey
have made mistakes in murder cases. And with
these mistakes, it's so much to learn about.
Also too, the State of New Jersey never had
executed an innocent person. There are lessons
to learn from these mistakes.

Please keep in mind as you hear my
testimony that my case is not unusual, it's not
indeed unique. As in many of those cases of
innocence, and I'm very lucky to be alive today.
Only God knows, out of the 1,042 plus that
already have been executed was not so lucky like
I was. Nobody knew the number of innocent that
went in there.

My case did not have no DNA
evidence. Most murder cases don't have DNA
evidence. It was not different than mine. The
true fact is that, out of the 123 that's been
released, only 14 have been exonerated and
released from death row on DNA evidence.

I can say with certainty that I was
not saved by the system. I was saved in spite of
the system. My case was upheld three times on
appeal by the Supreme Court of Florida. If it
had not been for two unfortunate circumstances in
my case, I would not be here talking to all of
you. The first one was when my case was moved to another county and it fell to the hands of a courageous woman, a female judge that wanted to do the right thing that go by the name of Honorable Barbara Fletcher. I can sincerely say that I owe her my life.

The second unfortunate circumstance was, they found, after I had been convicted for 16 years in death row, they found a taped confession of the real killer. Eventually, it was found that the killer confessed to more than 20 witnesses, including the wife and sister of the real killer, including law enforcement officers, including a former prosecutor investigator, a former FBI agent, criminal lawyers, friends of the real killer. In the end, they also found physical evidence against the real killer.

Had it not been for what people call pure luck, what I like to call miracles, the State of Florida would have executed me.

But let me tell you a little bit about death row. Death row is hell. I lived in six by nine cell infested with rats and roaches. And every time they moved me out of that cell, I
got shackles on my legs, chains on my waist and
handcuffs on my wrists. I even developed a
critical case of arthritis. I have suffered a
lot, but my family also suffered too, very
especially my mother.

I remember a letter that my momma
wrote me when I was in there. She wrote and
said, son, I know you are innocent and God knows
that you are innocent. I just built an alter,
and on that alter, I put the statute of the
Virgin of Guadalupe in it and I got roses and I
put it in it, and I pray five or six hours a day,
thinking for a miracle, and that miracle would
come, but you got to put your trust in God, all
your hope got to be in him.

Her belief in God and her belief in
my innocence gave me the hope and strength to
live, gave me the will of living.

But I learned originally not too
long ago, that in spite of all the hope that my
momma have in God, she also was saving money to
bring the body back from Florida to Puerto Rico.
For me, at times, it was real hard. After ten
years, I was tired of it, I wanted to commit
suicide. And believe me, lots of condemned death
row prisoners committed suicide. What saved me was dreams, happy dreams, awesome dreams of my childhood. Every time I was depressed, every time I wanted out of there, every time suicide thoughts came to my mind, I would pray to God send me a awesome dream. And I was wise enough to grab those dreams in the hope that, one day I would be out of there, that one day I would be free.

But I will tell you the hardest thing for me in death row is when the Government executes a person. Say someone lived in the cell and you've been around this condemned man for so many years, you grow to learn to love him, you share your most deepest thoughts with him. He cries on your shoulders and you cry on his. And then one day, they snatch him out of the cell and execute him. And I know the exact time when they execute him, because during my time it was the electric chair and the guy that generates the electric chair with electricity and I can hear that whoosy sound, hum-hum, that still stays in my mind, and I also can see the lights cut off and on.

Some of them are innocent. I can
tell you four right from the top that are
innocent, Jesse Tafero, Leo Jones, Benny Demps
and Pedro Medina, whose mommy lives right here in
New Jersey. I'm also grateful to make
friendships with the death row inmates. You see,
when I went in there, I did not know how to read,
I did not know how to write, I didn't know how to
speak English. The worst of the worst, the ones
that some people called monsters, taught this
Puerto Rican how to write, how to read and how to
speak English. If they would never have taught
me, I believe I would never have survived in
there, I would not able to learn law, I would not
be able to communicate better with my lawyers, I
would not be able to reply to the letters of the
pen pals, some of them from this great State of
New Jersey that show me so much love, compassion
and make me feel like a human being.
To conclude, I owe all of you to
recommend to the New Jersey State legislators
that they abolish the death penalty. It brings
too much pain, too much suffering to others.
It's a law made by humans, it's
carried out by humans, and we humans make
mistakes. As long as this law exists, there
always will be a risk that the State of New Jersey will execute an innocent person.

CHAIRMAN COLEMAN: Your ten minutes are up, Mr. Colon. Would you bring it to a conclude?

MR. COLON: Okay. Forgive me for that.

CHAIRMAN COLEMAN: Why don't you read the last paragraph.

MR. COLON: Okay. New Jersey has every right to protect its communities without the death penalty, we got penalties. Also this way, New Jersey will never execute an innocent person and no more families will have to suffer the pain of having a loved one on death row and the devastation of having a loved one executed. New Jersey can lead this nation by abolishing the death penalty. It can save that money to make programs to assist victims' families from murderers, to protect our children, to protect our communities and save innocent lives.

God bless you and love to you all.

CHAIRMAN COLEMAN: Thank you.

Is there any question of any commissioner of Mr. Colon?
Thank you, Mr. Colon. You may step down.

CHAIRMAN COLEMAN: Dan Carluccio.

You may proceed, Mr. Carluccio.

MR. CARLUCCIO: Thank you, Justice Coleman, distinguished members of the Commission.

I am a 65-year-old lawyer. I've been a lawyer for 41 years, most of which was spent as a trial attorney. In fact, I've actually tried cases against two members of this commission, and I lost both, some many, many years ago.

CHAIRMAN COLEMAN: Was I the judge?

MR. CARLUCCIO: I've spent a good deal of my professional career practicing criminal law, first representing people accused of crime, later prosecuting them, and now again on the defense side. I had the good fortune to be designated as the deputy public defender for the Ocean and Burlington Vicinage by Stanley VanNess and was honored to have been associated with such a distinguished citizen of New Jersey. I defended approximately 15 murder cases as trial counsel and supervised countless others. I won acquittals on many. And I came to understand firsthand how our system of justice works in the
eight years that I served. I had the honor to be
appointed and confirmed to serve as Ocean County
prosecutor for a five-year term in the '90s. I
personally prosecuted several murder cases and
tried two as the county prosecutor. I also
supervised many others and made decisions on
strategy, pleas, investigations and death
eligibility.

I have never tried a death penalty
case as defender or as prosecutor. But during my
tenure as prosecutor, the two most clearly death
eligible crimes that I had to deal with were
committed by 17 years olds, and they were not
death penalty eligible. Until one case that I'm
going to tell you about, not as a war story, but
as, I hope, an informing example that will
hopefully be of value to the Commission as it
goes about its very important work.

You see, I oppose the death penalty.
I oppose it not on moral grounds, because
morality is really another form of religious
expression, and I believe that our Government
should stay as far away from acting on religious
principles as it possibly can. Most religions
tolerate killing in one form or another, so I'm
not persuaded by religious beliefs on the issue of whether our Government, in the name of all of its citizens, should take a life for any reason, short of self-defense.

Our nation was founded on principles of the enlightenment, the age of reason. And our founders knew what they were doing when they separated Church and State. But where does reason lead us? Certainly, our founding fathers accepted the death penalty, but does that mean we should be blindly led by the past? I think not. I think that a reasoned approach would consider that the entirety of human history is a slow and steady march out of the slime toward the stars. 2500 years ago, the Greek dramatists recognized that murder begets murder and presented the consequence of that endless circle of violence as a limitation on what man could become. 

As we learn, as we evolve, as our society is enriched by ideas, people and cultures from around the world, should we not grow and develop in our ability to reason about something as significant as Government-sanctioned killing? The fact is that we know that the death penalty is mostly an emotional response to
heinous acts. It serves no purpose other than to
brutalize ourselves, because if killing is wrong,
killing of a police officer, killing of a child,
killing of anyone under any circumstance, short
of self-defense, it is wrong for the State to do
it as well.

But let's look at what the death
penalty does accomplish. Wouldn't that be a
reasonable thing to do, if we're studying whether
or not to have a death penalty? We know that it
generates a lot of public interest. Newspapers
and the media outlets have a lot to write about
and talk about when a death penalty case is in
trial. We know that human nature and political
interests being what they are, prosecutors and
police officials respond to that notoriety, as
do defense lawyers and defendants, but I can tell
you that prosecutors also know that they have
limited resources. Taking on a death penalty
case ensures that some of your best and brightest
will be tied up for a long, long time. You see,
death is different. A murder case, even without
the death penalty, is a very consuming
undertaking for the entire system. What is the
value in multiplying the costs in time, money and
resources in a murder case with a death penalty, when a perfectly reasonable alternative is life without parole? My answer is none.

A death penalty case makes the murderer into a celebrity. That offends me. It should offend our society as well. I believe that any deterrent effect resulting from a death penalty is neutralized or even overcome by that dark side celebrity. We know the names in the history of despicable people whom society should work to forget. Victims are continually brutalized by this notoriety and our culture is contaminated.

The old Kingston Trio folk song, Tom Dooley is about a murderer facing the death penalty, but his victim is not even named in the song, which gets me back to my case that I want to tell you about.

During my tenure as prosecutor, we discovered, apprehended and convicted a serial killer. One that none of you have even heard of. He had killed and sexually assaulted an elderly woman at the shore. A year or so later, with the case becoming cold, a retired couple were found murdered in their home in an upscale community
near Newark. The report in the Ledger caught the
attention of the police chief in Seaside Park,
who noticed some similarity to our case at the
shore. He called me, and I asked my detectives
to do a follow-up.

Working with the Essex County
prosecutors' detectives, they proceeded to solve
both murders, as well as an earlier murder that
the subject had committed. The defendant was in
his earlier 50s, life without parole was not a
sentencing option, but we made it one by using
consecutive 30-year-to-life sentences, which
would assure that this person would never ever
leave prison. Working with the prosecutors'
office in Essex and the courts in Essex and Ocean
Counties, we negotiated a plea that put this
person away for the rest of his life, without
ever any possibility of being released.

The victims' families and loved ones
were consulted and they were spared the torture
and pain of reading about these horrible crimes
for months, indeed years to come, as you've heard
here today, and best of all, no one even knows
his name today.

His guilty pleas and sentencing were
reported in the press for one day each, then he
was put where he belonged, locked away where he
could not further contaminate our society. Isn't
that a better outcome? Let's not create folk
heroes or folk villains. It's far better that we
do not know his name.

Reason informs us that our true
interests are served by eliminating the death
penalty in favor of life without parole. We
won't squander valuable resources and manpower
and time. We won't continue to brutalize the
families and loved ones of victims. We won't
debase and degrade ourselves by resorting to the
same conduct that we condemn for those who kill.
We won't risk the horrific consequences of
mistakes when convictions are found to have been
in error. We will remain on a path toward the
stars by resorting to the reasoned progress that
is truly the hallmark of our country and our
civilization.

The rule of law is a rule of reason.

And as we write our rules, reason should be our
predominant tool. There's no reason for the
death penalty, and we should not have one.

I abridged my remarks from my
written testimony, but that was because I was concerned with the ten minutes.

CHAIRMAN COLEMAN: Thank you, Mr. Carluccio.

Are there any questions?

Ms. Garcia.

COMMISSIONER GARCIA: Mr. Carluccio, I agree with a lot of what you said, but couldn't help but notice that a couple of times you made the statement, basically, that killing is never justified, short of self-defense. Isn't the death penalty really society's form of self-defense?

MR. CARLUCCIO: I don't believe that for an instant. I think it has nothing whatever to do with self-defense. It has to do with retribution.

COMMISSIONER GARCIA: Well, if these individuals are put to death and there's arguments about whether it's a deterrent or not, they won't return to society to kill again.

MR. CARLUCCIO: They won't return to society if they're locked away for their natural life without parole.

COMMISSIONER GARCIA: If.
MR. CARLUCCIO: If what?

COMMISSIONER GARCIA: They are locked away.

MR. CARLUCCIO: Believe me, I think that a capital crime, such as we call it, capital meaning that we're going to kill someone over it, but let's call it a crime that qualifies for life without parole is a crime that we would all pretty easily identify and we would find that jurors would easily identify, and we would find that the law could be carried out efficiently and effectively. And, in fact, I think that was already testified to by Attorney General Del Tufo, when I think I heard him say that the reversal rate, or the overturn rate, if you will, it's not necessarily reversal, sometimes people get new trials or new sentencing hearings, but the rate of appellate interference with convictions in life term murder cases is an insignificant piece of what it is in capital cases. And that's for a good reason, because, as I said in my statement, death is different. And when there's a death case, and there's a lot of lawyers here, whether it's an accidental death, whether it's a death in a civil trial or a
criminal trial, the whole proceeding is different, because there's that dead presence, dead person in the room, and everybody takes it very seriously. And our system should take it seriously, and it does.

And upon conviction, the seriousness of the punishment should be one that doesn't brutalize the rest of society or further inflict the kind of pain that you've heard from other witnesses here on families and victims. So that's the rationale I think that would best suit us as a reasoned approach.

CHAIRMAN COLEMAN: Senator Russo.

COMMISSIONER RUSSO: Thank you, Chairman. Good morning -- or good afternoon, Dan.

MR. CARLUCCIO: Hi, John.

COMMISSIONER RUSSO: Let me say preliminarily, though we disagree on this issue, Danny is a friend of some 40 years, I guess, and in fact, I'd like to say I was instrumental in his appointment as prosecutor, and he did a great job, although philosophically, though, not always do we agree on many issues.

Dan, though you say you've never
tried a death penalty case, I did, but that makes
you no less qualified for that position, and I
respect that position and you stated it well.
And as a prosecutor, you conducted, as you said,
many death penalty reviews, and you always
followed the law, but you feel the law should be
changed, and that's the reason for your being
here.

But let me ask you, Danny, do you
really believe that the death penalty is mostly
an emotional response to heinous acts and serves
no purpose other than to brutalize ourselves?

MR. CARLUCCIO: Well, I think there
are other reasons, but I think that's the
predominant one, I think that's the one that
prevails, yes.

COMMISSIONER RUSSO: For example, I
sponsored it, the Legislature passed it, the
Government signed it, you don't feel that we had
that as our -- or do you?

MR. CARLUCCIO: No, I do. I think
that it was very much influenced by the politics
of the times, quite frankly. I think that our
whole society is influenced by something. You
know, there's a famous person that I studied when
I was in college. Peter Finley Dunn was a newspaper writer back at the turn of the century and he had a character called Mr. Dooley. And one of Mr. Dooley's famous quotes was, the Supreme Court follows the newspapers. And I think the political establishment follows the public will.

And if you think about it, back in those times, everything was concerned about crime destroying our society, and we took all kinds of draconian measures with the criminal justice system, some of which were effective and worked, but a lot of which didn't and continue not to work. So I think that we are all products of our time, and I think at the time, I'm not saying that people were motivated by improper influences, but I think that they were influenced by the times, and that's what we got the death penalty for.

COMMISSIONER RUSSO: Well, just for whatever it's worth, Dan, when I first prosecuted that murder case in Ocean County, I believed in the death penalty, that's in the 1960s, this is 2006, I still believe in it under certain very restricted circumstances. And at no times do I
feel it was because of a weather vane, a poll, as
that fellow suggested. You believe in it or you
don't believe in it, and you have to respect each
other's views. And the fact that I believe in it
doesn't mean that I was just catering to the
views of the people.

MR. CARLUCCIO: But is your belief
based on reason or is it based on emotion?

COMMISSIONER RUSSO: It's based
primarily on the words of Justice Greg -- or I'm
sorry, Justice Stewart in Greg versus Georgia.

Do we have a copy of that handy?

All right. Let's see if we can.

Dan, a feeling that in a society to
have respect for law and order, you'll agree with
this, in order for there not to be a desire for
vigilante justice or what have you, there must be
a feeling that, in unusual crimes, the punishment
fits the crime. Now, I think it's fair to say
that you would not have executed even a
terrorist.

MR. CARLUCCIO: No, that's not true.

No, that's not true at all. As I said, I sat and
made decisions on who should face the death
penalty.
COMMISSIONER RUSSO: That's not what I mean, no, no, not as prosecutor. I mean today, you today do not feel that anyone should be executed by the State, in any State, as I read your statement.

MR. CARLUCCIO: I think the death penalty is counter-intuitive to a reasoned Government that believes in the principles that our Government espouses, that's my belief. It's not based on religious grounds, it's not based on moral grounds, it's based on the fact that I think it debases us all, but that is my personal feeling. As a matter of law, I have a different feeling.

COMMISSIONER RUSSO: Of course. You've always opposed the death penalty, certainly in all the years I've known you, and probably all your life; is that fair to say?

MR. CARLUCCIO: I have not supported the death penalty. I've never supported the death penalty.

COMMISSIONER RUSSO: You would not have executed Timothy McVeigh?

MR. CARLUCCIO: I'm sorry?

COMMISSIONER RUSSO: Timothy McVeigh
in Oklahoma.

MR. CARLUCCIO: I don't think that enhances our country, our status, our morality, our civilization, no, I don't. I don't think that this is the appropriate place for our Government to be killing people.

COMMISSIONER RUSSO: You can't argue with a person who believes that in their heart as you do and you always have --

MR. CARLUCCIO: Yeah, I know, but that's not my reason for suggesting that the death penalty in New Jersey should be changed. My reason for suggesting that the death penalty in New Jersey should be changed, as stated in my statement, comes from 40 years of experience, from the history since 1982 when your bill was adopted, and from what I've heard even sitting here today, which I've always intuitively known, about what victims go through.

I remember we had a case where a couple of kids, young kids, punks in a town decided to rob a local fast food place. The kid who was running the fast food place was a teenager himself. They got him to open the safe. And after he opened the safe, one of the kids,
who was really the worst of the bunch of them,
shot him in the head and killed him. And it was
a horrible, horrible case. But they were all
teenagers, except there was one who was 18, and
we had to decide who was the one who might be
responsible for what could have been a capital
murderer. That's a tough decision to make, of
course.

And it turned out that the victim
had a brother who was a State trooper. The State
trooper came and met with us. And we talked with
him and with his mother, and we talked about what
was going to be done with this, in our death
eligibility meeting. And I have to say that that
young trooper, because he hadn't been on the
force for very long, said to us that, you know,
do we really need to be going through knowing
what would be gone through, if it was made a
death eligible case, because it would have been a
terrible mess, because we couldn't definitively
prove which one of them pulled the trigger and
whether the 18 year old was, the 17 year olds
wouldn't be, and all of those issues. And it was
a very difficult thing for him, from his
perspective as a law enforcement person.
But as we came around to it, there
was unanimity among our committee and with the
family, that that should not have been a death
eligible case.

Now, I can't say that my personal
beliefs are not reflected in how I handled that
particular situation or others, but I do know
that the law provided the course for me to take.
And that's what we're talking about here. What
law should our society put on the books for our
society to take, and that's what you're going to
be recommending to the Legislature.

And I suggest to you that life
without parole is a far better, more efficient,
more effective, more reasonable, more
appropriate, more in keeping with our society way
to go than the death penalty. Now, again, I'm
not citing moral, religious grounds. I'm talking
about the reasons.

COMMISSIONER RUSSO: The last point
I wanted to make is that you mentioned in here,
and I don't think really that you use that as a
basis, you don't feel that our decision should be
based on the cost of the death penalty or lack of
it?
MR. CARLUCCIO: No, I think that when you're talking about cost, to quantify it in how much money was spent on this or that is a slippery slope, because cost should not be really a factor in trying to establish a just result. But I can tell you, from a practical side, and you know this, too, John, because you were there, when you have to go to the freeholders to get a budget passed and you really think you need a couple more investigators to go after some bad stuff going on in your county, it's hard to tell them it's because there's a death penalty case pending, you're not going to get the budget you need to hire those people and the investigators you need, so that costs do end up figuring into it, as it does in all levels of Government, so that would be my response.

COMMISSIONER RUSSO: You and I know that no matter what it was that went to those freeholders, we wouldn't have gotten it at that time. Thank you, Dan.

MR. CARLUCCIO: Thank you.

COMMISSIONER DeFAZIO:

Mr. Carluccio, you've been on both sides, but I have a question about the case that you
referenced in your presentation, the 50-year-old man, serial killer, sexual assaulter. This defendant that you referenced, he was a death eligible case?

MR. CARLUCCIO: Yes.

COMMISSIONER DeFAZIO: And that plea that he entered was entered when he was facing the death penalty, or at least death eligible?

MR. CARLUCCIO: Yes.

COMMISSIONER DeFAZIO: And that's how you extricated the plea or negotiated the plea, although you don't -- wait a minute, I jumped ahead. You don't know what's in the defendant's mind, but you being a defense attorney and you being a prosecutor, and you being a very intelligent fellow, you would have to infer that, in the defendant's mind, he had this thought that he was eligible for the death penalty.

MR. CARLUCCIO: That is absolutely correct. In fact, the way that happened was, he retained private counsel, a very competent counsel, who contacted both myself and the prosecutor in Essex County and said, I would like to plea this guy guilty and get him away forever
so that we don't have to go through whatever.

And realizing that that case, the prosecutor, it would have been not one, it would have been three death penalty trials, three death penalty appeals, three death penalty reviews that went on for however long, with multitudes of defense counsel and all the things that go into it, and at age 52, we consulted with the victims, we discussed it with all of our staff, and both myself and the prosecutor of Essex County, and, of course, we had to also pass it by the criminal assignment judge in Essex County and the criminal assignment judge in Ocean County, and that was the result.

And I only use it here as an example because that person would have been as familiar a name as Bigenwald or Marshall today, and he's not, and I think that enhances this.

CHAIRMAN COLEMAN: Ms. Garcia.

COMMISSIONER GARCIA: Isn't the real question not whether we're for or against the death penalty, but actually, is the system working? I think the system, in my own personal opinion, is working for the accused, but it's certainly not working for the survivors.
MR. CARLUCCIO: Well, I agree with you. I think that you've really then answered the question of this Commission, that you have to make a change, and I don't know what change you would make, other than to throw out due process of law, and that's certainly not a viable alternative, so that's why I think the life without parole is the alternative, and I felt that for some time. I think it takes just a lot of the bad parts away from it all and puts us back on track of what we're supposed to be doing here in administering a system of justice.

CHAIRMAN COLEMAN: Commissioner Russo has one final question.

COMMISSIONER RUSSO: Dan, I said before that the basis I felt to support the death penalty -- and, incidentally, let me say this, that perhaps surprising many people, I do not believe the death penalty is a deterrent. I don't believe any penalty is a deterrent, and I think you and I probably know that criminals don't think they're going to get caught, so that's an issue that's out. But the real reason that I always felt that there was a need for a death penalty in very unusual, heinous
cases, very unusual, not indiscriminately
applied, is best stated in one paragraph, if I
may read it, by Justice Stewart when the death
penalty was reinstated in Greg versus Georgia.
And he said, "On that score I would say only that
I cannot agree that retribution is a
constitutionally impermissible ingredient in the
imposition of punishment. The instinct for
retribution is part of the nature of man, and
channeling that instinct in the administration of
criminal justice serves an important purpose in
promoting the stability of a society governed by
law. When people begin to believe that organized
society is unwilling or unable to impose upon
criminal offenders the punishment they 'deserve,'
then there are sown the seeds of anarchy -- of
self-help, vigilante justice and lynch law."

I don't suggest you agree with that,
I just say to you that's the basis that promoted
me initially why to support this, not public
opinion or anything else.

MR. CARLUCCIO: You know what, I
wrote my thesis in law school on Justice Stewart,
and he's a very practical guy. And I think that
what he said is almost what I said, because he's
saying that it's an emotional response, it's not something that's based on reason, and he's saying that it has to do with public opinion in terms of feeling good about our society. So I think maybe from the time that was decided back in 1976, was that, or '78.

COMMISSIONER RUSSO: No, it's more like '80, I think.

MR. CARLUCCIO: '80, okay. Well, from that time down to 2006, maybe our society has grown. Maybe the society and the culture of New Jersey has grown from the polster, I heard there. Maybe that's where we're all going, getting to a higher, better place. That's all I can say about that, John.

COMMISSIONER RUSSO: Okay. Thanks, John.

CHAIRMAN COLEMAN: Commissioner Abbott.

COMMISSIONER ABBOTT: Dan, this isn't meant to be critical of your writing, but the assumption that none of us have heard of this person, I can tell you his name and address, but I won't give him any dignity at all in this room by doing that, or his former address, we don't
know his present address.

The one thing I would like to do is,
you said that in working with the Essex
prosecutors detectives, they proceeded is to
solve all the murders. I'd like to just point
out that the New Jersey State Police, the
evidence collection in that was phenomenal. And
the West Orange Police Department actually
developed him as a suspect and were honored next
door at the State House for that, so that's a
little plug for the police department.

MR. CARLUCCIO: Yes, it was a
fascinating case in terms of the investigatory
thing, right down to trophies that were noticed
and found and it was just an amazing thing. I
was really reporting it from my perspective.

COMMISSIONER ABBOTT: It was a team
effort.

MR. CARLUCCIO: It always is, that's
for sure.

CHAIRMAN COLEMAN: Thank you,
Mr. Carluccio.

CHAIRMAN COLEMAN: I now call

Marilyn Flax and Marilyn Zdobinski.
MS. FLAX: I want you to know it's very difficult for me being here today. I've heard many crime victims speak. My case is a little bit unique, which I will speak about a little bit later, but I want you to know that there have been several anti-death penalty groups here, and I want you to be aware that they don't speak for all the victims of crime. As far as I'm concerned, there definitely should be a death penalty.

The death penalty was designed for a select few, the most evil of evil of killers. My husband's killer, John Martini, is one of them. He's been on death row for 17 years. What I would like this Commission to do is not change the law, but enforce the law. I think that's what needs to be done today. The frustration with the victims of crime is that it's taking so long. I don't know whether it's political moves. Quite honestly, John Martini should have exhausted all of his appeals and should be able to be executed, but a commission was formed.

I have written a letter to the Acting Governor Codey telling him how I felt. I
never got a response from him. If I could roll
back the clocks of time 17 years ago when my
husband was kidnapped and murdered, shot in the
head three times, the case is a little bit
different, is that I spoke to the killer over the
15 minutes on one phone conversation and I had
four other conversations with him.

I don't think anybody in this room
has ever spoken to a killer in the same capacity
that I have. It is so frightening. I learned on
that day really what the word fear means.

If you think that you're sick and
you have 101, and all of a sudden, you have 105,
you realize how sick is sick. You can't imagine
my fear. After 17 years, I'm still fearful,
because John Martini said to me, one day somebody
will come after you and get you, too, if I'm ever
caught. What I'm really concerned about is that
the death penalty is not used and he is given
life imprisonment, it's not going to be life,
he's going to be eligible for parole and he's
going to be out on the street. That's very
frightening to me; it should be very frightening
to you.

What I also would like to say to you
is the death penalty was designed for the worst, worst criminals, that's why we have it. That's why we have execution. The same way that God, who is a forgiving God, created hell for a select few, he had a way of punishing them as well. We need to execute in New Jersey. We need to stop being soft on crime and we need to care about crime victims.

Whatever time I have left, I would like Marilyn Zdobinski to take my time on. If you have any questions, I'd gladly discuss them with you.

CHAIRMAN COLEMAN: Ms. Zdobinski, bear in mind that we've heard from you once, and I ask you not to repeat what you told us already. You may proceed.

MS. ZDOBINSKI: I won't, your Honor. Your Honor, I heard earlier, and I know, and with in all due respect to Senator Russo, it is not a matter of, cost, I agree with him that we should not be considering cost, however, it is a question that is before the Committee today and it has been mentioned by legislators here today, that it has costs the State of New Jersey a quarter of a billion
dollars to prosecute the death penalty since 1982.

I submit to you that that is a lie. I submit to you that that was a manipulation by forces both inside and outside the State who gathered together to oppose the death penalty at this particular time, because John Martini's appeals are over. John Martini is about to be executed. The system is about to work, it's about to work. So they came, and according to the report of the New Jersey Policy Perspective claimed and got headlines just at the time when this matter was to come before -- whether or not there was going to be a moratorium was coming before the Legislators, first the Senate and then the Assembly. And if you think that wasn't designed to catch the attention of the legislators and taxpayers, it certainly was.

And you know what, on page 15 of that report, there's a little sentence that reads, The Administrative Office of the Courts in 2004 stated that abolishing the death penalty would result in no cost savings to New Jersey.

And you know what they said in that report, without checking anything factually, they
said, that's impossible, and they discarded the opinion of the Administrative Office of the Courts. They then went on to say, and when I say "they," I mean the perpetrators of this report which grabbed the headlines, they said that it cost prosecutors three times as much as the public defenders to prosecute these death penalty cases. You know what, they didn't ask any prosecutors about what it cost. They didn't find out what it costs. Instead, the report tells you that relying on the opinion of a former prosecutor who estimated that it probably cost three times as much as it cost the public defender's office to prosecute these cases. They then multiplied the public defender's figure and said, that's what it cost prosecutors. And they said that this is buttressed by the figures from other states.

Well, you know what, if they had asked prosecutors who prosecuted these cases, you'd find out, that that's what makes New Jersey different. New Jersey is not the states who do not provide the public defender's office with many, many millions more than prosecutors have to put these cases through. Prosecutors rely on
their talent and on the bare bones of the case.

They rely on the facts of the case.

When I prosecuted John Martini, just one example, I was the only prosecutor in the room. There were three defense attorneys, and that was just for the trial. The public defender's office hired a jury selection expert, I have no idea what it cost, I'm sure it was a fortune. Prosecutors do not hire -- I've never heard of a prosecutor who hired a jury selection expert for one of these cases. Most of us try these cases by ourselves.

CHAIRMAN COLEMAN: Ms. Zdobinski, one of the charges the Commission has from the Legislature was to examine the issue of cost. If I understand you, you're asking us to ignore it, or you have recommendations as to how we should go about obtaining the information with regard to the costs. We can't ignore it, is my position, because the Legislature has directed that the Commission that was being appointed should look at or examine that issue.

MS. ZDOBINSKI: That's why I'm asking you, your Honor, to find out what the costs are. Because I can tell you about two
death penalty cases and I can tell you about Martini, and that it costs $2,000 apiece for the two experts I hired during the trial. During the prosecution of the appeals, and I was involved even up until my retirement and afterwards, I came and attended the appeals, I don't think we hired one expert for those appeals.

The public defender, on the other hand, had three attorneys. In fact, he had two public defenders and two private attorneys, including Alan Zegas. The point is that the resources are all on the side of the defense, and I am okay with that, because that's what makes New Jersey different. Prosecutors don't spend three times as much as the public defender's office, they don't spend nearly that much, and you can find out. You know what, call them and ask them. Call and ask. It's only 21 counties. How tough is it to find out.

In Passaic County, now, this is two counties, in Passaic County, I tried the only death penalty case that was prosecuted in the last now 16 years; I tried it. It didn't get to the penalty phase, but we only spent - you're paying me a salary anyway and I tried it - we
spent, I think, $6,000 for a psychiatrist in that case. Any other expenses are the ordinary expenses that a prosecutors' office would undertake to prosecute any serious crime.

In fact, I've seen many more nondeath penalty cases that took many, many more resources. That's what I'd like to say about that, your Honor.

But about finality, there's been talk today about finality. Well, I suggest to you that if the death penalty were abolished, any legislation that asked for life without parole is not going to apply to the defendants who are committing their crimes now or who are presently on death row. Those nine men on death row that have a total of 16 victims between them.

Robert Marshall is going to be coming up for parole in, I think it's what, seven or eight years. His sons have just embarked on what I hoped they would never have to embark on, and that is, they're not going to have any healing. In fact, they're going to be at each other's throats every time he comes up for parole, and he's coming up for parole. There was already an indication in the newspaper that his
one son, contrary to the younger son's position, he said that he will fight to keep his father in prison the rest of his life. Well, I suggest to you that that's not a lot of finality. And I suggest to you that those who have nondeath penalty cases, and I'll give you two examples, Marshall was one. Joan Delasandro was a seven-year-old girl in Hillsdale in Bergen County who was murdered while she was trying to deliver Girl Scout cookies back in 1973. Her mother's life was completely taken over by this crime. She was murdered, Joseph McGowan was then, it was before the death penalty, he was given life. He came up for parole first I believe in 1993 and he's been coming up periodically ever since. Her two grown sons now, who at the time, hadn't even been born when Joan was killed, they carry the burden of -- and we all know what happens, it's the families that carry the burden with parole hearings. They carry that burden. There will never be finality for them.

But Marilyn Flax's case is different. The appeals for John Martini are pretty much concluded, that's 17 years. It's about time. It's about time the law is carried
out. There's no question of innocence. Have you heard anyone, anyone come before you in all the sessions you've had to indicate that someone on death row is not guilty, is innocent. Is there some question about their case; no. You keep hearing from people from Florida. I understand there may be flaws in other cases in other places, but you know what the New Jersey Supreme Court is like, Justice Coleman. You know how carefully they consider the cases that come before them. How did the New Jersey Supreme Court in a 6 to 1 decision this July have no question about Martini's eligibility to be executed.

CHAIRMAN COLEMAN: Would you bring your presentation to a conclusion. Your time is up. Would you bring your presentation to a conclusion, and then we'll have questions.

MS. ZDOBINSKI: Is the public safer when --

CHAIRMAN COLEMAN: Your microphone is off.

MS. ZDOBINSKI: When you said my time is up, you really meant it.

Your Honor, I don't want anybody to
think that if there were no death penalty, there
would be no appeals. I can think of several
cases off the top of my head, they're murderers,
weren't tried death penalty. Craig Zimble is
one. He was finally brought to justice for three
murders in 1991. He's been incarcerated since
then. His appeals continue to this day. They're
still in the State courts. I think in three
different counties he has appeals going. He's
also appealing his characterization in prison as
being a very dangerous person. Why; because he
tried to escape in 1998. Murderers have to be
secure. He attempted to escape and what he is
trying to do, in getting his status as a high
risk lowered, is so that he won't have so much
security in traveling to and from the prison, I
suppose it's when he visits the different
counties for his various appeals.

I suggest to you that Mr.
Carluccio's example of an individual who pled
guilty, and there are still appeals when you
plead guilty, but there's just not as many, I
suggest to you that that example does not fit the
kind of murderers like Robert Weldon, who, in
1979, was finally convicted of murdering two
young girls in Howarth. In 1979, he's been
serving his time. Do you when his last appeal
was filed; two years ago, and I'm not suggesting
that that's going to be the last.

CHAIRMAN COLEMAN: Ms. Segars, you
have a question.

COMMISSIONER SEGARS: Yes.

I guess you've brushed off the fact
that the gentleman that was before us who was
very I think compelling in his testimony today;
you did hear the testimony earlier from
Mr. Colon?

MS. ZDOBINSKI: Yes, I did.

COMMISSIONER SEGARS: And albeit
from Florida, but how do you square the
possibility that any innocent person should be
executed?

MS. ZDOBINSKI: Have you seen any
evidence --

COMMISSIONER SEGARS: No. My
question is, how do you square that? I hear what
you've said.

MS. ZDOBINSKI: I know that the term
exoneration is thrown around quite a bit. I
don't know anything about his particular case,
but I would like to see whatever was submitted to
you in terms of court rulings or documentation
about his story in Florida. I understand -- I
know our system. I don't know the Florida
system. And I think it's a terrible thing to be
incarcerated if you are innocent, but I suggest
to you that our system here in New Jersey won't
let that happen.

COMMISSIONER SEGARS: We did have
testimony earlier, although not from a death row
person, but from a person who had been exonerated
from the State of New Jersey in our earlier
hearing.

MS. ZDOBINSKI: You mean Larry
Peterson?

COMMISSIONER SEGARS: I believe that
was the name.

MS. ZDOBINSKI: I believe that's
Larry Peterson. We had Barry Sheck here to
testify about that.

COMMISSIONER SEGARS: So there have
been mistakes in the State of New Jersey, maybe
not on death row, but there have been mistakes.

MS. ZDOBINSKI: If you see the
Burlington County Prosecutors' Press Release with
regard to the motion to dismiss the case against Larry Peterson, you will see that they did not use the word exoneration, they did not exonerate him. They indicated that after the passage of time and after review of the case, they did not have enough to put to a jury to prove his case beyond a reasonable doubt.

COMMISSIONER SEGARS: Are you unwilling to concede that it is impossible for the State of New Jersey to make a mistake?

MS. ZDOBINSKI: I think -- for the State of New Jersey to make a mistake; I don't think you're going to get me to say that the State of New Jersey cannot make a mistake. However, that is no reason to throw open the prison doors because the State of New Jersey might make a mistake.

COMMISSIONER SEGARS: But isn't the fact that you could possibly execute even one innocent person worth the cost of deciding upon life without the possibility of parole to avoid that possible, possible human error?

MS. ZDOBINSKI: The piece of mind that this State owes and the protection of future victims that this State owes to the good citizens
of this State, I don't think it's too much to ask
for the death penalty, particularly, in the way
that it is prosecuted and reviewed in this State.
New Jersey does it better than anybody else, and
I know you know that.

CHAIRMAN COLEMAN: One of the
problems we've been hearing is that we may do it
too well, because out of the 60 convictions, 50
or more have already been overturned and the
other nine are in the pipeline.

COMMISSIONER GARCIA, you have a
question.

MS. ZDOBINSKI: If I could just
comment, most of those reversals came early on.
You know, your Honor, that this has been a
refinement process, and that there are very few
reversals in recent years, as opposed to the
beginning when everyone was learning the system.
It was very difficult. And, you know, I feel so
bad for those people who spoke earlier. I don't
walk in a victims' shoes, I don't know how they
feel. But if the case was prosecuted in the
'80s, there was a great likelihood of a reversal,
because the system was just learning. The system
has been very, very refined. How else could the
Supreme Court be comfortable in a 6 to 1, there should be no impediment to his execution.

COMMISSIONER GARCIA: First, Ms. Flax, I'd like to say, I'm very sorry about your husband. Thank you for being here.

MS. FLAX: Thank you.

COMMISSIONER GARCIA: You had made the statement that the appeals process is really over for Mr. Martini. I'm not an attorney, but I was just wondering about the impact that this new decision by the US Supreme Court about their ability to claim that lethal injection is cruel and unusual punishment, I would think that that's going to play out in these cases.

MS. FLAX: Can I answer that or do I have to give it to you?

MS. ZDOBINSKI: Yes.

MS. FLAX: I thought about that, actually driving here today, and if we had a choice how to die, whether die of terminal cancer, Lou Gehrig's Disease, maybe being burnt 90 percent to your body and dying of burns, or being given a lethal injection, a shot to be put to sleep, I'm sure all of us would choose the latter. You know, I think it's too easy. I
mean, I would have loved Martini to, quite
honestly, be executed by the electric chair. I
think this is a very pleasant way of going out of
this earth, probably a little too pleasant.

COMMISSIONER GARCIA: I'm not going
to disagree with you on that. My point is that
you made the statement that you're asking us to
enforce the law and the Legislature to enforce
the law. I think the problem has really been at
the Supreme Court level, they're going to do
whatever they want. They're going to overturn
these cases, some of it is ridiculous, I mean
they'll overturn a case because the judge didn't
give the jury a potty break for God's sake. It's
horrible for the families. So I don't think the
problem is the Legislature enforcing the death
penalty. The Supreme Court, it's in their hands,
they'll do whatever they want. And the ones that
pay the price are the survivors. I'm sure you
heard Jo Anne Barlieb earlier, 21 years.

MS. FLAX: I listened to it. And
you what, there really shouldn't be a trial by
jury. There is no reason to have a trial where
12 people listen to evidence and make a decision,
because 12 people unanimously have to decide upon
a death penalty. My time was wasted in going to
two trials, not one trial, but two. Seventeen
years waiting for justice to be served. I don't
believe anything that I'm told anymore.

If the law is changed and he was
given life imprisonment without parole, there
will be somebody that will change that. We are
not safe in the State of New Jersey when it comes
to crime. And I'm frustrated and I'm very angry,
and I want to see justice and I really believed
in the system, but it failed me.

CHAIRMAN COLEMAN: Any other
questions?

Jonathan Gradess.

MR. GRADESS: Thank you.

Good afternoon, Mr. Acting Chairman
and members of this Commission. I'm here to talk
to you about your statutory charge to look at the
cost of the death penalty. I'm particularly
grateful for my placement at this moment on the
panel to deal with that issue. But I'd like to
deal with it candidly and tell you sort of the
history of my involvement with it first.

I'm the executive director of the
New York State Defenders Association. I was
asked to come here at the request of the New Jersey Association on Correction and that request emanates from the fact that, back in the same year that you created your death penalty, in New York, we issued a study entitled "Capital Losses: The Price of the Death Penalty for New York State." The circumstances under which we did that were that we had been contracted with by New York State to become a clearinghouse and a back-up center for all the state's public defense attorneys and assigned counsel and legal aide lawyers, and we were examining nationally the question of, gee, what if New York reinstates the death penalty. And as we went around the nation and surveyed the states, they told us things like, I hope you have a big checkbook; you better watch out for the costs. We actually thought it was this little arcane knowledge, and we really frankly did not appreciate or understand it at the time, but it resulted in the first study in this nation concerning the cost centers associated with capital punishment.

I hope that Senator Russo will come back. I do so want to answer this question for him.
CHAIRM AN COLEMAN: He will not.

MR. GRADESS: He'll be gone. Well, I hope someone will pick up the baton for him. I also must tell you that, as a result of my work, I was thereafter asked to testify before the Kansas Legislative Research Service, the Missouri Legislature, the general accounting office, the United States Senate. It is something that we've continued to look at because of that experience. I've been an expert witness in two capital cases, and we, for many years, were most immersed in this question. Our findings were, and you'll find them at page four, I believe, of this report, were really pretty clear, and I don't think they differ in New Jersey by any means. First, there's a widespread misconception among the general public that life in prison is more expensive than the death penalty. Second, capital cases cost more than noncapital cases. Criminal justice systems with death penalties face higher design and maintenance costs than criminal justice systems without capital punishment. The main aspect that drives the cost of capital punishment is not necessarily lengthy
appeals, although that adds to it, it is an
upfront cost associated with the guilt and
penalty phases of cases. And, most importantly,
I think for you and the questions that you've
raised here today, is that the exponential costs
of the death penalty continue to creat resource
strains on the remainder of your criminal justice
system.

Now, I agree -- I tried to read your
transcripts before. Let me at the outset say
what you're doing I think is really a great job,
and I'm honored to be before you. I read the
transcript so I could sort of be prepared, and I
got the sense that there are some here who
believe that there is no price that you can put
on justice, and I agree with that. It really is
an elemental proposition. But there is a price,
and it's a real and concrete price that you can
put on the diversion of the resources that arise
from the expenditures of monies for capital
punishment, and that is not going to go an away.
If you're a person or a study commission or a
legislator or a Governor who is interested in
saving lives, who is interested in protecting
your communities, who is interested in the
question of whether or not you're diverting
millions of crime fighting dollars, you must look
at cost of the death penalty. And you will not
be alone. For the last quarter century, most of
the states, a majority of the states in this
country have looked at this question and they
have concluded - and I'll share with you later
specifically - they have concluded that the death
penalty is inordinately expensive and it is a
resource drain. And when they begin to look at
it, they look at it this way, and I want to take
the specific figures of the New Jersey Policy
Perspective, and I want to assert that that is
your starting point for this issue. That
conclusion was that the death penalty only costs
you $11 million a year.

As of yesterday, your State Police
told our staff that that would provide to you 160
more police officers protecting your communities,
if you spent it there. Those are the choices
that you have. The choice to spend it through
your Crime Victims Compensation Board and gain
850 more grief counseling sessions, the choice to
do elsewhere in your state as we are doing in
Rochester, as you are doing in Newark, to take
Operation Ceasefire, assuming it is all that it is reported to be in the press, and bring it elsewhere, not just expand it by the $750,000 that Governor Corzine did, but to take all of these kinds of dollars and use them usefully. And I must tell you that, in all of the states that I've looked at, your budget is wonderful because you have two columns, you have a column that says, here is what we're cutting, here is what, if we had more money, we would spend it on. It's a delightful document. And I would think that that should be your starting point. And I think that you should look, for example, at your Crime Victims Compensation Board because it is rhetorically attractive to say that we'll spend whatever it takes. But it's not rhetorically attractive to spend it in this context. You've spent a quarter of a billion dollars, that's $250 million over the cost of life imprisonment without parole since 1982. You've had 600 aggravator death notices, 197 trials, 60 sentences, which if you pause there for a moment and divide it, is about $4.2 million per case, but go on, because as your Acting Chairperson said, you have lost 51 of those convictions
either through reversal, vacatur or the death of
the people on death row, so you're now left with
nine people on death row in New Jersey, and the
cost of getting them there is now up to $28
million a case. This is not smoke and mirrors.
This is the evidentiary proposition that New
Jersey does not have two spigots to turn on for
money, there is one. And if you choose to turn
it on for the death penalty, you will turn it off
for other things, whether you are a prosecutor
and you would like to prosecute more hazardous
waste on the New Jersey Turnpike, whether you are
doing victims services and you'd like, instead of
leaving the budget flat, you have, as I
understand it, a statutory scheme in New Jersey
that allows you to pay up to $25,000 per victim,
per case for what is needed under your
compensation board. Your average payment last
year was $6,000, as I understand your budget.
Your average payment this year is projected to be
$6,000 per case.

So as I listened to the victims who
spoke before and urged you to spend this money
elsewhere, and I hear the response, well, why
don't we go to the Legislature, the answer to
that question is, the Legislature in virtually
every state of the union fails dramatically to
fund victim services.

I come from the state that created
the first victims compensation board, and I sit
here I believe as the first person to sue it on
behalf of victims for its failure to provide
adequate resources, and that's 1976. We have
done much better since then, but states don't
victims services, they're not going to pass a
bill to do it and your budget reflects that you
don't care to do it. That's what's going on.
There are not two spigots.

Now, let me share with you a more
important view of this, because you must
understand it, and I congratulate you. And the
last prosecutor who was here made this point and
I want to make the record that I agree with one
portion of that, and it's this, New Jersey, when
you compare it to other states, cares about doing
the death penalty right. You are not Texas, you
are not Mississippi, you're not Alabama and it's
obvious. And it is so obvious that your care is
part of this that you have ended up spending an
inordinate amount of money to have zero
executions after 24 years. That's what is happening here.

Now, in Texas there is a similar reason why, when I share with you the Texas cost figures, that their cost is high, because they have chosen, unlike you, to do it on the cheap. They are killing people left and right in Texas if they can, you know it and I know it.

Now, what is the problem with that? You've got Texas, it costs a lot of money to do death cases. You've got New Jersey, it costs a lot of money and there's no way that there's a mirror image of those systems. Here is why: A nationwide study done by Columbia has shown us that 68 percent of the capital cases in this country are reversed. And out of that percentage, 80 percent result in life imprisonment without parole sentences. That's what happens to the Texas cases. They whip them there, they do them on the cheap, they don't resource them, they don't give them lawyers, and thank God, they're reversed.

And I say that with all deference to the remarks that have been made here with reference to technicalities, etcetera, but when
you come out of Texas, you're grateful that
someone is applying the law of the land, because
they've chosen consciously to denude their system
of resources, but you haven't done that. You've
infused your system with resources, but the
effect of that is to give this process the kind
of long-term delay that you're experiencing, the
kind of reduction, the failure of executions.

Now, let me just tell you a little
bit about the 25 years of studies, because you're
not alone, and the New Jersey Policy Perspective
is not unique. First of all, there have been
studies all across the country, the most
prominent one of them was done in North Carolina,
and it established the way to look at this is to
take a look at capital cases and noncapital cases
and track them together. And it is not the case
that these things are all fungible, they all
merged, there's not an extra expenditure. There
is one. And in North Carolina, the finding was
that that expenditure is $2.16 million more per
execution. In Florida, the state is spending $51
million extra per year above life. In
California, it is an extra $90 million per year.
In Texas, the state I'm talking about, they're
spending $2.3 million a case, which comes out
eventually three times the cost of 40 years in
tell. Indiana has just recently reported, and
all of this is in my testimony, that it's costing
38 percent more than it would cost for life in
prison without parole. Kansas, where I was in
1987, and has just done the study again, 1.2
million per case, 70 percent more than noncapital
cases.

The Federal Government, if you don't
want to look at the states or compare New Jersey
to the other states, has just through the
Judicial Conference indicated the defense costs
quadruple with capital cases. And prosecution
costs are 67 percent higher. Let me just for a
second --

CHAIRMAN COLEMAN: Your time is out.

MR. GRADESS: I'm running out?

CHAIRMAN COLEMAN: Yes.

MR. GRADESS: I do so sympathize
with the victims advocate who was here earlier.

CHAIRMAN COLEMAN: Let me just
remind you that the statistics are a little
difficult to remember much after we've heard
them, so we're going to rely rather heavily on
your written presentation to be accurate in our memory. I know the transcript is important.

MR. GRADESS: Okay. Well, I will finish. In fact, I will sum up.

Your quarter billion dollars actually has bought you no executions, and it's done so through a system that has monopolized your courts and delayed justice for victims and it's diverted millions of crime fighting dollars that could save lives and protect the public.

If you've got $250 million to spend on law enforcement in the next 20 years, your question, the Study Commission's question and this State's question is, do you want to spend that on the most expensive symbol and end up with no executions? And I think your answer will be no. I'd be happy to entertain your questions.

CHAIRMAN COLEMAN: Is there a question from any Commissioner?

COMMISSIONER DeFAZIO: I have questions, Justice.

The $7.8 million per year for the prosecution of capital cases in New Jersey, that includes, I'm assuming, and correct me if I'm wrong now, Mr. Gradess, that includes
investigative costs, correct?

MR. GRADESS: As I understand the
7.8 million and the 180 million that was
projected in this, it was based on an estimate
taking defense costs as the base and tripling it.
As a matter of fact, I'd like to address for a
second the criticism, as I answer your question.
In state after state after state, including my
own, the ratio of prosecution to defense
expenditures, when you look at it carefully, and
I think that's where you're going, you will find
is as much as 10 to 1, in some places, 8 to 1, 3
to 1 is by no means surprising to me.

My sense on reading the New Jersey
report was that the figures are probably lower
than they actually are. And to say that, I
believe that there is a reference in the report
to the bifurcation -- it's either that or in the
fiscal note associated with your bill -- a
bifurcation of State Police investigative costs
and prosecutorial costs, so I'm not entirely
sure.

I think that your Attorney General's
Office, and it may be something that you wish to
do, could supply a much greater amount of detail,
and in this respect, I agree, to your Commission about what is happening. Because I think you would confirm at least a ratio of 3 to 1, if not more.

COMMISSIONER DeFAZIO: All right. I'm going to have to really ask you for some clarification, because I'm having a difficult time following this.

This ratio of 3 to 1, you're saying that it costs $3 to 1 more when the State prosecutes a murder case as a capital case as opposed to a noncapital case?

MR. GRADES: Yes. Well, the New Jersey Policy Perspective -- you're citing figures not from me, but from the study of your cost system.

My remark has to do with the fact that there is an escalator effect that routinely applies to capital cases and it is not unusual at all, in fact, I've never seen a place where the ratio is 1 to 1. I would welcome maybe living in that place, but it doesn't exist, and I doubt very much that it exists in New Jersey.

My point was that I would not be at all surprised to find that the ratio, when you
take and aggregate the actual amounts being spent on cases and you capture from police budgets and you capture from local sheriff's budgets and capture the investigative costs and accurately report them and look internally at the case and how it is handled, extended voir dire, the number of people that are called as experts, the greater the scope, a prosecutor's efforts to answer mitigation, the numbers are inordinately more than noncapital cases, and the ratio may be debatable, but in my view, the debate moves that number upward, not downward.

MR. MOCZULA: Do you know if the report that you repeatedly quote from New Jersey did any of what you just said?

MR. GRADESS: I couldn't quite hear the end of your sentence. Do I know if the report did what?

MR. MOCZULA: Do you know if the report, whether the methodology of that report included any of what you just mentioned?

MR. GRADESS: I think some of it is there and some of it is not there, quite frankly, in my reading of it.

MR. MOCZULA: What is
there, other than tripling defense costs, just
taking the arbitrary tripling of defense costs,
what specific prosecution costs were relied on in
that report?

MR. GRADESS: Well, as I said
earlier, that report premised itself, as I
understand it, and I may be wrong and I would be
open to correction, is that it took defense costs
and it added an effect known to be true elsewhere
and tripled. There was evidence of having -- you
know, they talked to a prosecutor --

MR. MOCZULA: A former
prosecutor --

MR. GRADESS: A former prosecutor.

MR. MOCZULA: -- who
estimated costs, provided no specific detail.

MR. GRADESS: If your point is that
you think that impeaches this report; my point
is, I do not think it does. If your point
simultaneously is, could the report be
strengthened; my point is, yes, that it could be.
And I would think that you should,
because I believe there is no question, if you
gave it to the Attorney General of New Jersey and
said, pick your toughest pro-death prosecutors
who don't want abolition and have them define
your costs, I'm sitting here to say to you, the
prosecution costs will inevitably be higher. I
would be absolutely flabbergasted if they were
not.

And I would like to at this
juncture, if I might have a point of privilege,
just respond to your earlier question about ELWA
because I thought it might be, as asked, slightly
misleading, if I may.

The life imprisonment without parole
defendant in most states does not have a right to
counsel. Your State does not have an
automatic -- as I understand it, does not have an
automatic appeal in nondeath cases to your
highest court. And while you have, and I wish we
could get it in New York, a postconviction unit,
the scope of that unit is not great. It doesn't
cover federal habeas, so the actually answer to
your question asked earlier, if you got rid of
the death penalty, would the costs be the same;
the answer is no, they would not.

MR. MOCZULA: Well,
actually, my question dealt more with the
proclivity of noncapital defendants to continue
to file, as opposed to the system as it is in
place. Their appeals may be rejected, but that
really doesn't answer the question of the
numerous times that defendants continued to file.
And, again, as I mentioned before when prior
witnesses were testifying, if for no other reason
than they're put away for life in prison,
arguably, if we get to that system, and have the
time and the inclination to file. They don't
have the inclination to do anything else in that
sense. They have every inclination to challenge
the sentence.

MR. GRADESS: That's absolutely
right.

MR. MOCZULA: And we can't
quantify that.

MR. GRADESS: And their papers go to
a pro se clerk and do not get filed in most
cases. They have the Prison Litigation Reform
Act, which constrains their ability to do what
you're saying, and they're under the same time
limits of the AEDPA, which limits their habeas
access.

So the point is that, without
counsel, they're really in deep trouble and it is
simply not true that they will be in the same position as capital defendants who have not only in federal court statutory authority for counsel, but a cadre of lawyers that I've been trying to recruit the noncapital cases for years, who will do death cases, and will not do ELWA cases. It simply isn't the case that that's going to happen.

MR. MOCZULA: Is your opinion based on your experience in other jurisdictions or to any degree an analysis of postconviction relief times and appeals and numbers within New Jersey, capital and noncapital?

MR. GRADESS: Is my report of other states in any way related --

MR. MOCZULA: No, your comments that you just made now in terms of, there would not be all of these numerous appeals.

MR. GRADESS: No. I'm relating it specifically to New Jersey. I'm talking about Rule 3.22 of your rules regarding postconviction relief. I'm talking about the scope of your postconviction relief in this state. It is not as extensive --
MR. MOCZULA: My question went to whether, in actual experience, can you take a number of defendants, have you studied a group of defendants to find out how long their appellate process took, how many appeals they filed to make a comparison between capital and noncapital cases running through the system?

MR. GRADESS: If I understand your question, each one of the studies cited in my paper has done exactly that.

MR. MOCZULA: Have you done it for New Jersey?

MR. GRADESS: No, we've done it for New York. We have not done it for New Jersey. New Jersey Policy Perspective has done it and I commend you, if the view of this study commission is that that study needs more work. I think I would do that more work, because I'm confident, as I think every state that has looked at it, would tell you, look at it any way you want, look at this upside down and inside out, hire consultants, get an economist, go to the same school that a couple of weeks ago reported that you're in an economic decline at Rutgers, have anyone look at it, you will find that the cost of
capital punishment, maintaining the system is
inordinately more than the noncapital system you
have. And you are diverting resources that will
not be absorbed if you stop the death penalty,
you will release resources for other things, and
I would recommend that you do it.

MR. MOCZULA: Just one
final question. How would it factor into your
analysis if I told you that the costs -- and
irrespective of the validity of those
estimations, let's put that aside, because I do
have issues with the methodology, how would it
affect your analysis if I told you that the costs
estimated for institution of the death penalty
back in the early '80s when the initial
legislative hearings were held on whether the law
should be put into effect are pretty close to the
numbers that are being used now in terms of the
costs of the death penalty 20 odd years later?
In other words, it's not a revelation. In a
sense, it's directly on point to the initial
estimations and warnings as to just how much this
would cost.

MR. GRADESS: Well, I would describe
that the person who had that prescience then
should have been listened to earlier.

MR. MOCZULA: It was the public defender, in fact.

MR. GRADESS: Well, not surprised.

MR. MOCZULA: So we are on point in that, this is nothing new in a sense.

We know exactly where that public defender estimated the costs to be.

MR. GRADESS: It actually is very new, because what we're looking at today as opposed to 24 years ago is not the call in the wilderness to, please don't do the wrong thing. It is a deliberate examination a quarter century after you made the error saying, there is a better way to go, my God, when will we start doing it. That's very different. And the current public defender is sitting on this commission to be a voice in this, I think you're in a wonderful, wonderful watershed, and I hope you don't miss the opportunity.

CHAIRMAN COLEMAN: Any other questions?

Thank you, Mr. Gradess.

Sharon Hazard-Johnson.

Ms. Johnson, we're aware that you
presented testimony before, so we'll ask you not
to repeat yourself, but tell us what it is
additionally you wish to present.

MS. JOHNSON: It's a shame that the
world isn't a perfect place and that there are no
ersors or mistakes committed anywhere,
because - and here comes my emotional part -
otherwise, those idiots wouldn't be out there
committing these willful and intentional murders
and wanton acts of criminal violence on innocent
people. But we're not in that place.

I am for the death penalty when it
fits the crime. I sat here and listened to
numerous people and am amazed but not surprised
at the numbers and the groups that are against
the death penalty that come out to these sessions
all the time. This is my second time before you,
my third time at a meeting. And needless to say,
every time, those of us who are for the death
penalty when it fits the crime are outnumbered by
those that are against the death penalty under
all costs and circumstances. I want you to know
that they don't speak for me.

I was a little surprised when I sat
here and listened to a former prosecutor say that
he had prosecuted a capital case and that he
couldn't say that he didn't interject any
personal beliefs in how he handled the case to
make sure that it wasn't handled as a capital
case. I would present that that person, as a
prosecutor, was not qualified to perform the
duties for which he was hired. He should have
been on the other side. A person that prosecutes
a case, a prosecutor, a judge, the Supreme Court
justices should all be death qualified just as a
jury has to be death qualified to listen to the
facts of the case and render a decision based
solely on the facts and the law. That's why
they're hired or elected or selected, that's why
they're there, to carry out the laws of the land,
not to interject a personal opinion, position or
belief.

In 1972, 21 murderers escaped death
row. They were spared the electric chair when
the US Supreme Court ruled that capital
punishment was unconstitutional and New Jersey
abolished the death penalty.

In 1982, the State reinstated the
death penalty after a 10-year process of
performing a death penalty statute investigation
in order to ensure that the statute that came
back would meet Federal and State constitutional
standards.

New Jersey's laws have been
continuously reviewed and revised so that the
death penalty process would assure as close to
100 percent accuracy as possible, that no
innocent person is executed and that an execution
is carried out as fairly and humanely as
possible.

Death qualified juries voted
unanimously that many of New Jersey's most
inhumane murderers be sentenced to death. Some
of these include, but are not limited to Robert
Marshall, who had his wife Maria Marshall
murdered; Leslie Nelson, who murdered Officers
John McLaughlin and John Norcross; Peter
Pappasavas who murdered Mildred Place, they and
others were removed from death row by the State
of New Jersey. And today, Marko Bey who murdered
Cheryl Austin and Carol Pennison sits on death
row. Sean Kenney also known as Richard Bester
who killed Keith Donagey sits on death row. John
Martini who murdered Irving Flax; David Cooper
who murdered Latasha Goodman, Brian Wakefield
also known as B-Love and Burger-time because he went for an burger after he murdered my parents, Richard and Shirley Hazard, sits on death row. Ambrose Harris who murdered Kristin Huggins, Jessie Timmendequas, who murdered Megan Kanka, Donald Loftin who murdered Gary Marsh, Anthony DeFrisco who murdered Edward Kocher, although just weeks ago was released by the State of New Jersey from New Jersey's death row, Nathaniel Harvey who murdered Irene Schnapps, all these murders, with the exception of DeFrisco, are sitting on death row just waiting for their time to come when the State of New Jersey is going to release them from death row.

I submit that the Commission -- I respect the Commission for what you're doing, the study is underway, but I would submit that you should keep a couple of critical points in mind as you gather your evidence and review and hopefully qualify all the evidence that's submitted and render your decision to the legislators of New Jersey.

One is that evolving standards of decency demands that punishments for crimes must evolve to become more serious and severe as
murderers evolve to become more vicious and vile.

The second is that, murderers are the ones that create a killing environment, not the laws that punish them.

The third is that the penal system was created to punish perpetrators in accordance with their crimes. It wasn't created to teach them respect, morals or decency. These are the responsibilities of their families, relatives and sometimes their community, but not their obligation.

The fourth is that the people who lobby against the death penalty outside of their own unfortunate circumstances would be more productive to society if they focused their energy on potential murderers before they commit their willful and intentional murders or torture another human being to death. If they look to help these people, they will see that they're easily identified by their history and past behaviors.

Finally, the numbers of us that are for the death penalty when it fits the crime have not dwindled. Survivors are simply exhausted and people are fed up because of the continued
interference and overturning of death sentences
by the State of New Jersey at our expense.

Your recommendation should be to
stay the course of the death penalty statute
that's already in place and has been evolving
over the years to ensure an accurate, fair and
humane death penalty process. It's not the death
penalty law that's the problem. Could it be
those that are administering the laws that are
the problem? I think that should be a part of
your investigation.

Thank you.

CHAIRMAN COLEMAN: Any questions?

Thank you, Ms. Johnson.

MS. JOHNSON: If I may make one
final statement. I did leave copies of the story
of my parents. Some people prefer not to talk
about what happened to their loved ones. Some
people will come out and say and prefer just to
let it go away.

My parents lived a wonderful life,
or I should say wonderful lives, there were two
of them, not one. I want to remember my parents,
and I want you to know my parents and I want you
to remember them, too.
But I also can't forget their deaths, because it was so vile and inhumane. I refuse to forget their deaths. I'm not looking to be a celebrity. I'm not looking for them to be celebrities. I'm not even looking for a Brian Wakefield to be a celebrity. It's the law, it's simply the law, and it's time.

COMMISSIONER HICKS: Ms. Hazard, first of all, I really feel for your loss. And I know your parents' case very, very well. I lived in that town where they were murdered for many, many years. I'm no longer live there, but I did live there for a long period of time, and so I'm very familiar with the case and I'm very sorry, it was a horrible thing that happened to them.

You made a comment, though, that you think that the people who are opposed to the death penalty should be doing things to prevent it from happening, and I just want you to know, me personally and I know at least a couple of other people who are involved in a program with the State Department of Corrections where I travel the State and I go inside many correctional facilities up and down North Jersey, all the way down to Cumberland County, you name
it, the State doesn't compensate me for gas or anything, and I happily do this, because what I do is, I speak to the inmates. And many of these inmates, some of these inmates are murderers, they're not capital cases, they will someday be released, but I let these inmates know the pain that they put me and my family through and continue to put me and my family through, hopefully, to reach some of these inmates, so that when they are released, they will think twice before they commit these crimes again. So there is that avenue, and I'm taking advantage of it, because I don't want another family to go through what me and my family have gone through, and I want you to be aware of that.

MS. JOHNSON: Thank you, Mr. Hicks.

I am familiar with that program. It's called Focus on the Victim, and I too am involved in that program. I have visited at least six prisons and talked with probably about 75 to 100 inmates. And I even have a couple of other visits still on my calendar. And there's one reason I get involved in that program. And ironically, about a month or two before my father's and my mother's death, my father said to
me one day, he said -- we used to always get
together, we were a very close family, and we
talked about what they wanted when they died. My
father said -- he was a Navy man, he says, well,
cremate me and put my ashes out to sea. My
mother was a Jehovah's Witness, and she said, you
know, it doesn't matter what you do with me, what
you do with my body, because the body is only my
vessel, my spirit is what will live on. And my
father said to me, just a couple of months during
a regular family outing, he said, Sharon, there's
an old Negro hymn called, If I can help somebody,
and then I chimed with him, along the way then my
living shall not be in vein.

Because my father told me that, and
because of the lives that my parents led, I felt
that I had to go out, while I am promoting my
position for the death penalty when it fits the
crime, maybe something in their story could help
somebody that's incarcerated. Maybe somebody
that hears their story can be lifted or helped by
hearing what happened to them and maybe their
living and their dying won't be in vein.

CHAIRMAN COLEMAN: Commissioner
Garcia.
COMMISSIONER GARCIA: Sharon, I,

again, want to say, I'm sorry for what happened
to your parents. I believe I was here the last
time you testified. And I'm not surprised that
more survivors aren't here who are in favor of
the death penalty, simply because they are so
beat up and just disgusted with the system, not
because they don't care about this issue. And I
applaud you for having the strength, among so
many others here for coming here and stating your
position.

I also wonder what that distrust of
the system, when we see that it's not working,
has on our society. I know when we were working
on the Constitutional Amendment, it was so
important that victims be treated with dignity
and compassion and respect, if for no other
reason, because they wouldn't cooperate with the
criminal justice system if it was done otherwise.

So what's happening now when they're
being treated so badly by a system that doesn't
carry out a sentence? What impact does that have
on the survivors?

MS. JOHNSON: I think it makes it,

for lack of a better word, maybe inactive,
paralyzed, somewhat complaisant. But you know
what, the ironic thing is, when a system doesn't
work, do you know whose advantage that is, the
advantage is to the criminals who are willfully
and intentionally performing these acts every day
on innocent people. They don't fear anything.
They don't have a barometer.

COMMISSIONER GARCIA: And there's
also victims -- you know, we're talking about
helping perpetrator, what about the victims that
are left behind, like little Jo Anne Barlieb when
she was eight years old and her sisters, there's
thousands out there that nobody reaches out to
help, but they are out there and they may not be
here and be represented today and they need help.

Thank you.

COMMISSIONER SEGARS: Justice
Coleman.

CHAIRMAN COLEMAN: Yes.

COMMISSIONER SEGARS: Ms. Johnson,
again, I am sorry for your loss, and I mean that
with all sincerity, I think I said it before.
But the last time you testified, I did ask you a
qualifying question at the end of your testimony,
which was, if there were life without the
possibility of parole, would you favor adopting that model, and your answer at the time was yes.

Well, then I'd like -- you may remember the question. I really need to hear that from you, because I asked the question, and I just want it to be clear on what your answer was, because I recall you saying you would favor life without the possibility of parole?

MS. JOHNSON: No, if I gave that impression -- and I don't recall saying that at all, because my position is and always has been that Brian Wakefield deserves and should be executed by the State of New Jersey.

Looking at the history of what's happening with the death penalty over the years, so many people said, well, he's going to be released from prison one day. My position is, just as even before the trial where people said, he'll never get the death penalty, my position is that my strength, my energy, my belief is that, ultimately, the State is going to carry out the law, but I think what I conveyed to you is that, if this Commission intends to submit to the legislators to abolish the death penalty and replace it with life without parole, that what
this Commission should do is present to the
legislators that the taxpayers and voters take a
vote on whether or not to keep and impose the
death penalty.

If the voters voted to keep it, then
that's fine. If the voters voted to eliminate
the death penalty, meaning majority rule, I could
live with that, but I couldn't live with just
changing -- commuting his sentence to life
without parole.

COMMISSIONER SEGARS: Thank you.

Ms. Johnson.

CHAIRMAN COLEMAN: Thank you,

Ms. Johnson.

Brian Kincaid.

MR. KINCAID: Did you get my
submission? I e-mailed it late yesterday.

CHAIRMAN COLEMAN: Yes. Each
Commissioner has it in his or her folder.

You may proceed.

MR. KINCAID: My name is Brian
Kincaid. I am a certified civil trial attorney,
but I have engaged in criminal practice over the
years since 1989. It may seem like an odd match
being from Northern New Jersey up by Lake
Hopatcong, but I have become friends with Sharon Hazard-Johnson. And I actually became aware of her case many years before I got to speak to her. In my service as a volunteer fire fighter, we have a magazine called The Responder, which comes out, and the case was featured. And part of Brian Wakefield's weapon he welded against these victims was fire. And as a firefighter, I know that's a particularly horrible way to go.

I know we're addressing costs today and we're addressing a number of different issues in this Commission hearing. The first thing I would like to do is take umbrage with Dan Carluccio and Robert Del Tufo. Two things that they said during the hearing of the Commission today, Mr. Carluccio said, you know, by doing a death penalty, by imposing a sentence of death, you make a celebrity or folk hero out of these people, and there's a life sentence, they're never heard from again. And Robert Del Tufo talked about the draining dismal existence of somebody serving a life sentence.

Last week's Star Ledger had an interesting article, Cop Killer's Art Cancelled by School. Thomas Manning, not only a cop
killer, but a terrorist, part of the weather underground who killed State Trooper Lamonaco in 1981, his artwork, artwork - this is a fellow who is serving basically 80 years to life, so it means no parole - was on display at the University of Maine, called, Can't Jail the Spirit - art by political prisoner, Thomas Manning, and others.

Very interesting, because this is ostensibly a life sentence. This is ostensibly, according to Mr. Carluccio, somebody who shouldn't be a folk hero because he is serving a life sentence; and somebody, by Mr. Del Tufo's definition, who should be living a dismal existence.

He's doing art. It's being displayed at the University of Maine, and the University of Maine said his work and Mr. Manning were misunderstood.

So question, cop killer, artwork on display at the university; how on earth, in essence, is a life imprisonment without parole a just sentence here, when this known terrorist could still spew his venom from a jail cell? And how could any legislation this committee would
recommend to the Legislature prevent this, or
could it?

I also take umbrage with the fact --
the allegations that the appeals just stop under
the life sentences. I've written at one point
about the Joseph Aulisio murder case, which
occurred up in Old Forge, Pennsylvania. Joseph
Aulisio was 15 years old in 1981 when he
kidnapped and murdered two children that lived
next door to him. He was sentenced to death in
Pennsylvania in 1982. That death sentence was
reversed in 1982. I've written about the case on
and off, and the last appeal so far that was
done, because there have been appeals all the way
since the reversal of that death penalty in 1987,
was in 2003 before the third circuit. The
appeals, for people to say the appeals stop on a
life sentence is just intellectually dishonest;

Now, in regard to the costs that we
talk about, and there have been several debates
on cost, and you would have also thought that we
would have just -- that the death penalty is a
symptom, we don't have money for crime
prevention, nor do we have money for victims'
rights because of the death penalty.

Now, I just paid an extra penny in sales tax this year. The State can find ways to fund money. The Legislature, Senator Martin and Senator Lesniak could have come up with legislation in regard to crime victim compensation in reaching out to them, without abolition of the death penalty, but they never did so.

And when we talk about the cost, we have to talk about the true protection of society. In my submission, I outlined a number of cases to you. The first one was Clarence Allen. Clarence Allen was executed in California in January of 2006. Clarence Allen was serving a life sentence without parole for rape and murder in California. From his jail cell, in general population, he ordered the murder of three witnesses, three teenagers, for which he was executed.

Now, that life imprisonment without parole for Clarence, it was supposed to be so cost-effective and bring so much money to crime fighting; what was the life of those three victims worth; what was each of those lives worth
that he was able to order, from general population, life without parole, the murders of three other individuals?

And the abolitionists who have spoke here today, including the two State Senators, haven't addressed this at all. What do you do with somebody serving a life sentence without the possibility of parole and then commits such a crime; do you send them to bed without dinner; what do you do?

That cost was the lives of three teenagers that the State of California, for the first murder, didn't execute Clarence Allen.

If we're talking about New Jersey, closer to home, how about Joanne Chesmire? Joanne Chesmire, another murderer of a State Trooper, yet another terrorist with an underground organization, murdered Trooper Werner on the New Jersey Turnpike in 1973, escaped from Edna Mahan in 1979, and now she's in Cuba and engaged in more terrorist activities.

Question: The abolitionists, nor Senator Lesniak, nor Senator Martin seem to adequately argue, well, how do we prevent that that would never happen, that there would never
be a Joanne Chesmire in the New Jersey system
under life imprisonment without parole, or a
Clarence Allen; they didn't answer it.

I'll give you the example of Ted
Bundy. The last three murders committed by
Theodore Bundy, famous serial killer who was
executed in Florida, were while he was escaped
from prison in Colorado.

Now, any member of the Legislature,
any member of the Commission, what are they going
to say to a potential victim; there's somebody
with life imprisonment without parole, that
person has escaped and committed a murder, and
what are we going to do about it?

Ambrose Harris, on our own death
row, who murdered Kristin Huggins, he's murdered
against since he's been in prison. Granted, it
was another death row inmate, which I guess is
the only death we've ever had on New Jersey's
death row. I think he murdered the Mud Man
Simon.

John Martini; Marilyn Flax, I've
talked to her today and become friendly with her.
John Martini has tried to escape. I think his
prosecutor told you that during the last -- I
think it was diamond wire being smuggled in by a
jail guard. How do you protect society from
these people with life imprisonment without
parole when we've had proven escapes, when we've
had proven murders ordered from prison?

And then there's a message to
society, and I think there's a message to society
in regard to the costs, and I think the message
from society, I think Thomas Manning is a perfect
example. He continues to mock society, this
terrorist, from his jail cell, with his artwork
of the political prisoner. A cop killer
continues to mock society. He's still a folk
hero, we still hear from him again, so what
Mr. Del Tufo said and what Mr. Carluccio said in
regard to not making people folk heroes, in
regard to not ever hearing from them again, is
absolutely intellectually dishonest.

We could even go further back. If
you look at the case of Tex Watson, he was one of
the Manson murderers in California. He's
essentially serving life without parole. I think
it's an outrage to society that Mr. Watson has
fathered four children while in prison. He runs
a website. He has become an evangelist now. You
can go onto his website. That is an insult to society for which there is no cost.

Many years ago, the Arts and Entertainment Network ran a special on Richard Speck. Richard Speck was a murderer of eight student nurses in Chicago in 1968, in 1967 sentenced to death under the Georgia decision Furman, in 1972, released from death row. A video was smuggled out of the Illinois State Prison showing Richard Speck enjoying his life in State prison; having cocaine, having sex, doing all sorts of untold things. Well, where was the punishment there for Mr. Speck?

Now, one final thought in regard to the abolitionists who spoke in talking about innocent people. I think with the checks and balances here in New Jersey, the Legislature purposely made a death sentence a difficult thing to have happen in the State of New Jersey, though not an impossible thing. We have checks and balances here, and I think no one would argue the current dennisons of death row, any one of them is innocent.

The abolitionists pushed for many years the name of Roger Coleman from Virginia.
The DNA specialist said this was going to be the individual that DNA was going to exonerate and prove once and for all that an innocent man has been executed. And they had never mentioned, in my hearings of this testimony, the name of anybody innocent actually executed, post-Furman. Well, the DNA showed, when they did DNA tests last year, that Mr. Coleman was guilty, and the revelation that these death row inmates lie.

I would submit to you, on behalf of Ms. Johnson, on behalf of myself, thanking you for testifying today, and I hope you take my thoughts into consideration. Thank you.

CHAIRMAN COLEMAN: Any questions from the Commission?

Ms. Garcia.

COMMISSIONER HAVERTY: Mr. Kincaid, I just have one question for you, have you ever spent any time in Trenton State Prison?

MR. KINCAID: Yes, I have, because I represented, as a defense attorney, Francis X. Brand. Franc Brand was prosecuted. It was a 1988 murder of his brother, a hit on his brother. I defended Mr. Brand. I went to New Jersey State Prison postconviction for Mr. Brand, so I've been
there.

I was also in the Burlington County Jail. I also represented Jeff Cameron, who is probably still serving time in the Northern State Prison. I represented Jeff on civil rights charges in regard to a beating inflicted by a guard. So I am not of a mind that prison cannot be a terrible place, but when there's a will, there's a way. Prisoners take advantage of all sorts of unseenly behavior. And for Clarence Allen to be able to order a murder of three victims from prison speaks for itself, and for Thomas Manning to be able to do artwork from prison.

Oh, I was just handed an article that I forgot about, Trenton Prisoners Stay Locked in Cells During Gun Probe. Apparently, all sorts of unspeakable things happen, so to say absolutely that a life sentence without the possibility of parole is an absolute protection to society, when we see guns smuggled in, when we see murders ordered from prison, when we see artwork by a known terrorist, is intellectually dishonest.

COMMISSIONER HAVERTY: My question
is very simple. You talked about meeting your
client in Trenton State Prison. You met with
your client in an area where attorneys and
clients meet, correct?

MR. KINCAID: Excuse me?

COMMISSIONER HAVERTY: You met with
him in a common room, someplace where attorneys
and clients would meet, right?

MR. KINCAID: Yeah, but when you got
to that --

COMMISSIONER: Have you spent any
time in the cell blocks where these
convicted murderers are --

MR. KINCAID: Well, if you'll allow
me to answer, when we were taken -- at one point
in my representation and postrepresentation of
Francis Brand, the fellow I worked for down in
Trenton, there was a fee arbitration committee
hearing, and the way we had to get to that fee
arbitration committee hearing, I don't know why
they did this, but we had to go right through the
cell blocks, and so I did witness that.

Incidentally, when you're talking
about prison cell blocks, I represented a young
man from a Northern New Jersey high school. It
wasn't a scared straight program, but it was a program where they were taken on a tour of Jamesburg. And they're not cell blocks, but they're cottages there at Jamesburg, but they're very dangerous individuals there at Jamesburg. And what happened with this high school field trip, two guards were prosecuted for this, they decided to have some fun with the high school students and the students were led through this cottage and attacked, close to rape. The prisoners were prosecuted as adults for this. I had to walk through the cottages down there in my investigation as a plaintiffs attorney there, so I have been on cell blocks, if that's what you're asking.

COMMISSIONER HAVERY: I was just talking about Trenton State Prison.

MR. KINCAID: Yeah, Trenton State Prison, Northern State Prison, Jamesburg.

CHAIRMAN COLEMAN: Ms. Garcia.

COMMISSIONER GARCIA: I'm certainly not an abolitionist. I would say that I have as much compassion for these individuals as they had for their victims. I've never made any bones about that. I'll be very clear on my position.
You stated that -- you said something about mocking society.

MR. KINCAID: Yes. Go ahead.

COMMISSIONER GARCIA: Could you repeat that statement for me.

MR. KINCAID: Well, I talked about -- I listed two, I think. Number one, Thomas Manning, and if that is not a mocking of society, a fellow who is serving, ostensibly, a life imprisonment without parole, because it's 80 years without the possibility of parole for the murder of State Trooper Phillip Lamonaco, and remember, Thomas Manning also was a terrorist, not a terrorist in the sense we think today, of a terrorist from a foreign country bombing a building, he was a domestic-grown terrorist, particularly banked on the murder of police officers, and he achieved that in the Delaware Water Gap.

I can even remember that coming home from college, driving through 80 and being stuck by the road blocks there when that happened. And now his artwork, now this is supposed to be punishment, ostensibly, his artwork, so we know he was doing artwork, is being displayed at the
University of Maine. And, again, the quote was, if this isn't a mocking of society, if this isn't a lack of remorse for killing a police officer, who really stands as the symbol of society, a symbol of our civilized society, and the name of the art exhibit, Can't Jail the Spirit - art by political prisoner, Thomas Manning.

Thomas Manning isn't a political prisoner. He's a terrorist and a murderer. He's a cop killer. I'm a firefighter. I know what it's like to be on the line and put your life, but not like the police.

COMMISSIONER GARCIA: I think that's a totally different issue, though, don't you?

MR. KINCAID: Yeah, but I'm saying --

COMMISSIONER GARCIA: They have to learn to live with that every day.

MR. KINCAID: But that's a mocking of society by any stretch of the imagination, because if you're calling yourself a political prisoner when you have murdered a State Trooper, a police officer, he may as well be thumbing his middle finger up at society by doing that.

COMMISSIONER GARCIA: I know, but
don't you also think, when we don't execute these
death row inmates, that they are mocking society
and we are enabling them to mock society?

MR. KINCAID: Absolutely. And I
would add to this. It's become a mockery of
society with a lot of these death row inmates. I
think the fellow who murdered Sharon
Hazard-Johnson's mom and dad is a prime example
of that; and John Martini is a prime example,
some of the things that he said to Marilyn Flax.

We're at a juncture where Martini's
appeals are done. We can at this point execute
John Martini, but for two things, moratorium and
John Corzine. It ends up becoming a mockery of
society.

And if you think about this, if I
had any suggestion to save on the time, but not
dilute in any way the legal protection of these
inmates, currently we have the automatic appeal
to the State Supreme Court, then there's usually
a motion for a new trial and then we go to the
State Supreme Court again, because we combine the
proportionality reviews, to my knowledge, now in
the first appeal. Why not have an automatic
motion for new trial while you still have the
same sitting trial judge, because judges in the Superior Court do get rotated, that all the evidence could be gone through, that there's a transcript produced, and that the Supreme Court consider, at the same time, the motion for the new trial, the proportionality review and the death sentence itself. I think that that would probably save at least a few years on the process here and maybe that begins to dilute the mockery of society that we've now come to here in New Jersey.

We've come to, in New Jersey, John Martini, kidnaps Mr. Flax, I believe in 1988 --

CHAIRMAN COLEMAN: Mr. Kincaid, would you make your answers --

MR. KINCAID: Okay. I'm sorry. I don't mean to blow the -- I'm sorry.

CHAIRMAN COLEMAN: Mr. Hicks, do you have a question for Mr. Kincaid?

COMMISSIONER HICKS: Yes. You made a reference to the fact that inmates who receive life without parole can commit other crimes, like you gave the example of the guy who ordered three people murdered. Isn't it possible for someone who is sentenced to prison for robbery, for rape
or maybe noncapital murder cases, can do the same	hing? So, in effect, the only way you can prevent any prisoners from committing crimes once they're incarcerated is to execute all of them? I mean, what's stopping an armed robber from doing the same thing; what's stopping a murder case that's not a capital case from doing the same thing? I can't understand the logic. To me, it's something that could happen, regardless of what the person is in prison for.

MR. KINCAID: That's an interesting question on logic. And I will say that, while all murderers are criminals, not all criminals are murderers, that's number one. Number two is, we do know when we have somebody who has committed what we would consider a capital offense, something that we would sentence somebody to life imprisonment without parole, or for murder with, we already know that individual's propensity to commit murder.

Now, with the forger or the armed robber, is it possible; yeah, it's possible, but, again, not all criminals are murderers, but all murderers are criminals. Is it possible; yes.

CHAIRMAN COLEMAN: Any other
questions?

Thank you. We're going to have a five-minute recess now.

(Recess.)

CHAIRMAN COLEMAN: The next presenter is Anna Rivera.

MS. RIVERA: Hello. I know that I'm the last speaker, and I've never testified in a public hearing before, so please bear with me. My comments will be as brief as possible. I will not read the resolution, because I believe you all have the resolution itself, in the interest of time and appreciation for your patience.

Thank you, Chairman Howard and distinguished members of the Commission. My name is Cuqui Rivera, and I am testifying today on behalf of the Board of Delegates of the Latino Leadership Alliance of New Jersey, an alliance of hundreds of organizations across the state, to submit our resolution in opposition to the death penalty.

The mission of the Latino Leadership Alliance is to mobilize and empower Latino communities, to obtain political, economic, and social equity. The vision of the Alliance is for
a better New Jersey, a New Jersey as it should be. The Alliance's vision is to challenge New Jersey to build a state that can lead the nation in carrying out inclusive policies that empower and enoble dignity to all residents. Today I am presenting you with Resolution No. 2006-008, passed on July 29, 2006 by the Alliance Board of Delegates. The resolution calls for an end to the death penalty in New Jersey. It recognizes the many complex issues involved with the use of the death penalty from concerns about racial and economic disparity to the risk of executing an innocent person.

The resolution includes information about the use of the death penalty throughout the nation. We do not live in a vacuum where we can ignore what is happening in other states, some of which do not even provide adequate counsel for indigent defendants.

The resolution also includes information about our use of the death penalty in the context of the world community. We do not live in isolation in this global age and our actions as a nation affect our ability to lead.

The resolution calls for a serious
exploration of alternative punishments and this
Commission has an historic opportunity to do jus
that. We urge you to examine alternative
punishments carefully and thoroughly.

Since today's topic is cost, I would
like to suggest that there are better ways to
spend the money now being wasted on the death
penalty, which has clearly failed the people of
New Jersey. I mean no insensitivity to anyone
because I've heard that cost was supposed to be
talked about and not to be talked about, but this
is where the statement came from because the
question was cost in some ways.

I work at the Hispanic Directors
Association of New Jersey, a nonprofit umbrella
organization which counts as members 33 agencies
across the state serving some of our most needy
and desperate residents. The money spent on
trying death penalty cases, prosecutions that go
on for years and years, would be much more wisely
spent on after school programs for children in
poor areas of the state. The money would be more
wisely spent on drug prevention and education
programs. The money would be much more wisely
spent on preschool and special needs programs
that create opportunity.

The state has no place being an executioner and expending millions of dollars seeking vengeance and death. These funds would be better allocated creating hope and promise for the most vulnerable among us.

The Alliance believes that the death penalty should be abolished. The Commission should make that recommendation to the State Legislature and should challenge the Legislature to lead the nation on this important issue of justice.

Personally, I am not removed by a family from this situation. I celebrate a very large family. I have six children, five sons and a daughter. Two of my sons were shot. It did not reach the level of the heinous crime that you guys are deciding at this time, but by sheer miracle, my one son, who was shot in the back in his early teens, was shot straight through his back, the bullet went straight through him, it missed everything, and by the grace of God only is he alive. My oldest son was shot a couple of years later, who is also alive, thank God.

If any of you asked me, which you
have asked many who sat in this chair today, what
my opinion would be about the McVeigh type of
guy, and would I consider that death penalty to
be sufficient for him, someone who has committed
heinous acts like that, in my personal opinion, I
would say that that would be too easy for him, in
my personal opinion as someone may have killed
one of my children.

I also celebrate 13 grandchildren.

I could not imagine the pain, the inhuman pain of
what I would go through thinking if one of my
grandchildren were murdered.

But to sit in a cell, a 6 by 9 cell
every day and be reminded of your acts and the
pain that you have caused, I think, is much more
serving punishment. A lethal injection is, to
me, easy.

I would also say that, without
certainly being a death row inmate myself, it is
not a picnic. The freedoms that I have heard
people talk about, and I very much mean no
disrespect to no one, but it is a hard life to
sit in a death row cell. It is not a picnic, and
they are not enjoying themselves.

Those are my comments.
CHAIRMAN COLEMAN: Any questions from any Commissioner?

Thank you. You may step down.

The last person on my list is Deacon Hepp. Is Deacon Hepp here?

Have we omitted anyone who wants to speak today? Having seen none, I want to thank all of you who have come and participated today along with all of the commission members and we will now stand adjourned.

(TIME NOTED: 5:40 p.m.)
CERTIFICATE

I, ELIZABETH M. KONDOR, a Certified Shorthand Reporter, License #XI001172, and a Notary Public of the State of New Jersey, do hereby certify the foregoing to be a true and accurate transcript of my original stenographic notes taken at the time and place hereinbefore set forth.

ELIZABETH M. KONDOR, C.S.R.

Dated: Monday, September 18, 2006
Correct a Wrong – Abolish the Death Penalty

By Senator Raymond J. Lesniak

To: The Death Penalty Study Commission, Sept. 13, 2006

In 1982, I voted to reinstate the death penalty in New Jersey. I was wrong. Thank God, no one has been executed to date. And thank God, no innocent person was executed. As the saying goes, ‘There but for the grace of God....’

We now have an opportunity to right the wrong. It is not my intention to debate the moral aspects of the death penalty. I believe it is immoral. Others disagree. That’s a debate that should take place in another forum.

I’m here to voice my opinion that

- The death penalty should be replaced by a life sentence without parole.

- The death penalty is not a deterrent to murder; that its cost in tax dollars is wasteful spending; and that there is no way to create a foolproof system to prevent the execution of an innocent person.
My heart goes out to every family devastated by the murder of a loved one. They have every right to be angry and to express that anger. But I’m certain that — deep down — not one of them would want to act out on that anger. As a society, we should not act out of anger either.

You’ve heard the mounting evidence that the death penalty is not a deterrent to murder.

You’ve heard that the cost of the death penalty — due to costly State and Federal appeals mandated by the New Jersey Constitution and the Constitution of the United States — far exceeds the expenses of life imprisonment.

And, you’ve also heard that hundreds of innocent people have been sentenced to death, and no doubt some of them have been put to death because human beings make mistakes.

What I want to emphasize is that there is no fool-proof system to avoid convicting an innocent person. Eyewitnesses often are mistaken and people strangely confess to
crimes they did not commit. To paraphrase Benjamin Franklin, it’s better that 100 guilty persons are set free, then one innocent person suffer.

I’m not asking that anyone be set free. I’m just asking, that rather than the death penalty which is irreversible when executed, we not play God. Let’s just instead require that people convicted of murder spend the rest of their lives in prison with no possibility of parole.

Thank You.
April 26th 1996
My daughter's first birthday...also her Grandmother's murder day....
What should have been a time for joy and celebration quickly became a day of immense pain. Just one year earlier my mother was at my side when I gave birth....What irony to have her brutally murdered one year to the day later...

September 1998
State vs. Mildred Place's murderer begins...at this point I feel that I am justified in not stating my mother's killers name...there have been far too many times that I have had to say his name and I choose not to say it anymore. He will from here on be identified as Mildred Place's murderer. Her name should be the one heard and remembered.
The trial goes on for weeks...due to the brutal nature of the crime the prosecutor has me barred from the courtroom. At the time I didn't have a full understanding...now I do and am grateful that those images are not in my memories.

October 9, 1998
12 jurors make the heart rending decision for the death penalty. They did not make this decision lightly. They held hands, shook and cried when the verdict was read. This was the same response that my family had. Such a verdict was as hard for us to hear as it was for them to present.
The bogeyman is going to death row...he can't hurt us anymore.

February 12, 1999
The Star Ledger reports that Legislation moves to speed up executions in NJ. While this may be interpreted by others as good news, what it means to me and my family is the Supreme Court is going to be working just as quickly to come up with ways to overturn the few death penalty sentences that have been handed down.

April 1999
Death sentence affirmed for the 1996 killing of Mildred Place -- at this point I start to feel more secure in the sentencing...he is being watched 24 hours a day and the notoriety of being on death row means that any changes will be known by me and my family either by the court system or by the media.

November 29, 1999
Killer's attorneys argue before Supreme Court that client is deserving of a new trial due to an error on the Judge's part; request denied -- my security continues to increase.
February 14, 2002
Killer spared by high court. Mildred Place’s murder was not deemed heinous enough for the penalty of death to her killer. Heinous is defined as monstrous, atrocious, terrible and dreadful. My mother was beaten, sodomized, tortured and finally strangled. What else was the Supreme Court looking for to fulfill their meaning of heinous? Security shattered.

On April 26th 1996 I joined a club that wants no new members. I became a victim of violent crime – homicide.
On October 9, 1998 I became a member of a club with a very limited number of members – survivors of homicide awaiting death row execution of their loved ones killer.
On February 14th I became a member of a club with an ever growing membership...survivors of overturned death penalty sentences.

My family did not advocate for the death penalty...we put our trust in the legal system and prayed for the jurors to make the right decision. These 12 men and women whom the judicial system chose and approved made a life changing decision. Their decision not only impacted the life of my mother’s killer it impacted my family and friends as well.

NJ’s Supreme Court- without hearing the evidence or enduring the details of the horrific crime felt justified that the sentence should be vacated. This was determined on Proportionality Review...crimes of somewhat similar nature did not receive this penalty so neither should my mother’s killer. This “review process” could be described as punishing “on a curve”. My mother was brutally murdered – all aspects of the crime fit the stringent criteria for the Death Penalty. 12 citizens working within the parameters of the law determined that the crime was heinous enough for capital punishment. Opponents to the death penalty received this moment of victory; however it is short lived. My mother’s killer will one day see release. What kind of victory is that???

Mildred Place was the first victim now Justice was the second.

Well meaning friends and family assured me that since his sentence would be commuted to life in prison all this would be over for me. Sadly naïveté is common when it comes to penalties for crimes. Many think that a life sentence is truly that... there will be no release...there is only minimal understanding of New Jersey’s definition of “life”...my mother’s killer has his life and will have also get a life outside of prison one day.
As a result of the death penalty being overturned I face the dreadful task of telling my children about the nature of their Grandmother’s death. This is necessary as one day they may need to be the ones advocating for justice. I have spent the last 10 years trying to protect my children from this horrific tale. I foolishly thought that if their Grandmother’s killer was on death row or ultimately executed they wouldn’t have to learn of the fallibility of the justice system or suffer from it in the ways that I have.

I can hear my mother saying “put your trust in God...not man...” God does not sit on the Supreme Court....man does.

September 13th 2006
10 years and 4 months since the murder. It is another of Mildred Place’s grandchildren’s birthdays. The Grandson she never got to meet...
I find myself in the State House trying to describe to a panel the impact the Death Penalty has had on me and my family.
Nearly 8 years since the jury delivered the verdict of death...I am still forced to focus on my mother’s killer. If the killer were given life without parole – and I mean a “true life sentence” I would not be here...I would not be forced to discuss the killer and the verdict that was handed down...and the ways in which my life has been effected. Each court date, each appeal, each write up in the newspaper...revisiting and revisiting the pain...each event keeping me that much further from the curative process I and my family so greatly deserve.

If I were to speculate what the difference would be in my life... I would say I would be 8 years further in my healing process...who knows what that would mean...would I feel safe and secure again? Would I laugh more easily? Would I be able to walk into a dark house without panicking? Would my children have the freedom to ride their bicycles around the block? Would I stop seeing my mother’s killer in the park or near my children’s schools? Would I be living not simply existing?
All this wondering doesn’t really matter...the day my mother’s killer gets released...it starts all over again...
I am Patricia Harrison, sister of Jacqueline Harrison. I became a victim of crime on August 24, 1987 when my sister Jackie Harrison was brutally and sadistically murdered in Pemberton, Burlington County. The murder was as gruesome and heinous as one can imagine. The details are public information and would turn the stomach of even the coldest human beings.

Not only am I a victim of this murder, so are my five siblings, our parents and Jackie’s two daughters. And now, two generations later, Jackie’s grandson and soon to be second grandchild are also victims because she would have undoubtedly touched them in the same positive manner that she touched everyone she met.

After 19 years of her absence, I think of her and the joy she brought to me. Her meaningless death leaves a void in my life daily. This void permeates throughout her immediate family. Family gatherings during holidays, which are normally festive occasions in our society, are diminished because of this void in our lives. The sadness almost always turns to anger when we realize that the individual who did this to us is still living and has the opportunity to feel happiness and joy and all the other wonderful emotions that define our species.

The people who commit such a crime, including those incarcerated, continue to have an opportunity to experience a meaningful and fulfilling and, indeed, a happy life. Even if they are removed from society, they can enjoy literature, movies and a host of social activities. The last time my sister Jackie had the opportunity to enjoy any of that was 19 years ago. Her killer continues to enjoy many of the joyful aspects of life.

Our grieving will probably never end. Clearly, the crime goes far beyond “snuffing out another human life.” Handling death of a loved one is always difficult but handling the death of a loved one for a senseless reason and living with the brutality involved in Jackie’s death is a life long burden suffered by all the victims of the murder – particularly when the murderer continues to experience life itself.

Prior to the death of my sister I viewed capitol punishment differently than I do now. I could look it at from an objective point of view and felt that the important thing to do with dangerous criminals was to remove them from society and attempt to rehabilitate them. Since then I am viewing this issue subjectively and I feel quite differently. Those of you who are trying to be objective today should walk in my shoes or the shoes of the many living victims of this crime. Only then could you experience the unfairness of the grief caused by missing a loved one while having the knowledge that the killer continues to enjoy life.
It seems to me that the issue here goes beyond simply administering some punishment to a murderer. The issue must address the responsibility that society has towards all the victims of the crime. Simply taking the murderer out of society for a long period of time does not address the life long emotional problems created by the crime. Our society was built on understanding and helping our neighbors. In the case of a brutal murder, the best way for society to help the victims is to give them the knowledge that the murderer is no longer experiencing the joys of life that he has ended for another human life.

Patricia Harrison
My story begins 21 years ago. It was July 1985 when Cynthia Barlieb, a 25 year-old mother of four, was brutally shot to death. She was a clerk for a local Cumberland Farms convenience store. Her and my father had recently bought their first home and my mom worked part-time earning extra money to pay bills. I was eight years old and had three younger sisters. Melaney was five, Kristin was three, and Kimberly was fifteen months old. It was a Sunday, at 12:30 in the afternoon, when her assailant boldly walked into the store intent on committing armed robbery. As she worked the store alone, he made idle conversation with her until the other customers had left. At which time he locked the front door and flipped the open sign to close. Cindy fatally refused his demands to open the register. She was punished with a shot to her chest. Frustrated with his inability to open the register, he shot her twice more as she lay face down at his feet. One shot in the back of her neck and a final shot to the back of her head. He hadn’t finished with her yet. Barely still alive, he dragged her body to the back of the store and hid her inside the walk-in cooler. The killer attempted to cover his tracks and then fled the scene.
Eventually, it was his arrogance, partnered with a small reward that led to his capture. Thus began my family’s involvement with the criminal justice system.

The defendant was tried and convicted of capital murder, then sentenced to death by lethal injection. At the time, my sisters and I were too young to know anything about the trial. Over the years, I became none the wiser. It was enough for me to know that the man who viciously took my mother’s life was on death row. After all, he literally deprived her of everything, left four little girls without their mother, and bruised many hearts that still ache for her to this day.

I was introduced to our so-called justice system in 1993 when I first learned that the killer’s death sentence was overturned by the Supreme Court. Subsequently, the State moved to retry the penalty phase of the case, once again seeking a death sentence. In search of justice, I committed to attend every portion of that second trial. Our family was forced to relive the nightmare. We sat through the gruesome evidence and vivid testimony that tore at our wounds. Even more aggravating, was that the jury could not know Cindy as a real person. Her dead body was only evidence of the crime and any personal information about “the victim” was withheld so as not to “bias” the jury. It was the State vs. the defendant. Cindy was a murder victim and as a result lost every single one of her basic human rights. The killer on the other hand is entitled to every single human right in the book and then some. We heard how bad his childhood was and that he was a model prisoner and so forth. Thankfully, that wasn’t enough. The jury once again sentenced him to death and for the time being it seemed that justice had prevailed.

Sure enough justice was undone eight years later when another appeal made it to the Supreme Court. During the second trial, it was found that one of the jurors knew that Cynthia Barlieb was a mother of four. At the time, the judge had this juror replaced and resumed the trial. Apparently the Justices felt that the judge was wrong and should have declared a mistrial. This wasn’t fair to the defendant, so his second appeal was granted and the death sentence overturned.
For the third time, our family braced for yet another trial. This time around, thanks to the victim advocates and resulting legislation, I was able to read a victim impact statement to the jury. This was a major breakthrough; we could finally share personal information about Cindy’s life. Ironically, that same information is what caused the appeal to begin with. Also as a result of the impact statement, the defense fought to have me barred from the courtroom as a witness. It was eventually ruled that I could attend the trial with my family and, all over again, we relived our trauma. Ultimately we were failed by the justice system. The jury was deadlocked and by default, a life sentence of 30 years was imposed. With sixteen years already served, there was no comfort in knowing that he’d be eligible for parole in fourteen years. Frankly it’s an insult, a slap in the face. We’re damned to continue this charade each time he becomes eligible for parole and I cannot stomach the thought of his release.

I’d support the death penalty if the State of New Jersey could limit the appeals process and actually utilize it. Unfortunately, I sit here following a more realistic approach in favor of abolition. I can testify from experience that our current system is most unjust for the victims and their loved ones. I can only hope to save other families from the grief of the never-ending appellate process. I promote the substitution of the death penalty only with a life sentence that truly means life in prison with no possibility of parole. My family has struggled with the system for 21 long years and our battle for justice is far from over. Given the option, I would be grateful to adopt this alternative sentence in lieu of our tragic situation in the criminal justice system.

Testimony of Jo Anne Barlieb
September 13, 2006
victims for many years to come. and serve as a major advocate for other victims. For the dream that the VJC will come true, we hope and support the 2001 state conference of the VJC. In this hope and September 20th in order to express the full time of the Victims of Crime Compensation Board for After seeing the state of New Jersey as Chairman, the Victims of Crime Compensation Board is the lead in the Victims of Crime Compensation Board to law enforcement. The youths of law school in the new disease of crime. The camera from the previous court. The VJC continues to be the leader in the crimes of law school in our state. This is a model for other programs. Since then a few minutes ago I decided not to continue this program. The VJC was the first of its kind in the United States. The VJC is dedicated to the victims and the families of the New Jersey Crime Victims. The New Jersey Crime Victims Law Center provides free legal assistance to victims of

The New Jersey Crime Victims Law Center provides free legal assistance to victims of crimes. The New Jersey Crime Victims Law Center (VJC)
Statement of Richard D. Pompelio, Esq. to the Death Penalty Study Commission
September 13, 2006

The Constitution of the State of New Jersey states that victims of crime shall be
treated with fairness, compassion and respect by the criminal justice system. The manner
in which the courts of this State have dispensed justice with regard to the death penalty
process represents an egregious violation of the victim’s constitutional rights. My words
do not come easily; nevertheless, as a crime victim and a lawyer I cannot sit by passively
as many and be blind, indifferent or hypocritical to this unfortunate reality.

In 1989, a few days after my 17 year old son Tony was murdered, the county
prosecutor told my wife and me that he would not seek the death penalty of our son’s
killer because “the crime wasn’t heinous enough.” The facts indicated otherwise;
however, we were in such shock and pain that we just nodded a sheepish acceptance and
resolve to the dictate that we were just given. If the death penalty had been pursued by
the prosecutor and awarded by the jury, perhaps my family and I would still be in the
criminal justice system today. That is a nightmare I could wish on no one.

When my son was murdered, I had been a lawyer for 17 years and thought I
understood what the criminal justice system was all about. How wrong and perhaps
arrogant I was to be so presumptuous. What has the criminal justice system become?
Perhaps not much more than the mechanical processing of violators with unreasonable
requirements placed on trial judges and prosecutors to resolve cases? To truly understand
what the criminal justice system is all about, one must be the accused or the victim.
Because to that person, it is the reality of every waking moment of his or her life. There
are no vacations or days off.
Many assistant prosecutors throughout this State who actually work in the
trenches each day complain to me often that they are frustrated because they are
mandated by numbers and the name of the game is “plea bargain.” Our criminal justice
system has become a platform for politicians to promote to their populous that they are
tough on crime. It has become a forum for appellate judges to espouse the human rights
principles they have held so closely. Unfortunately, too often they must do so on behalf
of a violent criminal who committed the crime, but the cleverly articulated right
somehow greases his path to an unjust freedom. Just ask the survivors of Susan Green,
Leon Hanjian, Rosetta Lucas, Donna Lucas, Stanley Caswell and Esther Friedman, to
name a few. The killers of their loved ones were all found guilty and sentenced to death;
but today they all walk the streets as free men, having served an average of only 13 years
in prison. And this list goes on and on.

In 1980, President Ronald Reagan commissioned a national task force to study the
effects of the criminal justice system on victims of crime. After a two year exhaustive
study, the task force reported:

Somewhere along the way the system began to
serve the lawyers, judges and defendants with
institutionalized disinterest. . . . The treatment of victims is
a national disgrace.

I am not a cynic. Trained in appreciating the richness and the splendor of our
American system of justice, and then thrust personally into it with all its human factors, I
maintain a burning and passionate hope that the words of the interpretive statement to
Article 1, paragraph 22 of the New Jersey Constitution will someday have true meaning.
When the legislature approved, and 1.2 voters confirmed that crime victims should be

14x
placed on "equal footing" with the accused, the words were never meant to be empty
promises by the legislators and wishful thinking on the part of the citizens of this State.

As Justice Marie Garibaldi opined in the 1996 landmark victims' rights case of State v.
Muhammad: "We know exactly what the founders of this constitutional amendment
intended--fair treatment for victims."

Judges are trained as lawyers, and all lawyers are trained in understanding and
appreciating the beauty of our Constitution and Bill of Rights. We hunger and thirst for
the opportunity to advocate and advance these rights because that is the essence, the
foundation for what we see as the purity of our democratic society. We all have justice in
our hearts and a burning desire to achieve this justice.

And then there is the death penalty and the process that has developed in our
criminal justice system from it. The death penalty is an abomination. The author, Albert
Camus wrote, "For centuries the death penalty, often accompanied by barbarous
refinements, has been trying to hold crime in check; yet crime persists." Today, his
observation may alternatively be stated: For decades the death penalty in New Jersey,
often accompanied by illogical refinements, has been trying to hold crime in check; yet
crime persists and victims continue to be re-victimized by the justice system that exists to
protect them, at a cost to the taxpayers of millions of dollars each year...

The death penalty process in New Jersey over the past quarter century has been
the greatest failing of the justice system in the history of our State. It is the failing of
those in power, the politicians and the judges -- but it is a failing that has been spawned
from good and righteous intentions, and also pride, a pride on the part of these people in
power to do what they believe is right. The system can no longer suffer the pride of those in power. The taxpayers of this state can no longer bear the cost of this failure. And as for the victims – enough is truly enough.

Since the death penalty was reinstated in 1982 there have been 197 capital trials and 60 death penalty convictions of which 50 were reversed. Many proponents of the death penalty were banking on wife killer Robert Marshall, an upper middle class white man, as the first execution in New Jersey. As we now know, Marshall, not only has escaped the death penalty, but he will probably see freedom in time to enjoy it. And his wife Marie is just a painful memory in the hearts of her sons.

What has death penalty jurisprudence been like in New Jersey over the past quarter century? The case of *State v. Gerald*¹ is a good example. In 1982, Walter Gerald and his accomplice broke into the home of 89 year old John Matusz. When Gerald left, less than an hour later, he had savagely beaten John’s daughter and his disabled son Paul, who ultimately succumbed to death. To make sure his elderly victim could not identify him, Gerald stomped John on his face and dropped a television on his head. Gerald was identified as the killer because the imprint of his sneaker matched the marks on the victim’s face. He pleaded guilty to the murders and, after the death penalty trial, the jury unanimously voted for death.

Six years after the murder, the case came before the New Jersey Supreme Court, and the death penalty was reversed, sparing the killer’s life. On its own, without the defendant raising the issue, the court held that “the jury could have determined that the defendant had the purpose or knowledge to cause only serious bodily injury but not

¹ 113 N.J. 40 (1988)
death, ...” That is to say, the jury’s decision was not clear as to whether Gerald intended
to kill his victim or just cause him bodily harm. We have seen the New Jersey Supreme
Court apply the Gerald rule in cases like State v. Jackson, in which the death penalty
was also thrown out under the following facts:

“[There was evidence of an attempted rape. Defendant
stabbed the victim, in the words of the State, ‘wildly,
viciously, repeatedly: 53 times.’ Defendant stabbed her
eighteen times in the genital area with an obvious sadistic
intent. After the murder, he stole her car and drove around
casually with a man he happened to meet, drinking beer
and looking for marijuana. Defendant was arrested two
days later and confessed to the murder.”

This Gerald “rule of intent” imposed by the New Jersey Supreme Court, which
formed the basis for other reversals, became so publicly unsettling that the State
Legislature felt compelled to seek an amend to the New Jersey Constitution to reverse it.
In 1992, 1.8 million New Jersey voters approved the constitutional amendment, and sent
the Gerald rule packing.

I have represented many homicide survivors in my 17 years as a victims’ rights
lawyer. In 1990 I sat next to Florence Hoffman in the back row of a Sussex County
courtroom during the death penalty retrial of her 17 year old daughter Amy’s murderer,
serial killer James Koedatich. Amy had been murdered 8 years earlier. Florence was
sequestered from the first trial, and our hope was that the court would allow her to stay in
the courtroom during the retrial. The victim’s mother was forced to sit silently as
Koedatich made obscene gestures to the victim and to her supporters while his lawyer
asked the judge to remove Mrs. Hoffman, not only from the courtroom, but also from the

3 Id. at 486.
street in front of the courthouse. Koedatich’s lawyer described her as a “walking, talking victim impact statement” and an improper reminder to the jury that Amy was once a “living, breathing human being.” The defense counsel further argued that Mrs. Hoffman was being “milked by the prosecution like so much emotional baggage.” Fortunately, we were blessed with a passionate prosecutor, Thomas Critchley and a compassionate and wise trial Judge Donald Collester, who changed the course of history for crime victims in the State of New Jersey when he refused to expel Mrs. Hoffman from the courtroom stating, “This is a public courtroom, which is open to members of the public, all members of the public.”

The jury in Koedatich voted 11 to 1 for death. Several weeks later I received a letter from one of the jurors who said that this trial had been the worst experience of her life. The juror who voted against death was asked by the others to give a reason for his vote. He replied that he was against the death penalty, and when he was questioned about why he told the trial judge that he could vote for death if the proofs were presented, he responded to the other jurors, “I lied.”

In 1997 Thomas Koskovich murdered pizza deliverymen, Giorgio Gallara and Jeremy Giordano. In the death penalty trial involving the murder of Jeremy Giordano, the defense requested of the court that they be permitted to question Jeremy’s mother in front of the jury about her opinion on the death penalty. Why? Because she opposed it. The prosecution objected because the Supreme Court in State v. Muhammad4 clearly stated that such opinion evidence was not permitted. Nevertheless, the trial court permitted the testimony. When the jury came back with a death penalty verdict, the trial judge shocked everyone in the courtroom by stating that if the killer was not executed

4 145 N.J. 23 (1996)
within five years, his sentence would be commuted to life. He spoke of how the death penalty toyed with killers like a cat playing with a mouse. He never once mentioned the impact of the death penalty process on the innocent survivors. The victims’ families spiritually shattered and emotionally drained after having gone through two trials looked up at me, as beaten and hurt and asked me, “Can he do this?” I simply said “no”, but how could my words of consolation have any comfort at the time? The trial judge was reversed on the five year commutation ruling and the death penalty was reversed, one of the reasons being that the victim’s mother should not have been allowed to give her opinion against the defendant receiving death.

Many people mistakenly believe that the death penalty is a strong victims’ rights issue. It is not. Victims’ rights issues sometimes arise in death penalty cases such as *State v Muhammad* (victim impact testimony) and *State v. Timmendequas*\(^5\) (denial of change of venue based on impact on victim’s family), but in reality victims have little to do with the issue of the death penalty. The Victim’s Rights Amendment and Victims Bill of Rights (N.J.S.A. 52:4B-36) describe the civil rights that victims are entitled to receive in the criminal process. What victims need most from those who work in the justice system is to have these civil rights to fairness, compassion, respect and dignity recognized and respected. They do not need, nor do they want the vengeance of death, as too many surmise. I represented the mother of the victim in the appeal to the Supreme Court in Muhammad. As I left her apartment in Newark after a visit staring straight at us was the vacant building where her daughter had been abducted, raped and murdered.

---

\(^5\) 161 N.J. 515 (1999).
Victims say they want “justice”, but they have no say in what the justice will be. That is up to the court, the prosecutor and the defense counsel. Victims are placed in this adversarial system where justice becomes equated with winning and losing. And in death penalty cases in the State of New Jersey, the victim does not win. A recent report by New Jersey Policy and Perspective states that since 1982 the 197 capital murder trials that have taken place in New Jersey have cost the taxpayers least $253 million or over $1 million per trial or $11 million per year.

In this presentation, I have made reference to over a dozen cases of murder where the defendant was at one time sentenced by a jury of his peers to death. I ask the question – How much of the State Treasury funded by the taxpayers has reached out and helped the survivors of this carnage? I answer the question – practically nothing. A scholarship fund bill to provide educational scholarships for murder survivors that was proposed by Assemblyman Alex DeCroce was enacted into law in the year 2000. To date, it has not received $1 from the State Treasury. Most of the families of murder victims I have represented throughout the State of New Jersey have been members of minority and lower income communities. The victim’s mother in Muhammad could not leave that daily reminder of her daughter Jakiyah horrible death because financially she was imprisoned there. Yet we spend millions of dollars each year with companies like Life Skills to train and educate offenders.

I dream about what we could do in this State for these innocent and valued individuals if we could reduce the number of years they must spend in the criminal justice system in death penalty cases, and utilize some of the money we waste on these cases to help them move on to recovery. It is time for the lawyers, judges, legislators and
our Governor to collectively put their hearts and minds together to restructure the criminal justice system to achieve a more positive purpose. I respectfully seek the following:

- Abolish the death penalty now in favor of life in prison without parole;
- Take some of that taxpayers’ money that continues to be wasted, and do the following:
  1. Increase the services available to homicide victims;
  2. Appropriate some of this money to help the non profit homicide organizations who do so much work for victims, but who are struggling to keep their doors open;
  3. Fund the State Scholarship Program for murder survivors;
  4. Increase funding to law enforcement and to county prosecutor victim-witness programs to enable them to expand the good work they do for survivors of homicide.

There is not a more devastating experience in someone’s life than learning that their loved one has been murdered. For a murder victim, attending the trial is an exhausting process of having to bear witness to the slow motion replay of the events of the murder in an intimidating place like a courtroom, where the victim must sit mute and learn that he or she has little say about the rules of the game. In death penalty cases, with reversals and retrials, victims are forced to endure this horror over and over again; always with the same result. The pain caused by the murder of a loved one does not diminish over time; it is ever present for the victim’s family. For a victim of murder to survive, the victim must focus on their loved one, not the killer. Otherwise the victim will self
destroy from anger. That is why most victims of homicide are ambivalent about the death penalty.

On the eve of his leaving office as Governor of New Jersey in 1991, Brendan T. Byrne knew that the death penalty would be reinstated in New Jersey. Within several months it was. In the recent published Star Ledger commentary between Governors Byrne and his successor Tom Keane, Governor Byrne was asked: Is it time for New Jersey to abolish the death penalty altogether? His response was:

"I would suspect Governor Corzine privately -- and maybe publicly -- has resolved that nobody is going to be executed during his four years in office. I think we're just a step away from having the courage to say the death penalty does not work, either in theory or in practice, and should be abolished. We're pretty close to that. If we did abolish it, people who are victims' kin would be more satisfied that they've got all of what's available, rather than saying the killer could have gotten a harsher penalty."

I have been a lawyer for well over half my life. I know the beauty, the pain and the frustration of the criminal justice system from all sides. I implore those with the power to affect change to simply do it. If it takes "courage," then I challenge the individuals in power to show courage.

Richard Pompelo
Reverend Howard and members of the Commission, thank you for providing me with this opportunity to testify before you this afternoon.

I have spent a considerable part of my life working in law enforcement and practicing law. Along the way, I have encountered and pondered the arguments for and against the death penalty. This afternoon, I would like briefly to share some of my thoughts regarding capital punishment and to urge the Commission to recommend replacement of the death penalty with the punishment of life without parole.

As I see it, a life without parole sentence: incapacitates convicted capital offenders; is punishment that is certain and not susceptible to seemingly endless post-conviction applications and appeals; provides the more timely closure which is such an important component of the process of recovery for the victim's family and friends; costs less by reducing dollar expense and freeing up resources to meet other law enforcement needs (as well as lessening the demand for revenues to meet expenses from local real property taxes); avoids the arbitrary, "struck by lightening" character of the process of selecting death row candidates; provides, I believe, as much of a deterrent effect to premeditated, calculated murder as would
the death penalty; and better accords with what should be the values and mores of a civilized society.

2

As a society that believes criminals should be punished, the urge to execute those convicted of heinous crimes is understandable. We are outraged by loss of life, sickened by violent, grotesque, unthinkable acts divorced from any concept of humanity, from any semblance of dealing kindly and mercifully with a fellow human being. We all, I am confident, have experienced that hot flush of rage over an horrific occurrence and have felt the urge to have the person who committed such an inhuman act receive like treatment. But, for any number of reasons, we must try to temper such emotional reactions and to realize that an eye for an eye is not an effective societal response, let alone a proper one:

1. First of all, the overarching truth is that it is simply not morally unacceptable for a civilized society to kill, indeed to kill in the calculated and premeditated fashion inherent in the death penalty. That one has killed, has acted in an uncivilized, wanton manner, does not entitle organized society to kill, to act in like uncivilized fashion.

2. In addition to being inconsistent with fundamental standards of morality and decency in an advanced society, capital punishment is an ineffective remedy and, pragmatically, serves no legitimate interest. It has no penological
purpose except retribution. But there are other effective ways to express retribution rather than resorting to societal homicide. These "ways" are not only more humane but also fairer, less risky to the innocent and far less economically expensive to our citizenry.

As a note in this regard, you have heard -- or undoubtedly will hear -- from Columbia Professor Jeffrey Fagan, an expert in this field particularly in evaluating the deterrence factor. Dr. Fagan has convincingly opined that none of the studies purporting to attach a deterrent effect to the death penalty is accurate or valid. I would simply add that my experience in law enforcement, from years of service in a prosecutor's office to service as the State's Attorney General, reinforces the hypothesis that the death penalty is not a deterrent to murder. Most homicides I have encountered have been generated by spontaneous anger and emotion (often in a family context), or by severe mental impairment or societal dislocation and not by the premeditated calculation for which the possibility of a death penalty might give a would be killer second thoughts.

3. The process which determines whether or not a person will be sentenced to death is an arbitrary one.

There is no formula for deciding in what cases the death penalty will be sought. The issue turns upon extraneous, unpredictable matters such as the personalities of prosecutors and the manner in which they choose to exercise their
prosecutorial discretion. Locale also may be a factor. The death penalty is less likely to be pursued in an urban environment besieged by homicides and other violent crime than in a more rural setting where, as an infrequent occurrence, a homicide is of major, somewhat unique, significance. And, yes, racial and ethnic considerations do, from time to time, improperly intrude and affect life or death judgments.

Moreover, once the decision has been made to have a homicide prosecution proceed as a capital case, the defendant's fate often turns upon random things such as the abilities and quality of public defenders and other defense counsel, the selection and composition of a jury (and the State in which the jury is being empanelled) and both the fair-mindedness and competence of judges, both trial and appellate.

No wonder that in 1972 United States Supreme Court Justice Potter Stewart opined that being involved as a defendant in a capital punishment was as random and serendipitous as being struck by lightning. Indeed, he went so far as to characterize the death penalty as cruel and unusual punishment because of the capricious process of selecting a random few to run the gauntlet of life or death.

4. The death penalty is also just too expensive. I know this sounds insensitive when one is considering life or death decisions. But it is a matter which must be factored into the equation.
Since its reinstatement in New Jersey in 1982, death penalty cases have consumed over $250 million in taxpayer dollars, a significant portion of which come from local real estate property tax revenues, in order to meet the expenses of prosecutors, public defenders, correctional officials and various experts (such as those versed in proportionality analysis). Parenthetically, none of the proceedings has ever met its objective of executing a convicted defendant.

Moreover, the stakes of life or death -- the dual proceedings, one for guilt or innocence, the other for punishment based upon evidence of aggravating or mitigating circumstances, the right to automatic New Jersey Supreme Court review of a capital conviction and the intensity of the Court's involvement, as well as the Court's proportionality review -- require the diversion not only of public dollars but also of significant and talented prosecutorial and other public resources to the tasks at hand and thus foreclosure use of these resources in other critical areas.

In a word, as a former law enforcement officer who remains interested in fair and reasonable governance and operation of the criminal justice system, I believe the death penalty is not a wise investment, especially when resources -- including the valuable time of investigators, prosecutors and police -- are as scarce as they are today. New Jersey residents rightly demand justice and safe streets. They want perpetrators of violent crimes to be punished and they want crime to be
prevented. They want victims to be cared for. They want results, not years of
appeals, and they are entitled to just that.

3

This Commission is charged with evaluating alternatives to the death
penalty. As stated at the outset, I believe the best alternative is a sentence of life
without parole.

In recent decades, the minimum punishment for murder has
presumptively been the 30 years (of a 30 year to life sentence) during which the
defendant is not eligible for parole. There have been additions such as the limited
application of a life without parole sentence under the 1997 amendment to the
statute and the impact of the "No Early Release Act" but neither is directly
germane to the point I wish to make. And that point is that life without parole is
different from a life sentence in terms of both certainty and severity.

Under a punishment of life with no possibility of parole, a defendant
will serve his natural life behind bars. He will remain behind bars until he is
buried. There is no opportunity to go before the parole board. There is no credit
for good time served, no reward for getting your GED. When the sun rises,
inmates serving sentences of life without parole are behind prison walls and they
are still there when the sun falls. With each passing day, from sunrise to sunset,
until they die, inmates under sentence of life without parole remain incarcerated. It
is truly a severe punishment. While, as Professor Fagan has noted, empirical data is lacking on the question of whether life without parole has a deterrent effect, it is not unreasonable to conclude that the prospect of a dreary existence behind prison bars forever without hope of release would match any deterrent effect which capital punishment might evoke. Moreover, it is well to note that life without parole avoids the possibility that innocent persons will be killed and leaves open the opportunity for a capital defendant, through new evidence, to prove that he or she was wrongly convicted.

Life without parole is also a certain punishment. Unlike the death penalty, which is plagued by errors and reversals and subjected to a constitutionally mandated "super due process," life without parole means the punishment that is delivered is the punishment that is served. Allow me to explain.

In the first few years after the death penalty law was enacted in New Jersey in 1983, case after case was reversed on appeal. Initially, everyone thought that the new statute simply needed to work out its flaws. But, today, more than twenty years later, the reversal rate for capital sentences is still stunningly high — more than 80%. We never worked out the flaws. The result of all of this goes well beyond failure to implement the remedy. This failure, coupled with sometimes seemingly endless habeas corpus and other post-conviction applications and appeals, drag the proceedings on for years to the detriment of the victim's
family and friends who cannot experience timely closure and who must often suffer the pain of seeing the killer of their loved one re-sentenced to something less than what they were promised. With life without parole, the early statistics are just the opposite. Life without parole became available in 1997 and, to my knowledge, no offenders sentenced to that punishment have seen their sentence reversed.

I cannot promise that one sentenced under life without parole will never get out of prison. Under our state constitution, all sentences can be commuted by a Governor. Sentences can also be reversed by a court during the normal appellate process. And of course, if new evidence reveals a person was wrongfully convicted, that person would be released. But, I can tell you this: the odds that someone will be released under a life without parole sentence are so low as to be little more than theoretical. The reversal rate for life sentences is significantly lower than the reversal rate for death sentences. Further, people who commit crimes that we classify as capital crimes are not the sort who are granted clemency by Governors.

As someone who cares about New Jersey and the safety of its citizens, I urge you -- as people who also care about such things -- to recommend to the State Legislature that it reject capital punishment and replace it with life without parole. By enacting the moratorium and creating this Commission, the Legislature signaled its readiness to consider alternatives and it has already accepted life
without parole as a viable sentencing option in limited homicide situations. Please
guide them toward general acceptance of this more just, more certain and more
effective result.
PUBLIC OPINION ON THE DEATH PENALTY IN NEW JERSEY

Report prepared for presentation to: New Jersey Death Penalty Study Commission September 13, 2006 public hearing

Report prepared by: Patrick Murray

On behalf of: New Jerseyans for Alternatives to the Death Penalty

Report prepared on: August 15, 2006
PUBLIC OPINION ON THE DEATH PENALTY IN NEW JERSEY

TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Introduction</td>
<td>1</td>
</tr>
<tr>
<td>II. Measuring Public Support for the Death Penalty</td>
<td>1</td>
</tr>
<tr>
<td>III. Changing Preference on the Death Penalty in New Jersey</td>
<td>2</td>
</tr>
<tr>
<td>IV. Dynamics in Public Opinion on the Death Penalty</td>
<td>6</td>
</tr>
<tr>
<td>V. Conclusions</td>
<td>9</td>
</tr>
</tbody>
</table>

Appendix: Survey Question Wording and Methodology
About the Author

33x
PUBLIC OPINION ON
THE DEATH PENALTY
IN NEW JERSEY

SUMMARY

- Public opinion on the death penalty is generally measured along two dimensions: support in principle and policy preference.

- In principle, New Jersey's level of support for capital punishment has hovered around 6-in-10 for the past seven years. This support has consistently been a few points lower than the national average.

- In terms of preference, New Jerseyans favor life without parole over death as the penalty for murder by a 13 point margin. This represents a swing of 20 points since 1999, when the public preferred capital punishment over life without parole by a 7 point margin.

- The New Jersey public has become more concerned that the death penalty is likely to be applied unfairly to certain groups, namely the poor and African-Americans.

- The public today does not believe that capital punishment acts as a deterrent.

- When considering alternatives to the death penalty, the public is unsure whether "life in prison without parole" is indeed a guaranteed sentence of life imprisonment. This concern may have an impact on public preferences about the death penalty.

- The majority of the public admits that it has little awareness of the issues surrounding capital punishment. Receiving information that more than 100 death row inmates have had their convictions overturned or that prosecuting a death penalty case could cost the state more than imposing a life sentence appears to significantly affect public support for the death penalty.

- Public opinion on this issue is based largely on an emotive response based on finding a punishment that "fits the crime." Public opinion research indicates that New Jersey residents are open to death penalty alternatives as long as such sentences adequately and fairly punish the crime of murder.
PUBLIC OPINION ON
THE DEATH PENALTY
IN NEW JERSEY

I. Introduction

This report summarizes public opinion in New Jersey regarding the death penalty. While national poll measurements on this issue have been fairly regular over the past decades, New Jersey opinion was only measured sporadically prior to 1999. This report examines changes in public opinion in the state over the past few years. It also examines public support for the death penalty and alternative sentences in light of national opinion.

It should be noted that two of the surveys discussed in this report – the 2002 and 2005 New Jersey polls – were conducted by this author on behalf of New Jerseyans for Alternatives to the Death Penalty. However, all New Jersey polls discussed in this report used the same sampling methodology of a random digit dial telephone survey of 800-1,000 adult residents of the state.

II. Measuring Public Support for the Death Penalty

Most major national and state polls ask at least two questions to gauge public support of the death penalty as a criminal justice policy. The first is some version of “Do you favor or oppose the death penalty for persons convicted of murder?” The second question presents two alternative sentences: “What do you think should be the penalty for murder – the death penalty or life in prison with absolutely no chance of parole?” (see appendix for actual question wording used in the polls covered by this report).
A national pollster who tracks this issue, Gary Langer director of the ABC News Poll, posits that the first question expresses support for capital punishment in principle while the second is more descriptive of public preference on capital punishment as a policy choice ("Capital Punishment, 30 Years On: Support but Ambivalence as Well," press release July 1, 2006).

The "principle" question on general support was first asked by the Gallup organization starting in 1936. The second question on "preference" has regularly been included in polls only since the mid-1980s. Indeed, how best to measure public opinion on capital punishment was the subject of a recent online discussion among public opinion professionals from the American Association for Public Opinion Research (AAPOR). Frank Newport, editor-in-chief of the Gallup Poll, summarized the consensus opinion that numerous questions are necessary to understand opinion on the death penalty, "The question of which [version of the death penalty question] is the 'proper' depiction is one that I would address by saying – as is the case in a good deal of public opinion – that providing multiple measures and approaches to an issue is the key" (email to AAPORNET, June 5, 2006).

III. Changing Preference on the Death Penalty in New Jersey

In the years immediately following the 1976 U.S. Supreme Court decision allowing states to reinstate capital punishment, statewide support for restoring the death penalty in New Jersey hovered around 72% to 73% (source: Eagleton Poll 1977 and 1981). It would be 18 years before another independent public poll was taken to gauge statewide opinion on the death penalty. A poll taken in 1999 showed that support in
principle for the death penalty had dropped to 63%. Since then, support for the death penalty in principle has fluctuated between 58% and 62%.

It is also worth noting that during this same time frame, public support for the death penalty in New Jersey has been consistently a few points lower than across the country as a whole (see table).

<table>
<thead>
<tr>
<th>Year</th>
<th>National</th>
<th>New Jersey</th>
<th>NJ-US difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>69%</td>
<td>63%</td>
<td>-6</td>
</tr>
<tr>
<td>2000</td>
<td>63%</td>
<td>62%</td>
<td>-1</td>
</tr>
<tr>
<td>2002</td>
<td>65%</td>
<td>60%</td>
<td>-5</td>
</tr>
<tr>
<td>2003</td>
<td>64%</td>
<td>58%</td>
<td>-6</td>
</tr>
<tr>
<td>2005</td>
<td>66%</td>
<td>61%</td>
<td>-5</td>
</tr>
</tbody>
</table>


Moreover, the longer national trend on this question shows that recent support for the death penalty is historically at its lowest level since capital punishment was reinstated in the late 1970s.
While public support for the principle of capital punishment has remained fairly stationary for the past seven years, there has been an ever increasing preference among New Jerseyans for life imprisonment rather than the death penalty as the favored punishment for murder.

As recently as 1999, a plurality of New Jerseyans preferred the death penalty over life in prison with absolutely no chance of parole by a 44% to 37% margin. The following year the gap had narrowed considerably only one point – 44% to 43%. Two years later, public opinion in New Jersey experienced a dramatic shift, with a plurality in 2002 saying that they prefer life in prison (48%) rather than the death penalty (36%) as the penalty for murder. A poll taken in 2005 confirmed this shift in preference – 47% life imprisonment to 34% capital punishment.

![New Jersey: Preferred Punishment for Murder](image)

Interestingly, this shift in New Jersey preference for punishing murder occurred during a time when there was little movement in national opinion. During the same time New Jersey opinion experienced a 20 point swing – from a 7 point preference for the
death penalty to a 13 point preference for life imprisonment – national opinion held fairly steady at a 1 to 5 point preference for capital punishment over life without parole.

<table>
<thead>
<tr>
<th>Percentage point difference in preference</th>
<th>Life Imprisonment over Death Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>National</td>
</tr>
<tr>
<td>1999</td>
<td>n/a</td>
</tr>
<tr>
<td>2000</td>
<td>-5</td>
</tr>
<tr>
<td>2001</td>
<td>-1</td>
</tr>
<tr>
<td>2002</td>
<td>-3</td>
</tr>
<tr>
<td>2003</td>
<td>-4</td>
</tr>
<tr>
<td>2004</td>
<td>n/a</td>
</tr>
<tr>
<td>2005</td>
<td>-5</td>
</tr>
</tbody>
</table>


Moreover, the 2005 New Jersey poll conducted for NJADP found that among those who initially say they favor the death penalty, 1-in-4 (25%) actually prefer life imprisonment as the penalty for murder when the alternative is presented to them.

The polling does indicate a potential reason why opinion on the policy preference question may have shifted so dramatically from 1999 to 2002. There appears to have been a growing sense during that period that the death penalty is applied unfairly. New Jersey polls taken in both years asked if the public felt members of certain demographic groups – namely poor and black – were more likely to receive the death penalty for the same crime. From 1999 to 2002, the number of New Jerseyans who felt that the death penalty may be applied unfairly to these groups increased by 9 to 10 percentage points.

<table>
<thead>
<tr>
<th>New Jersey adults who agree:</th>
<th>1999</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>A poor person is more likely than a person of average or above average income to receive the death penalty for the same crime.</td>
<td>56%</td>
<td>65%</td>
</tr>
<tr>
<td>A black person is more likely than a white person to receive the death penalty for the same crime.</td>
<td>42%</td>
<td>52%</td>
</tr>
</tbody>
</table>
IV. Dynamics in Public Opinion on the Death Penalty

As the data presented in this report indicate, a number of New Jerseyans who support the death penalty in principle actually prefer the criminal justice system to dispense a sentence of life in prison with no chance of parole.

It appears that a key issue in the public’s ambivalence toward the death penalty is that few citizens consider the policy and economic implications in their initial support of capital punishment in principle. The 2005 New Jersey poll asked death penalty supporters why they favor this punishment. The vast majority – 6 in 10 – stated that they support a punishment that “fits the crime.” Few offered practical policy reasons such as deterrence, a belief in savings to the taxpayer, or providing closure for the victim’s family as key reasons for their initial support.

In this context, survey research indicates that the New Jersey public is open to other options – specifically life without parole – to punish murder as long as they “fit the crime.” In addition to the movement away from supporting capital punishment as a policy when the alternative of life without parole is presented, both the 2002 and 2005 polls also found that including restitution for the victim’s family in the sentence increases support for life without parole to 69% – including more than one-third of those who initially supported the death penalty in principle.

- Public does not believe capital punishment is a deterrent -

Other polling finds that overall support for the principle of capital punishment is clearly not rooted in any perceived deterrence effect. National polls have shown a sharp decline in the belief that the death penalty acts as a deterrent to murder in society. In
1985, the Gallup poll found that 62% of the public believed capital punishment to be a crime deterrent. This dropped to 51% in 1991 and then again to 35% in 2004. A New Jersey poll taken by Quinnipiac University in 2000 found that only 40% of the state believed that “the death penalty deters others from committing murder.”

![Graph showing national trend of death penalty deterrence](chart)

Source: Gallup Poll

- Public not confident that “no parole” means no parole -

One issue that may underlie support for the death penalty is a public impression that “life without parole” is merely a guideline in sentencing rather than an unalterable term. The 2000 Quinnipiac poll asked how confident New Jerseyans were that “those convicted of murder and sentenced to life with no possibility of parole will spend the rest of their life in prison.” Only 12% responded that they were “very confident” that a life sentence meant a life sentence, whereas 52% said they were not too or not at all confident that such a sentence would be carried out in full.

A recent poll in California echoed this sentiment: 54% in that state agreed that “sentencing someone to life in prison without the possibility of parole does not guarantee that a prisoner will not be released from prison some day” (Field Poll, February 2006).
- Public unaware but concerned about the cost of death penalty prosecutions -

On the whole, the vast majority of New Jerseyans believe that “imposing the death penalty on convicted murderers costs less than keeping them in prison for life.” When posed this question in the 2002 survey, 71% of state residents agreed with the statement that the death penalty costs less compared to only 21% who disagreed.

The 2005 New Jersey survey asked participants to consider that studies on other states had found that the total costs of prosecuting and punishing a capital case are more expensive than life without parole. In this context, two-thirds of New Jerseyans (66%) said that they would prefer that “the state spend that money on services for victims of crime or on other measures to fight crime such as extra police.” Only one-in-four (24%) felt the money should “continue to be spent on prosecuting death penalty cases.”

- Public does not follow issue closely -

While almost every New Jerseyan – about 19 out of 20 in recent polls – thinks that “innocent people are sometimes convicted of murder,” few put this into the context of actual cases. Since capital punishment was reinstated in the mid-1970s, over one hundred people have been freed from death rows across the country after their convictions were overturned. In fact, the 2002 poll conducted for NJADP was taken about one month after the release of the 100th such case. Even though the news story received national coverage, only 10% of the New Jersey public said they heard a great deal about it, compared with 60% who did not follow the story much or at all.

The 2005 survey specifically asked about the impact of learning that more than 100 death row inmates had their murder convictions overturned. When death penalty
supporters were made aware of this information, one-third (36%) said they became more likely to oppose the death penalty because of this fact.

V. Conclusions

New Jersey public opinion on the death penalty is decidedly ambivalent. This is an issue which few residents follow closely as it impacts very few directly. Public opinion measures on the death penalty indicate that initial levels of support are based on an emotive response that the punishment must fit the crime. However, when presented with alternatives to the death penalty that can also “fit” the crime of murder, public sentiment shifts. In New Jersey, this shift in preference was most significant from 1999 to 2002.

In terms of preference, New Jerseyans favor life without parole over death as the penalty for murder by a 13 point margin. This represents a swing of 20 points since 1999, when the public preferred capital punishment over life without parole by a 7 point margin. Moreover, statewide support for capital punishment has consistently been a few points lower than the national average.

Underpinning this increased preference for life without parole is the fact that the New Jersey public has become more concerned that the death penalty is likely to be applied unfairly to certain groups, namely the poor and African-Americans.

Issues that may dampen public support of alternatives to capital punishment include public uncertainty over whether “life in prison without parole” is indeed a guaranteed sentence of life imprisonment.
Other survey findings which underscore the death penalty's low public salience include the fact that small pieces of information can have a significant impact on opinion levels. For example, information that more than 100 death row inmates have had their convictions overturned or that prosecuting a death penalty case could cost the state more than imposing a life sentence can cause noticeable shifts in public support for the death penalty.

In sum, public opinion research indicates that New Jersey residents are open to death penalty alternatives as long as such sentences adequately and fairly punish the crime of murder. According to the survey data, life without absolutely no chance of parole can fit this definition. Furthermore, statewide preference for the alternative of life in prison without parole has increased significantly in a short period of time.
APPENDIX:

SURVEY QUESTION WORDING AND METHODOLOGY

**Question Wording**

<table>
<thead>
<tr>
<th>National:</th>
<th>Death Penalty Support in Principle</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABC News (all years)</td>
<td>Do you favor or oppose the death penalty for persons convicted of murder?</td>
</tr>
<tr>
<td>Gallup (all years)</td>
<td>Are you in favor of the death penalty for a person convicted of murder?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>New Jersey:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>NJADP/Rutgers (2002, 2005);</td>
<td>Do you favor or oppose the death penalty for persons convicted of murder?</td>
</tr>
<tr>
<td>Star-Ledger/Eagleton-Rutgers Poll (1999);</td>
<td></td>
</tr>
<tr>
<td>Quinnipiac (2000, 2003)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>National:</th>
<th>Death Penalty or Life Without Parole Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABC News (all years)</td>
<td>Which punishment do you prefer for people convicted of murder: the death penalty or life in prison with no chance of parole?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>New Jersey:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>NJADP/Rutgers (2002, 2005)</td>
<td>What do you think should be the penalty for murder – the death penalty or life in prison with absolutely no chance of parole?</td>
</tr>
<tr>
<td>Star-Ledger/Eagleton-Rutgers Poll (1999);</td>
<td></td>
</tr>
<tr>
<td>Quinnipiac (2000)</td>
<td>What do you think should be the penalty for murder – the death penalty or life imprisonment with absolutely no possibility of parole?</td>
</tr>
</tbody>
</table>
## Survey Methods

### National:

<table>
<thead>
<tr>
<th>Poll</th>
<th>Method Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABC News</td>
<td>RDD (^1) telephone sample of U.S. adults. Most recent poll’s sample size=1,000. MoE=±3% (^2)</td>
</tr>
<tr>
<td>Gallup</td>
<td>RDD telephone sample of U.S. adults. Most recent poll’s sample size=510. MoE=±5%</td>
</tr>
</tbody>
</table>

### New Jersey:

<table>
<thead>
<tr>
<th>Poll</th>
<th>Method Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>NJADP/Rutgers (2002, 2005); Star-Ledger/Eagleton-Rutgers Poll (1999);</td>
<td>RDD telephone sample of NJ adults. Sample sizes: 2005=801, 2002=803, 1999=802. MoE=±3.5% for all years. These three polls also used the same field house of interviewing staff to conduct interviews.</td>
</tr>
</tbody>
</table>

### Notes:

1. RDD = “random digit dialing” – a sampling method used by most pollsters as it gives every household with a telephone land line – including new and unlisted numbers – a known chance of being selected in the sample.

2. MOE = “margin of error” for the sample. All surveys are subject to sampling error, which is the expected probable difference between interviewing everyone in a population versus a scientific sampling drawn from that population. For results based on the total sample, one can say with 95% confidence that the error attributable to sampling has a maximum margin of plus or minus X percentage points. Sampling error increases as the sample size decreases, so statements based on various population subgroups, such as separate figures reported by gender or party identification, are subject to more error than are statements based on the total sample. In addition to sampling error, one should bear in mind that question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of opinion polls.

3. The Quinnipiac poll only interviews registered voters, whereas the Rutgers polls interviewed all adult residents on this broader public policy issue. Further analysis of the Rutgers polls indicate that there is little variation in opinion between the full population of all adults and the sub-group of those who are registered to vote. For example, the 2005 poll found support for the death penalty at 63% among registered voters, only 2 points different from the general public finding. The 2002 poll found just a one point difference. These slight differences do not impact the analysis of general trend in opinion over the past years presented in this report.
ABOUT THE AUTHOR

Patrick Murray, MA, is the founding director of the Monmouth University Polling Institute, initiating the Monmouth University/Gannett New Jersey Poll during the 2005 New Jersey gubernatorial race. Following the election, he was named a “Winner” by New Jersey Politifax for being the most accurate pollster in that contest.

Previous positions include associate director of the Star-Ledger/Eagleton-Rutgers Poll and co-director of the Bloustein Center for Survey Research at Rutgers University. During his time at Rutgers, Murray conducted two statewide polls on the death penalty for New Jerseyans for Alternatives to the Death Penalty (in 2002 and 2005).

Mr. Murray has over 13 years experience directing custom-designed research projects. These include numerous needs assessments for state agencies and regional organizations, and community evaluations for local municipalities.

He has directed consumer assessments of public services, business studies, and regional service evaluations. Other studies include image research for transit providers, academic institutions and non-profit organizations, along with magazine reader surveys and public television viewer segmentation studies. Mr. Murray’s research expertise includes designing and implementing large and small-scale survey projects; telephone, internet, mail, and in-person survey design; quantitative data analysis; and qualitative research techniques such as focus group facilitation and cognitive interviewing.

Mr. Murray has presented research to the American Association for Public Opinion Research and the American Political Science Association. He also teaches public policy research methods, has worked as a national election analyst for NBC News, and has appeared as a commentator on various local and national media outlets.
I am the mother of a murder victim and I serve on the board of directors of Murder Victims' Families for Human Rights (MVFHR), a national non-profit organization of people who have lost a family member to murder or state execution and who oppose the death penalty in all cases. There are MVFHR members in every state.

Discussions of the death penalty typically focus on the offender, the person convicted of murder. My focus, and the focus of those whom I am representing through this testimony, is on the victims of murder and their surviving families.

My daughter Shannon was 23 when she was murdered in 1998 by a serial rapist in Philadelphia. Here in New Jersey, and especially in Southern New Jersey, many of you likely saw the frequent press coverage of the crime. Shannon had grown up in Maryland, graduated from Duke University, and was finishing her first year of graduate school at the Wharton School of Business. Shannon was home by herself, up late studying for her final exams, when the assailant pried open a balcony door on her second floor apartment and attacked her as she was preparing to take a bath. We would ultimately learn that in the same neighborhood, this assailant had broken into at least four other apartments and sexually assaulted single white female residents in the 11 months prior to Shannon's death. Although the Philadelphia police now claim they had linked the prior four cases, they had not warned the community of the danger that lurked there for young women like our daughter. It was not until some nine months after Shannon was dead that the police would notify the community that she was killed by a serial attacker who might still be prowling in their neighborhood. He would attack again in August 1999 in Philadelphia. Although it took the Philadelphia Police more than 17 months to successfully process the DNA evidence in these various cases, all six were ultimately linked.
From late August 1999 until late September 2001, we would hear nothing more of this stalker, rapist, and murderer. Then it was announced that a DNA link had been made between Shannon’s case and a series of sexual assaults that had taken place in Fort Collins, Colorado during the spring and summer of 2001. The assailant struck again in early April 2002 in Fort Collins. Following their own leads, those provided to them by the Philadelphia police and even outside entities including an intelligence unit at the U.S. State Department, Fort Collins police arrested Troy Graves on April 23, 2002. Ultimately he pled guilty to assaulting, raping, and killing Shannon. He also pled guilty to 13 other sexual assaults in the two state crime sprees.

Losing a beloved family member to murder is a tragedy of unimaginable proportions. The effects on the family and even on the wider community extend well beyond the initial shock and trauma. The common assumption in this country is that families who have suffered this kind of loss will support the death penalty. Prosecutors will sometimes say to a grieving family, “We will seek the death penalty in order to seek justice for your family.” This equating of justice and the death penalty relies on a second assumption - that victims’ families believe that only the death penalty can provide justice. These assumptions are so widespread and so unquestioned that survivors who oppose the death penalty are sometimes questioned about their beliefs in a way that suggests they do not want justice for their loved one.

I am here today to tell you that these assumptions are false. Many family members oppose the death penalty – and for a variety of reasons.

As victim’s family members who oppose the death penalty, my husband and I represent a growing and for the most part under-served segment of the crime victim population. Along with the other members of MVFHR, a group founded by and for victims, we have come to believe that the death penalty is harmful to victims’ families and interferes with the already difficult healing process. For me and for fellow members of MVFHR, that harm is exacerbated by our belief that responding to one killing with another killing does not honor our loved ones and does not help create the kind of society we want to live in, where human life and human rights are valued. We also recognize that an execution creates another grieving family, and causing pain to another family does not lessen our own pain.

No one should infer from our opposition to the death penalty that we do not want these murderers caught, prosecuted, and put away for the remainder of
their lives. My husband and I believe Shannon's killer is where he belongs today, as he serves his prison sentence, and we rest assured that he will never again perpetrate his sort of crime on any other young women.

The notion that only the death penalty is justice for murder victims' families is also false - and harmful. The supposed justice of the death penalty is only available to a small percentage of victims' families. What about the families of victims of the many heinous cases in which the death penalty is not sought or imposed? What about the families of victims in the many cases in which it is imposed but then reversed on appeal? What about the families of victims that morally oppose the death penalty but are forced to endure capital trials regardless of their beliefs? What about the families who are divided by their views on capital punishment? In other words, if the widespread assumption is that the death penalty is justice for the families of murder victims, why do we keep failing to achieve justice for the families? Why do we keep hurting and dividing families while also ignoring their needs?

Assumptions about victims and justice feed notions about things such as closure. Providing closure to victims' family members is so frequently invoked in discussions of victims and the death penalty that victims' family members jokingly refer to it as "the c word." But I can tell you with all seriousness that there is no such thing as closure when a violent crime rips away the life of your child.

Indeed, linking closure for victims' families with the execution of the offender is problematic for two additional reasons: first, the death penalty is currently applied to only about one percent of convicted murderers in this country. If imposition of that penalty is really necessary for victims' families, then what of the 99% who are not offered it? Second, and even more critical from a policy perspective, a vague focus on executions as the potential source of closure for families too often shifts the focus away from other steps that could be taken to help victims' families in the aftermath of murder. The danger for this is especially present when capital appeals go on for decades, and with each court decision, the murderer's name is splashed across the headlines. Where are the victims in this process? How are they served?

I understand that there are several people on this Commission who also lost a loved one to murder, and, although we may not see eye-to-eye on the issue, I am confident that we would all agree that more must be done to help surviving family members. That's a worthy goal – and something this Commission
should address as part of its deliberations on whether there are suitable alternatives to the death penalty.

My husband and I believe we as a society must move beyond vague sentiments about being tough on crime and seeking justice for victims and look closely at what actions would truly prevent violence and help victims heal in the aftermath of violence. We need to create a new paradigm about crime that establishes as a goal an aspiration for healing, for both individuals and society. That focus should be on the needs of victims, instead of on the desire of some for blind retribution without regard to the death penalty’s many harmful consequences. By focusing on the needs of victims, we truly honor the meaning of justice.

I would like to conclude by saying, especially to those of you who support the death penalty or are ambivalent about it, that you have an important opportunity to help create a more helpful, healthier paradigm for victims and all of society. You may continue to believe that murderers should be executed, and there is likely little I can say to change your mind. But I do ask to you to consider that the existing paradigm, with its focus on the murderer, hurts victims.

If your goal is, as I believe it should be, to do what is best for victims, you should recommend an end to the death penalty in New Jersey. Thank you.
Testimony of Juan Roberto Meléndez-Colón
Trenton, New Jersey, September 13, 2006

Introduction

My name is Juan Roberto Meléndez-Colón. I was born in Brooklyn, New York and raised on the island of Puerto Rico. I immigrated to the United States as a young man to try to make a better life for myself—in search of the American dream. Unfortunately, instead I lived the American nightmare.

In 1984, I was convicted and sentenced to death for a crime I did not commit. Almost eighteen years later, I was exonerated and released from death row on January 3, 2002. I am the ninety-ninth death row inmate in the United States to be exonerated and released since 1973. Right now, one hundred and twenty-three of us have been exonerated and released because of innocence. I know that New Jersey has made mistakes in murder cases even though you haven’t yet sent an innocent person to death row. There are lessons to be learned from those mistakes. Please keep in mind as you hear my testimony that my story is not at all unusual.

I Was Not Saved by the System but in Spite of the System

As in so many of the other cases of innocence, I am a very lucky man to be alive today and able to speak with you. God only knows how many others were not so lucky and have already been executed!

There was no DNA evidence in my case. DNA is not available in most murder cases and it wasn’t available in mine.

I can say with certainty that I was not saved by the system. I was saved in spite of the system. My case was upheld three times on appeal by the Supreme Court of Florida. If it hadn’t been for two very, very fortunate circumstances, I would not be alive today. First, after many years of appeals, my case was moved to another county and fell into the hands of a courageous female judge—the honorable Barbara Fleischer. I can sincerely say that I owe my life to her. Second, was the very fortunate discovery of the taped confession of the real killer—sixteen years after I had been sentenced to death. Eventually, it was discovered that the real killer confessed to about
twenty people. Had it not been for what some call pure luck or what I like to think of as miracles, the state of Florida would have killed me.

Death Row

Let me tell you a little about death row. Death row is hell! I lived in a six by nine foot cell, infested with rats and roaches and whenever I was moved out of the cell, I was always in shackles, chains and handcuffs. I suffered terribly but my family, and especially my dear mother also suffered a lot. She probably suffered more than I did. I remember receiving a letter from her while I was on death row that said: "Son, I just built an altar. I put a statue of the Virgin of the Guadalupe in there and I cut roses. I pray five rosaries everyday, seeking for a miracle. I know you didn’t do this. I know I didn’t raise no killers. Have faith, put your trust in God and that miracle will happen. One day, you will be free.” Her belief in my innocence and her faith in God gave me strength—it gave me hope and it gave me the will to live. But at times it was hard. At times I wanted to commit suicide. I wanted out of there. It was hell and I wanted out of there. A lot of my friends did commit suicide. Every time I wanted to commit suicide, our creator would send me an awesome dream—a dream of happier times—a dream of my childhood—a dream of hope: Hope that one day I would be free.

Other Death Row Inmates

One of the hardest things for me when I was on death row was when they would take another inmate to execute him—someone who lived in the cell next to me and who I had shared my deepest thoughts with for many years; someone I trusted; someone who was like family to me. And one day, they just took him away and I couldn’t do anything to save him. I knew the state of Florida was going to kill him and I couldn’t do anything about it. I knew the exact moment when he was being killed because I could hear the buzzing of the electricity and the lights would cut on and off— I knew that the state of Florida was burning the life out of my dear friend—a man who I had grown to love. And some of them were innocent: Jesse Tafero, Leo Jones, Benny Demps and probably also Pedro Medina, whose Mami lives here in New Jersey. Their families must have suffered terribly. I can’t even bear to think about what would have happened to my mother if I had been executed.
I am grateful for having had the friendship of so many death row inmates. Many of them taught me to read and write and speak English. Without this I would not have survived in there. The “worst of the worst,” the most undesirable and despised people in the nation, the ones that some call “monsters,” they taught me how to read, how to write and how to speak English. It’s rusty but it helped me survive in there. It helped me learn the law, study my case, communicate better with my lawyers and today it helps me share my story with you.

Conclusion

To conclude, I urge you to recommend to the State Legislature of New Jersey that it abolish the death penalty. It causes far too much suffering and as long as New Jersey has the death penalty, there will always be a risk of executing an innocent person. It is a human law and it is made and carried out by humans and humans make mistakes. As long as the law exists, sooner or later a mistake will be made and an innocent person will be executed in New Jersey. It’s only a matter of time.

But you know, governments shouldn’t be in the business of killing the guilty anyway. We don’t need to kill the guilty either and when we do it hurts so many others.

New Jersey has every right to protect its communities but it can do this without the death penalty by putting the worst killers in prison for the rest of their natural lives. Also this way, New Jersey will never execute an innocent person and no more families will have to suffer the pain of having a loved one on death row and the devastation of having a loved one executed. New Jersey has a chance to lead this country by becoming the first state in the nation to abolish the death penalty in the modern death penalty era and use the money saved to provide better services for families of murder victims and to fund programs which will effectively reduce violent crime, protect our children and our communities and save innocent lives.

Thank you for this opportunity to speak with you today.

Peace and Love to you all.
Juan Roberto Meléndez-Colón,
4205 Rancho Grande Pl, NW
Albuquerque, NM 87120

54x
New Jersey Death Penalty Commission

Testimony of Daniel J. Carluccio Esq., September 13th, 2006

I am a 65-year-old lawyer. I’ve been a lawyer for 41 years, most of which was spent as a trial attorney. In fact I’ve actually tried cases against two members of the Commission. I lost both, but that was a long time ago.

I have spent a good deal of my professional career practicing criminal law, first representing people accused of crime; later, prosecuting them and now again on the defense side. I had the good fortune to be designated as the Deputy Public Defender for the Ocean/ Burlington vicinage by Stanley Van Ness and was honored to have been associated with such a distinguished citizen of New Jersey. I defended approximately 15 murder cases as trial counsel, and supervised countless others. I won acquittals on many and came to understand, first hand, how our system of justice works in the 8 years I served.

I had the honor to be appointed and confirmed to serve as Ocean County Prosecutor for a 5-year term in the 90’s. I personally prosecuted several murder cases and tried two as Prosecutor. I also supervised many others and made decisions on prosecutorial strategy, plea negotiations and investigations.

I have never tried a death penalty case, as Defender or as Prosecutor. I remember being nervous about being asked about the death penalty at the Senate Judiciary Committee and the State Bar hearings on my appointment as Prosecutor. I decided I would respond, if asked, ‘as a lawyer I am trained to follow the law’, but I was never asked. I did, however follow the law and conducted ‘death penalty eligible’ reviews on numerous occasions. But during my tenure as Prosecutor, the two most clearly ‘death eligible crimes’ were committed by 17 year old defendants to whom the statute did not apply. That is until a case that I will tell you about, not as a “war story” but as an informing example that hopefully will be of value to this Commission as it goes about it’s very important work.

You see, I oppose the Death Penalty. I oppose it not on moral grounds, because “morality” is really another form of religious expression and I believe that our government should stay as far away from acting on religious principles as it possibly can. Most religions tolerate killing in one form or another, so I am not persuaded by religious beliefs on the issue of whether our government, in the name of all of its citizens, should take a life for any reason short of self-defense. Our nation was founded on the principles of the Enlightenment, the Age of Reason, and our founders knew what they were doing when they separated Church and State. Just look around the world and you will see where the linkage of Church and State leads.

But where does “Reason” lead us? Certainly our founding fathers accepted the death penalty, but does that mean that we should be blindly led by the past? I think not. I think that a reasoned approach would consider that the entirety of human history is a slow and steady march
out of the slime, toward the stars. Twenty five hundred years ago, the Greek dramatists recognized that ‘murder begets murder’ and presented the consequences of that endless circle of violence as a limitation on what man could become. As we learn, as we evolve, as our society is enriched by ideas, people and cultures from around the world, should we not grow and develop in our ability to reason about something as significant as government-sanctioned killing?

The fact is that we know that the Death Penalty is mostly an emotional response to heinous acts. It serves no purpose other than to brutalize ourselves, because if killing is wrong, killing of a police officer, killing of a child, killing of anyone, under any circumstance short of self-defense, it is wrong for the State to do it as well. But let’s look at what the Death Penalty does accomplish. Wouldn’t that be a reasonable thing to do when we are studying whether or not to have a death penalty?

We know it generates a lot of public interest. Newspapers and the media outlets have a lot to write and talk about when a death penalty case is in trial. We know that, human nature and political interests being what they are, Prosecutors and police officials respond to the notoriety, as do Defense lawyers and Defendants. But I can tell you that Prosecutors also know that they have limited resources. Taking on a death penalty case insures that some of your best and brightest will be tied up for a long, long time. You see, death is different. A murder case, even without the death penalty, is a very consuming undertaking for the entire system. What is the value in multiplying the costs in time, money and resources in a murder case with a death penalty when a perfectly reasonable alternative is Life without Parole? My answer is “None”.

A Death Penalty case makes the murderer into a celebrity. That offends me. It should offend our society as well. I believe that any deterrent effect resulting from a death penalty is neutralized or even overcome by that “dark side celebrity”. We know the names and the history of despicable people whom society should work to forget. Victims are continually brutalized by this notoriety and our culture is contaminated. The old Kingston Trio folk song, “Tom Dooley” is about a murderer facing the death penalty, but his victim is not even named in the song. Which gets me back to my case.

During my tenure as Prosecutor we discovered, apprehended and convicted a serial killer. One that none of you ever heard of. He had killed and sexually assaulted an elderly woman at the shore. A year or so later with the case becoming “cold”, a retired couple were found murdered in their home in an upscale community near Newark. The report in the Ledger caught the attention of a Police Chief in Seaside Park, who noticed some similarity to our case. He called me and I asked my detectives to do a follow up. Working with Essex Prosecutor’s detectives, they proceeded to solve both murders as well as an earlier murder the subject had committed. The defendant was in his early 50’s. Life without Parole was not a sentencing option, but we made it one by using consecutive 30 year to life sentences, which would assure that he would never leave prison. Working with the Essex Prosecutor and the Courts in Essex and Ocean Counties, we negotiated a plea that put this person away for the rest of his life, without any possibility of ever being released. The victim’s families and loved ones were spared the pain and torture of reading about these horrible crimes for months, indeed years to come. And best of all, no one even today knows his name. His guilty pleas and sentencing were reported for one day. Then he was put where he belonged - locked away, where he could not
further contaminate our society. Isn’t that a better outcome. Let’s not create folk heroes or folk villains. It is far better that we do not know his name.

Reason informs us that our true interests are served by eliminating the Death Penalty in favor of Life without Parole. We won’t squander valuable resources in manpower and time. We won’t continue to brutalize the families and loved ones of victims. We won’t debase and degrade ourselves by resorting to the same conduct that we condemn for those who kill. We won’t risk the horrific consequences of mistakes when convictions are found to have been in error. We will remain on a path toward the stars, by resorting to the reasoned progress that is truly the hallmark of our country and our civilization. The rule of law is a rule of reason and as we write our rules, reason should be our predominant tool. There is no reason for the Death Penalty and we should not have one.

We should enable Prosecutors and Courts to apply their limited resources to further the rule of law to pursue effective, meaningful investigations, prosecutions and adjudications and not squander their efforts on putting to death a person who deserves to be put away for life.

Daniel J. Carluccio Esq.
9 Robbins Street
Toms River, N.J. 08753
732-793-7801
To the New Jersey Death Penalty Study Commission:

I have participated in this state's death penalty process. As a Bergen County assistant prosecutor, I represented the State at the trial of John Martini, accused of kidnapping and murdering Irving Flax. This was my first death penalty case, and my introduction into the way in which "death is different". I soon came to realize that every phase of this capital trial would indeed undergo intense scrutiny on appeal, and that securing a death verdict was not the culmination of my work, but only the beginning.

Since a jury announced in 1990 that John Martini deserved to die, his case has been the subject of seemingly endless appeals, which did not end when the New Jersey Supreme Court finally affirmed his death sentence years after the trial.

John Martini announced at that time that he wanted to die, and thus begun a new round of court proceedings. Although Martini voiced his desire to forego his right to federal appeal, the New Jersey court system insisted that further state hearings were necessary in order to insure that all of Martini's rights were protected. These hearings lasted several years, and finally resulted in the New Jersey Supreme Court reaffirming the propriety of his death sentence and his right to have that sentence carried out.

Once the last obstacle to his execution in this state had been removed, Martini then proclaimed that he had had a change of heart, and no longer wished to be executed. Thus, the federal appeals that should have begun years before were finally initiated, lasting several more years. In October, 2003, the United States Court of Appeals for the Third Circuit denied Martini's appeal from the Federal District Court, which had found no reason to reverse Martini's death sentence. Although the Third Circuit opinion makes the point almost immediately that Martini's guilt is not an issue, the Public Defender continued to seek review in both the state and federal system.

On December 3, 2004, the United States Supreme Court denied Martini's last federal appeal. However, the Public Defender was even then filing Martini's third post conviction relief petition in state court, a petition which is years out of time, and advanced arguments already
made. The New Jersey Supreme Court rejected this final appeal in 2006.

I have read of the criticisms of the death penalty process in states like Texas or Illinois, and I am certainly not in a position to defend what may have occurred in those states. But I have worked with prosecutors statewide and nationwide over the last decade to assure that every capital defendant in this state receives a trial that will withstand appellate scrutiny, and I can testify to the effort that is mandated for a capital defense. Every prosecutor who tries a capital case in this state, of necessity, becomes an expert on the rights of the defendant, which are enhanced in every respect when a defendant faces the death penalty here. I will illustrate with the Martini case.

After John Martini kidnapped Irving Flax in Fair Lawn, he held him for ransom. In a telephone call that was recorded by the FBI, Martini told Marilyn Flax, Irving's wife, that he needed the money because he was on the run for murder. After receiving the ransom from Flax's wife, he eluded capture by the FBI and subsequently murdered Mr. Flax by putting three bullets in the back of his head. He stated years later in open court that he indeed killed Mr. Flax because "he could identify him".

At his trial, I was the only attorney representing the State. John Martini, on the other hand, had been provided with two court-appointed attorneys, as well as an investigator who had taken the bar (and passed it during the trial). This legal team was present in court for every day of the trial. The defense also had the benefit of an experienced jury selection expert for the six weeks that it took to pick the jury, from funds in the public defender capital case budget. There is no corresponding budget for capital prosecution, and no expert sat with me during jury selection. The public defender budget also paid for investigative trips to Arizona for the defense team, as well as flying witnesses in from out of state. I had never tried a capital case, but the lead defense attorney had already successfully defended one.

Because our criminal justice system has such strict evidentiary rules in capital cases, the jury that decided his fate in 1990 never knew about the murders he committed in Arizona that precipitated his flight
to New Jersey, or any of his prior convictions. Every piece of evidence was painstakingly purged of any reference to the other murders. Every witness had to be carefully coached to avoid mention of the reason Martini fled Arizona.

Did these circumstances make it difficult to try the case? Of course, but these are the rules that are accepted by prosecutors when we take on a capital case. Defendants all over the state are afforded expanded legal and investigative assistance, and it does not end with the death verdict.

When John Martini first expressed his wish to die, the court determined that there was a conflict between Martini and his public defenders. Alan Zegas, a leading criminal defense attorney, was appointed at public expense to defend Martini's right to die. Years later, when Martini changed his mind and there was no longer a conflict with the public defenders' office, Alan Zegas continued in the case. Martini is now represented by two public defenders and two private attorneys to pursue his present appeals.

While this appeal process has gone on, Martini pled guilty to the two murders in Arizona, and was convicted of another murder he committed in Philadelphia. In a hearing conducted when he expressed his desire to die, he took the stand and calmly and coldly explained that he did indeed kill Irving Flax, and that he had to kill him because Mr. Flax could identify him. That was one of the aggravating factors the jury had found, years before Martini admitted the motive in open court. Martini himself has removed any fear in his case of "executing the innocent".

There is no system that more laboriously protects the rights of those who are accused of capital crime. The New Jersey process is carefully designed to leave no stone unturned in a capital defense. If the organization that calls itself New Jerseyans for an Alternative to the Death Penalty actually looked at the process and how it works in New Jersey, NJADP would have to admit the truth. Instead, they rely on tales from other states, where the kinds of safeguards we have here in New Jersey do not exist. If they had consulted anyone who worked in the New Jersey system (on either side), they would have learned
these facts. Their pleas for a "comprehensive review of the system" has been answered by the independent work product of the Special Masters. All concerns usually raised by death penalty opponents have been addressed, both in individual cases and in the annual comprehensive review.

The "moratorium" that has existed since 1982 is proof of the deliberate speed with which a careful system works.

Sincerely, Marilyn G. Zdobinski, Esq. (retired prosecutor)
Totowa, New Jersey
(973-333-9104)
New Jersey and the Cost of the Death Penalty

Testimony before the New Jersey Death Penalty Study Commission

Jonathan E. Gradess
Executive Director
New York State Defenders Association

Trenton, NJ
September 13, 2006
Introduction

My name is Jonathan Gradess, and I am executive director of the New York State Defenders Association. I’m here at the request of the New Jersey Association on Correction (NJAC). In 1981, our Association, which had been founded as a not-for-profit corporation in 1967, was funded by the State of New York to function as a backup center and clearinghouse to improve the quality of public defense representation. We have a contractual obligation to review, assess and analyze the public defense system of New York State and to make recommendations for improvement to the Governor, the Judiciary, the Legislature and others. In 1981, we commenced a nationwide study to examine what New York would need in the event it chose to reinstate the death penalty. We quickly discovered that cost was a major issue to consider and provided a report in 1982 to New York’s Division of Budget, Assembly Ways and Means Committee, and Senate Finance Committee.

I was the lead author of Capital Losses: The Price of the Death Penalty for New York State, one of the first studies of cost and the death penalty published in this country. More than 5,000 copies of Capital Losses have been distributed to budget analysts, legislators, government officials, bar associations, the media, state associations of counties, prosecutors, judges, defense lawyers and scholars. It has been widely cited and broadly used as a model for analyzing the costs of capital litigation.

I have continued to collect data and study the question of the cost of capital litigation. I have appeared as an expert witness before the United States Senate Committee on the Judiciary, the Missouri Legislature, and the Kansas Legislative Research Service. I have been a consultant to the United States General Accounting Office in its required study of the cost of the implementation of the federal death penalty. I was also consulted by the American Bar Association’s Ad Hoc Committee to Assess the Cost Impact of the Death Penalty on the Justice System. Our staff, under my supervision, assisted the American Bar Association in its efforts to assess the cost of post-conviction representation. I have been an expert witness on the cost of the death penalty in two capital cases, and have published several articles on cost in the popular press.
What is this debate really about?

The issue of cost and the death penalty is a controversial one. On the one hand, among the general public, there is a widespread misconception that the death penalty costs less than life without parole – a myth that has been debunked by cost studies across the nation.

On the other hand, among lawmakers and public officials, the truth about cost is slightly more apparent. And I know that among some of you on this commission, the response to this fact is, “There is no price on justice. This is not a dollars-and-cents kind of issue.”

And you are right. There is no price on justice. But the question of the cost of the death penalty is not about counting dollars. It’s about counting lives. And the diversion of resources to fund a capital punishment system is also about counting lives.

- The $11 million New Jersey spent to execute no one last year could have put 160 new police officers on the streets protecting your communities.

- It could have instituted new gang prevention programs like the one in Rochester, NY, reported to have cut that city’s murder rate by a third in just one year, or further expanded your own Operation CeaseFire, also reported to have had dramatic effects.

- The $11 million New Jersey invested in just one year of the death penalty could have provided grief counseling to more than 850 victims of violent and traumatic crimes. Given that many criminal defendants were once victims themselves, helping victims heal also helps reduce crime.

The authors of New Jersey’s recent cost study conclude that in the two decades that capital punishment has diverted money and resources from local and State treasuries, New Jersey has spent over $250 million above the cost had the 1982 statute provided for life without parole instead of death. ¹

I’ll talk more about where those numbers come from later. But first I want to ask: What did that quarter of a billion dollars buy you? Nine people remain on your death row. Each of their death sentences cost your state $28 million to achieve.

Your quarter billion dollars has bought no executions through a system that has monopolized your courts and delayed justice for victims’ families. And this death penalty system has diverted millions of crime fighting dollars that could save lives and protect the public.

The diversion of resources

As you deliberate whether New Jersey should maintain its death penalty, it is imperative that you not think about costs in the abstract. Recognize there are not two spigots from which money flows forth. You cannot have a death penalty with all its attendant costs and all the other things citizens need. New Jersey, like all states, must choose.

In the weeks ahead, as New Jersey grapples with its property tax crisis, as police and firefighters and teachers demand that their pensions not be cut, as New Jersey counties seek money to improve crime lab facilities, ask yourself whether New Jersey is truly committed to the high cost of capital punishment.

When crime ridden neighborhoods demand better lighting on their streets, or police units plead for more soft body armor or bullet proofed cars to protect their lives, or families of murder victims fight for desperately needed services, remember New Jersey’s commitment to the death penalty.

Against a backdrop of cuts threatening to cause New Jerseyans enormous pain, the death penalty will continue to diminish the lives of your citizens and make your state less safe. Death penalty proponents like to condemn the cost argument as the ravings of Chicken Little. But I am here to tell you that the sky is falling in New Jersey and it has nothing to do with those of us who are describing the process. The sky is falling because of a shortsightedness that barters away policing tools to pay for hours of appellate review, that trades the needs of crime victims to purchase New Jersey judicial time to hear death penalty cases, that yields to an image of
execution in exchange for the *reality* of highways, homes and health care. There is only one money spigot, and New Jersey will have to decide whether it will turn it on to *actually* protect its millions of citizens or, maybe, to one day execute one or two of them.

**Conclusions about cost generally**

As a result of my work in New York and elsewhere, I conclude that:

- There is a widespread misconception among the general public that life in prison is more expensive than the death penalty.

- Capital cases cost more than non-capital cases.

- Criminal justice systems with death penalties face higher design and maintenance costs than criminal justice systems without capital punishment.

- The main aspect of capital litigation driving up cost occurs *up front*, during trial and penalty phases of capital proceedings.

- The exponential consequences of the cost of the death penalty will create continuing resource drains from other critical functional areas of the criminal justice system.

These generalizations are backed up by a quarter century of state studies ranging from California to Alaska, from Kansas to Georgia, from Florida to Indiana. New Jersey is not alone, and New Jersey’s findings on cost are in line with these other studies.

**Why is the death penalty so expensive?**

Those who have studied the cost of the death penalty conclude it is inordinately expensive. Life without parole is also expensive, though considerably less so. One critical difference is that death penalty costs are accrued up-front, at the trial level, and life without parole costs are spread out over many years. The expenditure of millions of dollars all at once hits taxpayers harder than when paid over 40 or 50 out years.

The death penalty combines the most expensive parts of both punishments: lengthy and complicated death penalty trials followed by, in most instances and certainly here in New Jersey, incarceration for life. In most cases where the death penalty is sought, it is never imposed. And even when it is imposed, it is rarely carried out. And even when it *is* carried out, 20 or more
years have already passed. So by the time you’ve had one execution, you’ve paid for the most expensive trial you can imagine, followed by the most expensive kind of incarceration you can imagine, and many times followed by the most expensive retrials you can imagine.

Death cases are more expensive at every point in the legal process. They typically involve:

- more pretrial preparation;
- a greater number of pre-trial motions;
- the utilization of more experts;
- in-depth investigation into the background of the defendant to prepare mitigation for the sentencing phase and to inform trial strategy;
- more defense attorneys appointed and prosecutors assigned;
- a longer and more complicated jury selection process;
- more frequent juror sequestration;
- both a guilt phase and a penalty phase trial;
- trials which are 3 to 5 times longer than in typical murder cases.

And all of those additional resources are accrued before a single appeal is filed.

The public logic that imagines life without parole as the more expensive punishment is fashioned in a vacuum. It assumes that execution eliminates future correctional costs. This narrow analysis doesn’t take into account that most capital cases actually don’t result in execution, either because the jury chooses life without parole instead of death or because at some point later in the process either the guilty verdict or the death sentence is reversed. A study at Columbia University found that 68 percent of death penalty cases nationally are overturned on appeal, and a full 82 percent of those reversals end in a life sentence.2 Thus, a typical death penalty case accrues all the costs of its expensive trial, some number of appeals, and then all of the costs of a life sentence. Nationally, only about 12 percent of people who have been sentenced to death have been executed.3

---

This reversal rate can easily go up the less careful the system. So states like Texas, which execute significantly greater numbers of people, still spend millions more per case than they would if their system didn’t include a death penalty, not to mention the much greater risk of executing an innocent person. Efforts to do the death penalty “on the cheap” only end up creating a more costly system in the end.

New Jersey doesn’t want to emulate Texas for a number of reasons. New Jersey’s death penalty system, like New York’s before the statute was overturned in 2004, is more careful, though not without its flaws. Such care and thorough review means an ever larger set of expenses in every case – and that’s without many of the innocence reforms recommended by the Illinois and Massachusetts Commissions, which would add yet more expense and time to the process. This thoroughness also means few death sentences and even fewer, if any, executions. The question, then, is not whether New Jersey’s death penalty is more expensive or whether there is a price on justice, but what you actually gain for all the extra cost. Because a death penalty that is never carried out is just another name for life-without-parole at an exponentially greater cost.

**Costs in New Jersey**

Earlier in my testimony I listed figures about cost in New Jersey taken from a 2005 study by New Jersey Policy Perspective. The study found that New Jersey has spent over $250 million on its death penalty since 1982, *ever and above* the cost had the 1982 law created life without parole as a sentence for first degree murder instead of the death penalty. These costs included:

- $7.8 million per year for prosecution, or $180 million since 1982
- $2.6 million per year for defense, or $60 million since 1982
- $282,609 per year for identified court costs, or $6.5 million since 1982
- $295,652 per year for Department of Corrections costs, or $6.8 million since 1982

The total of over $253.3 million since 1982 comes to $11 million per year, and $4.2 million per death sentence. But of the 60 death sentences handed down since 1982, only nine remain intact, with no executions having taken place. Each of the death sentences that remain has
thus cost New Jersey over $28 million to secure. And more of these death sentences could be overturned in the future.

The report did not include the costs of jury selection or additional jury costs as a result of longer trials, or the actual costs of executions, and noted that there is considerable reason to believe that the actual figure is much higher.

**New Jersey is not unique**

Since 1982, a majority of states in one form or another have, either informally or formally, studied the cost the death penalty and come to recognize its high and disproportionate cost. Many states have formally examined the question of whether the death penalty is more expensive than life imprisonment, concluding that the latter is less expensive. Other states have budgeted for the high cost of the death penalty. In some states, press studies reveal the issue; elsewhere, governmental bodies issued reports. Each of the studies, though sometimes differing in their level of sophistication and in the assumptions they make, have come to the same conclusion as the New Jersey cost study. The best analyses compare a system in which the death penalty is employed to a system dealing with similar crimes in which a life sentence is used instead. It is important to note that the costs of the death penalty usually don’t appear as budget line items. Prosecutors or judges might be paid the same regardless of whether they are doing death penalty cases, but time is money. If a prosecutor or judge works longer on a death case, then those hours are not available for other work. If death penalty cases take more time, then that time difference is a net cost measured in the hours of all the participants.

**Findings in other states**

**North Carolina:** Duke University’s study of the cost of North Carolina’s death penalty remains one of the most comprehensive in the country. It found that, based on the number of executions at the time, the state was spending $2.16 million more per execution over the costs of a system where the maximum sentence was life imprisonment.4

**Florida:** For years, Florida has been plagued with its effort to implement a death penalty. In 1988, a study of the cost of the death penalty in Florida revealed that the per case cost for

---

execution was $3.1 million per case, while the cost of life imprisonment under then extant actuarial tables was slightly more than $515,000. More recently, the Palm Beach Post found that Florida spends $51 million a year additional on its death penalty, compared to what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida had carried out from 1976 to 2000, the cost for each execution is $24 million. 

**California:** Twenty years ago, Margo Garey, after a statewide survey, concluded in a well-researched and well-written law review article that, “A criminal justice system that includes the death penalty costs more than a system that chooses life imprisonment as its ultimate penalty.” A study by the Sacramento Bee concluded that the death penalty costs California an extra $90 million per year and that over 80 percent of those costs ($78 million) are spent on initial trials.

**Texas:** According to the Dallas Morning News, a single death penalty case costs an average of $2.3 million, about three times the cost of imprisoning someone in a single maximum security cell for 40 years.

**Indiana:** Fiscal notes in the state of Indiana going back to the late 1980s project state savings of millions of dollars per year by the elimination of the death penalty. More recently, the Indiana Criminal Law Study Commission projected that with a 20 percent reversal rate (which is extremely low), the future of the state’s death penalty would cost $51 million, or 38 percent more than life without parole.

**Kansas:** In 1987, the Kansas Legislative Research Department in conjunction with legislative hearings conducted by the Kansas Legislature on the cost of the death penalty concluded that the cost of the reimposition of the death penalty in Kansas would cost $11,419,932 per year above then current costs, excluding post-conviction appeals following direct review. More recently, after the reintroduction of capital punishment in Kansas, a legislative study commission found that a single death penalty case would cost $1.26 million, or

---

6 S. V. Date, “The High Price of Killing Killers,” Palm Beach Post, Jan. 4, 2000, at 1A.
10 Indiana Criminal Law Study Commission, January 10, 2002 (assuming that only a modest 20% of death sentences are overturned and resentenced to life).
11 Memorandum from Kansas Legislative Research Department Regarding Costs of Implementing the Death Penalty – House bill 2062 (February 11, 1987).
70 percent more than a comparable non-death penalty case. The study also looked at trial and appeal costs and found that death trials cost 16 times more than non-death trials ($508,000 instead of $32,000), and that appeals cost 21 times more in death cases.  

**Missouri:** In 1990, a five year moratorium bill was under legislative review and the question at issue was the scope of a study to be performed during the moratorium. I was asked to testify concerning the addition of a cost analysis to the bill after it was determined that Schuyler and Texas counties in Missouri were threatened with bankruptcy as a result of certain death penalty prosecutions. This phenomenon of course is not unique to Missouri, and there is evidence of local governments concerned about property taxes in California, Nevada and the deep South urging prosecutors to defer capital prosecutions because of their cost.

**Maryland:** In 1983, the General Assembly, Public Defender and Chief Judge of the Court of Appeals were asked by the House Appropriations Committee to provide information on the fiscal impact of processing death penalty cases in the state. They concluded that filings that resulted in sanctions of death averaged higher costs for each justice component than filings where the outcome was a non-death sentence. Today, 23 years later, I am consulting on the high cost of Maryland’s death penalty, and only ten days ago the *Baltimore Sun* reported on prosecutorial recalcitrance to capitally charge based on cost.

**Federal:** The cost of the death penalty has not escaped the attention of the federal government. As I mentioned earlier, I was called to testify before the Senate Judiciary Committee and also to assist the General Accounting Office. For the last 20 years, the federal government has been concerned about the increasing costs of the death penalty. Recently, the Judicial Conference of the U.S. looked at the question and concluded that defense costs in federal cases would quadruple the costs in death cases compared to non-death cases. The report also found that prosecution costs were 67 percent higher than defense costs, *without* counting investigation.

---

13 See, “Committee to Study the Death Penalty in Maryland, Final Report, The Cost and Hours Associated with Processing a Sample of First Degree Murder Cases for Which the Death Penalty was Sought in Maryland Between July 1979 and March 1984” (1985).
Who generally pays for these costs? One study at Dartmouth University found that the costs are primarily borne by counties and most often paid for by raising taxes. The Dartmouth study estimated that over 15 years, the death penalty would cost counties an extra $1.6 billion.¹⁵

As stated earlier, counties have faced bankruptcy because of a single case.¹⁶ Prosecutors across the country have also noted that a single death penalty case could bankrupt their office. The emphasis on county budgets means the decision to seek death in any case is directly affected by the county’s ability to afford the process. This economic disparity is one of the factors that leads to arbitrariness in the death penalty system. In New Jersey, you already know that geographical disparity can also produce a race effect.

**Conclusion**

The death penalty is flawed and filled with legal landmines that will continue to explode in New Jersey and across the nation. New Jersey’s law has already been suspended, first by the courts, and then by the legislature. The death penalty can never escape its capricious nature. It can’t be made swift, efficient, or effective. Mistakes are a permanent graft on the institution itself. Tinker as you will, you will not and cannot make it fair.

And therein lies the choice you face as you decide whether or not to keep it. The death penalty is on its way out. There is growing public fear that an irreversible mistake will happen, if it has not already. The perception of arbitrariness, bias, and unfairness are eroding public confidence in the criminal justice system as a whole. And there is widespread understanding that the death penalty does not deter. Someday, the death penalty will be laid to rest, along with flogging, burning at the stake, and corporal punishment – all once a part of our nation’s history. You will do a great service to the people of New Jersey, and our nation, if you help it quickly along its inevitable course.

---

At the core of this debate is a harsh reality. There is not a bottomless pit of funding from which to keep the public safe and serve the needs of victims’ families. It is true, there is no price on justice. But you can finance programs with a track record of improving public safety. If you have $250 million to spend on law enforcement over the next 20 years, ask yourself this: is its most expensive symbol really your best answer?
Murder victims’ daughter speaks out

By SHARON HAZARD-JOHNSON

On January 18, 2001, one person destroyed the lives of my parents and countless innocent people, including every decent person in the community of Pleasantville and beyond.

A stranger beat and stabbed my father, Richard Hazard, a 70-year-old Navy retiree who answered a knock on his door. The attacker took my father to the cellar then ambushed my mother, Shirley (Ross) Hazard, a 65-year-old postal service retiree, as she entered her home. He beat her unmercifully, threw her down the cellar stairs, kicked her (as he later described it) “like a football player” numerous times then stabbed her in the neck to make sure she would die and “not look at him anymore”. He then ransacked their home looking for money and valuables, set several fires in the home including their bodies then fled the scene in my mother’s car.

He stopped at a McDonalds to eat, then proceeded to drive farther. The car broke down so he walked into a mall to buy new clothes. His were bloody. He also bought jewelry and CDs. Then he called a cab. He took the cab to Atlantic City, rounded up some of his friends and held a party in two lavish hotel rooms for his friend who was going to jail the next day.

He was apprehended early the next morning while asleep in one of the rooms. He is no longer a stranger to us. His name is Brian Purcell Wakefield a.k.a. John Williams, a.k.a. B-Love, a.k.a Burger-time.

***

We — their children, relatives and friends — faithfully attended every court proceeding. But the legal process made it seem as if our parents never truly existed. We were only allowed to prove their existence through written victim-impact statements and a brief showing of their photograph in the courtroom.

Our statements could be read only after they were edited by Wakefield’s attorneys — he had two — and the judge, and then only after it was demonstrated that the people reading the statements could do so without any display of emotion. That was done through trial readings of the statements.

Through it all, we felt that our hands were tied behind our backs and our mouths were taped shut. We weren’t allowed to show any natural emotion because, we were told, it could prejudice the jury against the defendant or make him appear to be a bad person.
We remained on our best behavior. Our parents had raised us that way.

Because it was a capital murder case, where the death penalty could be imposed, the public could see our faces but not our real pain.

We weren't allowed to let the public know that my parents' grandchildren were experiencing nightmares, asking to be driven by the house where Grandma and Pop-Pop lived (the house that was also theirs) or ask to go to see Grandma and Pop-Pop at the cemetery.

We weren't allowed to tell the public that Heidi, my parents' collie, who was also beaten on that horrible day, is doing OK but still responds to words like "Pop-Pop" or "ride" as she did before because it meant she'd be going for a ride in his truck. We couldn't say these things because any of these things might not ensure a fair trial.

To the outside world we may appear to be functioning OK. We go to work or to school, but you can't see the battle of emotions that flood us with no warning, at any place or time. We relive January 18, 2001, over and over again, even today.

Now that we can speak, we want to and we feel that we must.

So many people have prayed and conveyed their condolences and well-wishes for our parents and us. We have drawn strength from you all. We appreciate and thank everyone.

We even thank the defense attorneys. We don't know why or how they are able to do what they do. But, for the sake of justice (even for the likes of Wakefield) it's a good thing that someone is willing and able to defend these monsters. Considering what they had to work with, they did a good job.

And, of course, we thank God for the jury and their courage and willingness to serve by listening to the facts and casting an honest vote.

We pray that they always remember that Wakefield performed the acts that got him to this place, not them, and we pray that they live their lives with lightness of heart and spirit.

***

During the past three years, we have heard, read and seen many things. No one knows how hard it has been for all of us to sit quietly for so long, feeling like punished little children in a corner though our parents were viciously killed. Hopefully, no one else will know or have to go through such an ordeal.
As you read our comments, keep these questions in mind:

What would you do or say if you were in our shoes or if someone did these things to your mother and father? Today, it is the Hazards, the Ross's and our families, but tomorrow, God forbid, it could be you and yours.

I have read that Washington, D.C., sniper John Lee Malvo's defense attorney said "every person, certainly every child, has good in him. Every person is redeemable". I believe this is true. But, I also believe that not every person chooses redemption. Not every person chooses good. Inherently, we all have a sense of right and wrong. Ultimately, we are the products of our choices.

We all have addictive capabilities and know that only we can stop wrong behavior patterns if we want to. Regardless of what anyone else says or does for or to us. We've all experienced this to different degrees. This is the gift of "free will" that we all have. Ultimately, we are the products of the choices we make.

People have asked me if I'm still angry. My answer is: You're damn right I'm angry and I will be for a long time. I will be angry about what happened to my parents for the rest of my life.

Some people have told me not to blame God. Blaming God has never entered my mind. Wakefield was the one who put himself in a position to do this, he is the one who did this, not God. God is just as appalled by Wakefield as the rest of us are.

As for forgiveness, I consider myself a forgiving person. I don't practice carrying grudges. But now I do. Against Wakefield. I will never forgive Wakefield for what he did to my parents.

This is new to me. Wakefield needs to seek forgiveness from the people he did those terrible things to, the people he beat and stabbed; the people he killed: my parents. And he needs to seek forgiveness from God. I don't pray for God to help me forgive Wakefield. I pray to God that Wakefield gets what he deserves — execution by the State. Justice. Nothing more, nothing less.

This position does not burden my heart.

***

The Bible speaks of an "eye for an eye." In ancient times, an eye for an eye was practiced. If these were ancient times, Wakefield would have been beaten, stabbed and set afire. Today, he'll be sedated to ensure that he will feel no pain, then his heart would be stopped — silently, respectfully and humanely.
In the book of Genesis it says that, "anyone shedding man's blood by man will his own blood be shed". God gave us rules, regulations and punishments that are not unlike the actions of "cause and effect" or the "laws of nature."

My parents suffered cruel and unusual punishment at the hands of an evil low-life stranger. And for what? Why did Wakefield do this? How could Wakefield, or anybody, do something like this?

Not one day has passed without me thinking of both of my parents, without me remembering them — the way they were as individuals and as a couple, as parents and grand-parents. Not one day has passed without that sickening gut-feeling that comes every time I think of how they died. No. They didn't "die." They were murdered.

I think of the terror they felt for themselves and each other, the pain of blows to the head, face and torso. The sharp pain of the knife that pierced their bodies. The terror of being bound and ambushed in their own home. The one place everybody, even a lowly creature like Wakefield, should find and be assured a level of comfort.

Not one day has passed without my looking at a picture of my parents. I look at their photograph, but I remember their faces, their smiles, their postures, their hands, feet, skin, nails, their scents, their embraces, their jokes, their illnesses, voices, their laughter, joy, even their arguments as a couple and scolding and praising of us as their kids, almost to the point where I can touch them. They are in me and I am a part of them. This is the one thing Wakefield didn't and can't touch or take away, the one thing he hasn't destroyed.

But Wakefield did a hell of a job destroying their lives, destroying our lives. Who chooses to think that someone like him exists? Someone who did the things he did to an elderly couple, to a mother, a father, a grandmother, a grandfather, an aunt, an uncle, a friend or a foe? To a human being? To a living person?

***

Day in and day out, we listened as the defense tried to blame everyone else for Wakefield's actions — everyone except him. They blamed his mother, his father, Division of Youth and Family Services, they blamed the State of New Jersey by claiming that they failed to protect him and they even blamed some bad drugs he took in Camden.

Brian Purcell Wakefield entered my parents home that day. Brian Purcell Wakefield performed the brutal acts against them.
I believe Wakefield has no remorse whatsoever. To me, this was evidenced by his behavior both after he murdered my parents and while he was in the county jail. I believe that if it weren’t for getting caught, he wouldn’t give a damn about anything he did.

While he sometimes had a controlled but observable upper lip smirk on his face, the only other hint of emotion he showed through the entire trial was when the cab driver said he took my parents’ belongings to the police. The movement of his lips revealed his thoughts.

As an African-American, I must say this: Wakefield and his kind are a complete and total embarrassment to humanity and to the entire African-American community.

Even I was embarrassed and disgusted when Wakefield’s brother was drug through the courtroom in shackles as if he were a slave, but instead he was an undignified accomplice to a murder. It’s a good thing the jury wasn’t permitted to see his entrance. These people are enemies of a civil society — all of them.

Many friends and family members were not present during the sentencing on the non-murder-related crimes against my parents. For some, it was simply too stressful. For others, it was simply enough that Wakefield got a unanimous verdict for punishment: death by lethal injection.

But those family and friends believe that a three-year wait for a trial is too long for victims to endure. That wait stifles the victims and interferes with their constitutional right to free speech. They should be free to speak publicly at any time.

As a family, our feelings range from wishing Wakefield would take the express route to hell to hoping he would do everyone a favor by volunteering for lethal injection.

Some of us won’t speak his name but refer to him as “a deadly viral germ” which, like any other germ or virus, must be killed or eradicated.

We are all still devastated.

As for me, I am mad as hell.

I am angry that my parents have perished at the hands of a 23-year-old hoodlum with a long criminal record that includes over more than 25 serious juvenile confinements.

We sat in the courtroom, day after day, listening to Wakefield’s defense, watching the wheels of justice turn around his callous heart.
We watched the process help him not to appear to be a bad person, watched the jury not appear to be prejudiced against him.

We followed the blame game that allows everybody but Wakefield to be held responsible for having committed these horrendous acts.

Well, we now know who and what Wakefield is. And the bottom line is this: Wakefield should not have been on the streets. Period.

It's unfortunate that the State and the courts have immunity from this very serious charge.

Although there is no price good enough for our parent's lives, we would have initiated a lawsuit for $2 billion — one billion for each of my parents. No, make that $32 billion — one for each of them, each of their children and each of their siblings, or their siblings living children. Then we would have added one for the community, the State and the world that would be used to rid the streets of these ignorant bastards who are wreaking such havoc.

While Wakefield is clearly the person to blame for what he did to my parents, the state of New Jersey, its legislators and its municipalities have a responsibility to keep known, dangerous and inhumane criminals like Wakefield from citizens. They didn't fail to protect Wakefield, but they failed to protect my parents.

***

Ironically, my father said to me just months before his death that he wanted the hymn, "If I Can Help Somebody Along The Way (then my living will not be in vain)" played at his funeral when he died.

That is how my parents lived their lives. It was sung at their memorial and it is etched on their headstone.

In the name of my father and mother, what I intend to do with my life is, wherever I can, try and help keep others from taking the path, or continuing to taking the path, that Wakefield chose. But, at the same time I will be working to help move Wakefield's death sentence along.

The state needs to put this killer to sleep by anesthesia, to stop his cold, callous, evil, good-for-nothing heart.

In the meantime, when he wakes up each morning, lays his head down at night, eats a meal or cleans his cell, I want him to think of us all — especially, my parents.
I said this to him in the courtroom, and I will say it again: if his childhood was so bad, he should have killed his mother and father, not mine.

I will be thinking of Brian Purcell Wakefield for the rest of my life.

E-mail this story

For complete coverage and photographs of local news, sports and features, read The Press of Atlantic City print edition. Subscribe
HAZARD, RICHARD A. and SHIRLEY (ROSS), of Pleasantville, on Thursday, January 18, 2001 at approximately 4:00 pm the lives of two beautiful people were taken away.

Richard A. Hazard was born on April 16, 1930 in Worcester, Mass. to the late Charles Sumner Hazard and Ruth (Dominis) Hazard. Shortly after he joined the Navy, in 1952, he met Shirley Ross who was born on September 2, 1936 in Philadelphia, PA to the late Helen (Collier) Ross. On December 29, 1954 the two married and from this blessed union they produced five children, all of whom they adored.

After retiring from the Navy in 1973, Richard worked at the Atlantic Electric Company (now Conectiv) and was a member of IBEW Local #2. He retired in 1990, Shirley ... worked for the Pleasantville Post Office for 29 years before retiring in 1990. She then began working at Boscov’s.

This beautiful couple is survived by sons Michael Hazard (and wife Patricia) of Pleasantville, and Gary Hazard, Sr., of Siler City, NC; daughters Sharon Hazard-Johnson (and husband Dewey) of Mays Landing, Helen M. Copeland (and husband Michael Sr.) of Egg Harbor Township, and Shirley R. Hazard of Las Vegas, Nevada; 10 grandchildren Nikki Hazard, Gary Jr., Miesha Copeland, Michael Jr., Aliyah Hazard, Lynette Edmonds (and husband Wendell) and Lynese Steward (and husband Ernest Sr.), Cheryl Gist, Melanie Stewart (and husband Gabriel Jr.), and Darryl Johnson; seven great-grandchildren (Julissa, Sydney, Mikayla and Ernest Jr., Edward, Joshua, Cherly, Dena, Genae and Dacee). Richard was one of 18 children, seven of whom are predeceased including his brothers Bill Hazard, Charlie Hazard, Joe Hazard and George I., Hazard and sisters: Marieard, Muriel Shepherd, and Lula Wiker. He is survived by his sisters: Jigga Hazard, and Michael Hazard and sisters Ruth Webber (who he visited faithfully every day) and Peris “Suzie” (and husband Mark) Stanton. Shirley is survived by brothers Samuel (and wife Dorothy) Ross, Kingston Ross, Calvin (and wife Gloria) Ross, and Richard (and wife Marion) Ross and sisters Esther Wright, Doris Hazard, Loretta Brown and Gwendolyn.

Both are remembered with a tremendous host of nephews, nieces, cousins, brothers, sisters at the Kingdom Hall of Jehovah’s Witness, friends and acquaintances. A Memorial Service will be held on January 27, 2001. 11:00 AM at the Pleasantville High School Auditorium, 701 Mill Road, Pleasantville. Donations may be made in their memory to the Richard and Shirley Hazard Grandchildren’s Education Scholarship, P.O. Box 232, Pleasantville, NJ 08232. Arrangements by Adams-Perfect Funeral Home, Northfield. A Memorial Service will be held on January 27, 2001. 11:00 AM at the Pleasantville High School Auditorium, 701 Mill Road, Pleasantville. Donations may be made in their memory to the Richard and Shirley Hazard Grandchildren’s Education Scholarship, P.O. Box 232, Pleasantville, NJ 08232. Arrangements by Adams-Perfect Funeral Home, Northfield.
Murder charges

Investigators remained at the scene at 300 Wellington Ave. in Pleasantville on Friday after two bodies were found in the basement following a fire in the home on Thursday.

Police allege that an Absecon man beat and stabbed a senior couple during his robbery of a Pleasantville home and dragged them to the basement before setting the house aflame.
Wakefield then left the Wellington Avenue home, said Blitz, who added that thousands of dollars in cash and other items were missing from the house.

Wakefield allegedly escaped in the Hazards' 1994 Lincoln Continental. The vehicle later was discovered by an off-duty Hamilton Police officer on the eastbound side of Route 322 in the township, just past Cologne Avenue.

Wakefield then took a taxi cab from the Hamilton Mall, located in Mays Landing, to the Tropicana Casino and Resort, where he booked a room. He was arrested there at 6:30 a.m. on a bench warrant for failing to appear in court on a drug charge, and an arrest warrant charging him with another home invasion robbery on Jan. 17, Blitz said.

Although authorities would not positively identify the victims as the Hazards, friends and co-workers shared memories, describing them as a loving and caring couple.

Donna Goldman, 45, worked with Shirley Hazard for 17 years at the Pleasantville Post Office before Hazard's retirement three years ago.

"When we worked at the window together, we would always say, 'Can I help you, sir? Can I help you, ma'am?'" Goldman said.

"She watched a lot of people grow up here," Goldman said. "She was the mother figure in the office. Everyone knew her. She was like a celebrity. People came in just to see her."

But somber family members weren't ready to talk about the Hazards.

Atlantic County Prosecutor Jeffrey S. Blitz, above, says the suspect in Thursday's beating and stabbing deaths of two Pleasantville residents was arrested Friday morning at the Tropicana Casino and Resort on a bench warrant.

Trisha Hazard, the Hazards' daughter-in-law who lives in Pleasantville, went to the crime scene Friday afternoon where police and fire investigators continued to investigate the fire-damaged home.

Sharon Johnson, one of the Hazard's' daughters, said the family did not feel ready to talk yet.

"At this time we thank everybody for the support," Johnson said. "We know a lot of people knew them and loved them. We know that everybody is with us and supportive and just about everybody that interacted with our parents, we thank you."

Family members would not release photos of the couple.

"When the family feels the time is appropriate, we will give more information," Johnson said.

Warren Haines, a postal worker who worked with Shirley Hazard for more than 20 years, described Shirley as "very nice. She would do anything for you."

Haines also had a connection to Richard Hazard. Hazard once worked as a naval recruiter and recruited Haines into the Navy.

Hazard, who worked at the former Atlantic City Electric Company, now Conectiv, retired a few years before Violet Chappell, who worked there until 1993.

"He was really well-liked at the electric company," Chappell said. "How can people be so cruel?"

Thursday's incident continues a growing trend of home invasions in the region.

In December, a woman named Aurelia Garcia died after she was found in her Atlantic City apartment bound, stabbed and burned.

There was a home invasion early Wednesday morning in Pleasantville and there have been several others in the city in recent months.
Brian Wakefield, shown Monday in Superior Court, also is accused in another home-invasion robbery.
EXECUTIVE SUMMARY

New Jersey's death penalty law has existed for sixteen years. Since its adoption, not a single murderer has been executed. Therefore, one year ago Governor Whitman established the Study Commission on the Implementation of the Death Penalty to examine the death penalty laws and procedures in New Jersey and to make recommendations to improve the process.

In its examination of New Jersey's death penalty, the Commission held several public meetings throughout the State and heard the testimony of numerous witnesses, including victims' family members and legal experts. A summary of witness testimony is attached to the report as Appendix A. The Commission also received written reports and testimony concerning the death penalty and toured "death row" at New Jersey State Prison in Trenton.

The Commission has concluded that the death penalty system, as currently implemented, allows some murderers who deserve capital punishment to avoid the death penalty altogether and permits inexcusable delays in the execution of those who are sentenced to death, even after taking into account the panoply of rights that should be accorded all criminal defendants and the special care that must be taken when a human life is at stake. The Commission believes that the amount of time consumed by death penalty cases is excessive and undermines the deterrent effect of capital punishment, promotes disrespect for the criminal justice system and prolongs the suffering of victims' families. As Professor Barry Latzer testified before the Commission, there is far greater incentive to engage in dilatory
From: Brian Kincaid
Sent: Tuesday, September 12, 2006 5:35 PM
To: Neville, Gabriel
Subject: Testimony at hearing on September 13, 2006

- Dear Mr. Neville,

In accordance with our conversation of September 8, 2006 please be advised that I wish to testify at the September 13, 2006 New Jersey Death Penalty Study Commission Hearing. The Commission members should be advised as follows as to my background:

I. I am an attorney with a practice in Parsippany New Jersey. I was admitted to the New Jersey bar in 1989 and to the Pennsylvania bar in 1988. I am Certified by the New Jersey Supreme Court as a Civil Trial Attorney. My practice has included, over the years, a criminal practice consisting mainly of Municipal Court matters, although during 1990 and 1991 I assisted in the defense of Francis X. Brand, as an associate attorney, for the Law Firm of Russell T Kieler PC. The aforementioned case was venued in Burlington County which could be best classified as a "murder for hire" type of case. I have also written articles concerning a murder case dating from July 26, 1981 in Old Forge Pennsylvania in which 15 year old Joseph Aulisio was convicted of the kidnapping and murders of 8 year old Cheryl Ziemba and 4 year old Christopher Ziemba. Joseph Aulisio was sentenced to death in May of 1982. There was a reversal of this death penalty in March 1987. Mr. Aulisio's latest appeal of his conviction and life sentence was denied by the Third Circuit in 2003.

II. I have served as a councilman in the Borough of Mt. Arlington New Jersey (1999-2005). I have been a Volunteer Firefighter for the Borough of Mt. Arlington since 1998 and serve as the Fire Department President.

III. I am a friend of Sharon Hazard-Johnson and wish to speak as to a number of issues of concern regarding any proposed legislation to abolish New Jersey's Capital Punishment Statute. A number of my letters to the editor have been published on this topic by both the Morris Record News Paper and the Star Ledger. The points that I wish to raise to the Commission are as follows:

A. Is the cost, in terms of dollars, spent on the practice of Capital Punishment in New Jersey an effective use of resources when compared with Life in Prison without Parole.

1. I am of the opinion that the argument that Life in Prison without Parole is more cost effective than Capital Punishment to be intellectually dishonest.

A. There appears to be nothing in any proposed legislation limiting a prisoners right to appeal a life sentence. I use the example of the Joseph Aulisio case in the Commonwealth of Pennsylvania on this point. Mr. Aulisio's 1982 death sentence was vacated in 1987 and despite this reversal Mr. Aulisio has continued through 2003 to challenge his conviction. This has equated to a cost to the taxpayers of the Commonwealth of Pennsylvania who pay both for the Deputy Attorney Generals who fight Mr. Aulisio's appeals and the public defenders who pursue the appeals. I believe prior to the Commision making a finding on cost effectiveness there should be research conducted as to the cost of appeals filed by those serving life imprisonment currently in the State of New Jersey.

B. There can be no element of state legislation that will limit an inmate's right to access to the Federal Courts to continue to pursue appeals in that venue.

C. There are a number of programs including National Defense and Social Security which are certainly not cost effective and yet for the protection of society as a whole we continue these programs. To limit a sanction that a criminal is subject to based upon cost alone does not seem to be in the best interests of society.

D. If costs are of concern I would suggest the following logical step in amending New Jersey's current practice of Capital 1. Instead of the automatic appeal to the New Jersey Supreme Court upon a capital sentence there should be an automatic motion to the trial court for a new trial. In this motion all of the alleged mistakes made by the lower court at trial can be examined by the trial Judge. Upon a decision on motion to uphold the court's origanal sentence the automatic appeal can then be made to the New Jersey Supreme Court. This would allow the court to review the entire transcript of both the trial and the motion for new trial hearing at the same time. We have already combined the process of review of the capital sentence with the proportionality review. This would end the current practice of after an affiarmance of the orginal sentence by the Supreme Court the inmate then filing a motion for new trial which is then followed by yet another review by the New Jersey Supreme Court.

II. Protection of Society:

A. Is society truly protected by a Sentence of Life in Prison without Parole?

1. Clarence Allen: This individual was executed in California in January 2006. Mr. Allen had been serving a life sentence in California for the rape-murder of a teenager. From prison Mr. Allen ordered the murder of another three teenagers who were witnesses at trial against him. What would the Commision propose as to the Clarence Allen case?
Allen type offender? The life sentence did not stop Mr. Allen from ordering the deaths of three additional people from prison. Would the Commision recomend that a life sentence without parole be served in "super max" type conditions as are served by Federal Prisoners in the Federal Prison in Colorado? Would a death penalty be available for this type of offender in any recomendations the Commision may make?
2. Joanne Chesmire: This notorious terrorist gunned down a New Jersey State Trooper in 1973. In 1979 Chesmire escaped from prison and now continues her terrorist activities in Cuba. How will the commission guarantee to the public that if it makes a recomendation that the death penalty be abolished and Life in Prisonment is implemented that there will be no escapes.
3. Ted Bundy: This serial killer murdered two women and a young girl in Florida following his escape from jail in Colorado? What guarantee is offered to the public that this will not happen under a life sentence?
4. Ambrose Harris: Mr. Harris is under death sentence in New Jersey for the rape-kidnapping-murder of Kristin Huggins in Trenton following a release, on parole, from prison. He has killed again while on death row. What punishment would the Commision recommend for such an offender.
5. John Martini: This inmate is under a sentence of death in New Jersey for the Kidnap-murder of Irving Flax of Fairlawn. John Matini had also killed four people in Arizona and another three people in Pennsylvania. Mr. Martini's appeals have been exhausted. All that stands in the way of Mr Martini's execution is the current moritumum on capital punishment in New Jersey. Mr. Martini has made planned escape attempts. Can the public be safe from such an individual who has attempted escape?
III. Message sent by society:
New Jersey's death penalty has been reserved for the worst of offenders. The death penalty in New Jersey is not given out often and our legislation has purposefully made this penalty a difficult one to impose. We must consider the following:
A. Thomas Manning: this individual is a terrorist serving a life sentence here in New Jersey for the murder of State Trooper Phillip Lamonaco. Manning continues to mock society from prison. It was proposed that artwork by Manning be displayed at the University of Maine in an exhibit entitled "Can't Jail the Spirit-Art by Political Prisoners". A fair question is that if we argue that life imprisonment is a sufficiently harsh penalty why is Manning making artwork to be displayed at a public university?
B. Tex Watson: Tex Watson murdered Sharon Tate and seven other people by the order of Charles Manson. Watson has fathered four children while in prison and runs a evangelical web site from prison. Where is the punishment for Watson and how would the Commision propose to prevent such insults to society by prisoners sentenced to life without parole?
C. Richard Speck: Richard Speck was orginally sentence to death for the murder of 8 student nurses in Chicago in 1966. Speck's death sentence was vacated in 1972. The Arts and Entertainment Network has aired an "Investigative Reports" program which showed video tape of Speck in prison enjoying cocaine and sex. How would the Commision propose that such a mockery of justice not occur here in New Jersey under a Life without Parole Sentence?
IV. Final thought on issue of innocence:
A. For years many of those who advocate abolition of the death penalty pointed to Roger Coleman, who was executed in Virginia in 1992, as an example of an innocent man executed. Recent advances in DNA proved this year that Coleman was guilty of the rape and murder. Why are those who advocate the abolition of capital punishment so quiet about Roger Coleman at these hearings?
Respectfully Submitted,
Brian W. Kincaid.  

9/13/2006
Testimony of Anna “Cuqui” Rivera
September 13, 2006

Thank you Chairman Howard and distinguished members of the Commission.

My name is Cuqui Rivera and I am testifying today on behalf of the Board of Delegates of the Latino Leadership Alliance of New Jersey (LLANJ), an alliance of HUNDREDS of organizations across the state, to submit our resolution in opposition to the death penalty.

The mission of the Latino Leadership Alliance is to mobilize and empower Latino communities, to obtain political, economic, and social equity. The vision of the Alliance is for a better New Jersey – a New Jersey as it should be. The Alliance’s vision is to challenge New Jersey to build a State that can lead the nation in carrying out inclusive policies that empower and give dignity to all residents.
Today I am presenting you with Resolution #2006-008, passed on July 29, 2006 by the Alliance Board of Delegates. The resolution calls for an end to the death penalty in New Jersey. It recognizes the many complex issues involved with the use of the death penalty from concerns about racial and economic disparity to the risk of executing an innocent person.

The resolution includes information about the use of the death penalty throughout the nation. We do not live in a vacuum where we can ignore what is happening in other states, some of which do not even provide adequate counsel for indigent defendants.

The resolution also includes information about our use of the death penalty in the context of the world community. We do not live in isolation in this global age and our actions as a nation effect our ability to lead.

The resolution calls for a serious exploration of alternative punishments and this Commission has a historic opportunity to do just that. We urge you to examine alternative punishments carefully and thoroughly.

Since today's topic is cost, I would like to suggest that there are better ways to spend the money now being wasted on the death penalty, which has clearly failed the people of New Jersey.
I work at the Hispanic Directors Association of New Jersey, a non-profit umbrella organization which counts as members 33 agencies across the state serving some of our most needy and desperate residents. The money spent on trying death penalty cases, prosecutions that go on for years and years, would be much more wisely spent on after school programs for children in poor areas of the state. The money would be more wisely spent on drug prevention and education programs. The money would be much more wisely spent on preschool and special needs programs that create opportunity.

The state has no place being an executioner and expending millions of dollars seeking vengeance and death. These funds would be better allocated creating hope and promise for the most vulnerable among us.

The Alliance believes that the death penalty should be abolished. The commission should make that recommendation to the State Legislature and should challenge the Legislature to lead the nation on this important issue of justice.
RESOLUTION

WHEREAS, The Board of Delegates of the Latino Leadership Alliance of New Jersey (LLANJ) has the authority to and duty to establish the policies of the organization;

WHEREAS, the mission of LLANJ is to empower Latino communities to obtain economic and social equity;

WHEREAS, the United States is one of 74 countries that still has the death penalty. The vast majority of the world’s executions take place in just four countries: China, Iran, Vietnam and the United States;

WHEREAS, according to the federal government’s General Accounting Office, race is a factor “at all stages of the criminal justice process,” including the prosecutor’s decision to charge a defendant with a capital offense or a decision to proceed to trial rather than plea bargain. As Justice Harry Blackmun stated in 1994, “Even under the most sophisticated death penalty statues, race continues to play a major role in determining who shall live and who shall die”;

WHEREAS, over 90 percent of defendants charged with capital crimes are indigent and cannot afford to hire an experienced criminal defense attorney to represent them;

WHEREAS, in a 1993 case, Herrera v. Collins, the U.S. Supreme Court, by a vote of 6-3 ruled that a claim of actual innocence based on newly discovered evidence were not grounds for overturning a capital conviction. As Justice Blackmun wrote in his dissent, “The execution of a person who can show that he is innocent comes perilously close to simple murder”;

BE IT THEREFORE RESOLVED, that the LLANJ does hereby recommend the following:

* We as leaders of the Latino community in New Jersey, share certain core beliefs in universal truth and historical commitment to social justice for all,
* We are united in our conviction that the death penalty is immoral in principle and unjust in application. It violates our belief in the intrinsic worth of all human beings and our potential for spiritual regeneration,
* Criminal justice procedures are inconsistent and weighted against the poor, the powerless, members of minority groups and persons with developmental disabilities. Errors can lead to punishment and potential execution of the innocent,
* LLANJ therefore calls for an end to capital punishment and exploration of alternative methods to reduce problems of societal violence,
* We request that the New Jersey State Legislature enact legislation that ends the death penalty. We urge a continued suspension of all executions pending this legislative action.
* Advocate and negotiate with the Governor and state public policy leaders to institute Executive Orders and Public Policy directives that will close the service gap to the Latino Community

BE IT THEREFORE RESOLVED, that The Board of Delegates approves this resolution and the person who appears below is authorized to sign such a contract and any other documents necessary in connection therewith

SIGNED: ______________________________

Martin Perez, President, LLANJ

I, ______________________________, Secretary of the Board of Delegates hereby certify that this resolution was duly adopted on July 29th, 2006.

SIGNED: ______________________________ (Date) __________

Secretary

94x
To the Rev. Mr. William Howard Jr. and
the Commission to hold hearings on
the death penalty.

Former prosecutor Marilyn Jaszcinski
notified us yesterday of the meeting
scheduled September 13, 96. We want to
attend this meeting but in view of the
short notice, we may not be able to do so.

Our son, Gary Kent Marsh, was a
victim of a violent and brutal killing
on May 5, 1992. A few months earlier,
Donald Lofton had brutally executed
another innocent person. Lofton was
found guilty beyond a reasonable
doubt and a second jury sentenced
him to death. In the last 14 years,
he has been taken care of and
protected by the state of New Jersey.

Our son, Gary, was an exceptional man
who served in the U.S. Airforce. Honorably
discharged, he continued in the reserve
as a Staff Sgt. He worked full-time
and earned a degree at Rider College
Graduating with Summa Cum Laude honors.
His training in the Airforce
led him to accept a job and further
training at T.W.A. facility in Kansas.
A part-time job of only three days, to help a friend and earn some extra money, cost him his life.

Gary was a great guy! He brought integrity, kindness and happiness to himself and all who knew him.

Doesn't our son deserve that the State of New Jersey carry out the sentence and bring justice?

There is no question of guilt.

Yours Truly,

Joyce Marsh

[Signature]

96X