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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.

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C O M M I S S I O N M E M B E R S

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1 CHAIRMAN COLEMAN: Welcome everyone.
2 The New Jersey Death Penalty Study Commission is
3 now conducting a public hearing and this session
4 now will come to order.

5 Can you hear me in the back?

6 (Off the record.)

7 CHAIRMAN COLEMAN: The New Jersey
8 Death Penalty Study Commission is now in session.
9 We are conducting a public hearing.

10 Before commencing with today's
11 business, and we have 17 persons who have signed
12 up to speak to us today, I'd like to call your
13 attention to the fact that on August 16th we had
14 a work in session and the transcript of those
15 proceedings are available on the New Jersey
16 Legislative Home Page. If you need any
17 assistance with respect to that, please contact
18 one of our staff members.

19 As Commissioner Howard would do, I'd
20 like to welcome everyone here, and we appreciate
21 your presence. And your large turnout is
22 indicative of the importance of the assignment we
23 are undertaking. Reviewing the New Jersey Death
24 Penalty Act is a very serious undertaking and we
25 really appreciate your appearance and

1 participation in order to try to move this
2 process forward.

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

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

15 So, Senator Lesniak, would you
16 proceed, please.

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

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

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

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

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

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

23 You've heard, and will hear, that
24 the cost of the death penalty, due to costly
25 State and Federal appeals mandated by the New

1 Jersey Constitution and the Constitution of the
2 United States, far exceeds the expenses of life
3 imprisonment.

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

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

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

23 Thank you, Justice, thank you
24 members, and I certainly would answer any
25 questions you may have.

1 CHAIRMAN COLEMAN: I thank you
2 Senator for your presentation.

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

5 Having seen none, you're excused.
6 Thank you.

7 Do you have one?

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

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

23 MR. LESNIAK: Well, that's not a
24 question, but I would concur that that certainly
25 is immoral. But I do disagree on whether there

1 is such a thing as a blatantly guilty person.
2 A person may be guilty, but there's no system in
3 place known to man that can ensure that guilty
4 people -- that innocent people are not found
5 guilty. There's no perfect system. And as
6 Justice Coleman knows very well, due process
7 requires that every act of Government have a
8 legitimate and rationale purpose. And since it's
9 clear that the death penalty has never been a
10 deterrent, and the imposition of the death
11 penalty has throughout this country resulted in
12 innocent people being executed, I believe that
13 the death penalty violates due process of the
14 Constitution as well. That's not your charge, I
15 admit that. Your charge is to whether the death
16 penalty, as constituted in New Jersey, is good or
17 bad, and I would suggest that there is no good
18 purpose and there are plenty of bad purposes.
19 Thank you.

20 CHAIRMAN COLEMAN: Are there any
21 other questions?

22 Thank you, Senator.

23 MR. LESNIAK: Thank you, Justice.

24 Thank you, members.

25 CHAIRMAN COLEMAN: Sandra Place.

1 MS. PLACE: Good afternoon.

2 CHAIRMAN COLEMAN: Would you turn
3 your microphone on.

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

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

18 September of '98, the State versus
19 Mildred Place's murderer begins. At this point,
20 I feel I'm justified in not saying his name.
21 There have been far too many times that I've had
22 to address the case with his name only. He will
23 be here identified as Mildred Place's murderer.
24 The trial goes on for weeks, and due to the
25 brutal nature of the crime, the prosecutor has

1 asked me and barred me from the courtroom. And
2 at the time, I didn't have a full understanding;
3 now I do and I will be forever grateful that
4 those images are not in my memory.

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

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

23 April of 1999, the death sentence
24 has been affirmed. At this point, I start to
25 feel more secure in the sentencing. He is being

1 watched 24 hours a day and the notoriety of being
2 on death row means that any changes should and
3 will be known by me and my family, either by the
4 court system or by the media.

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

10 February 14, 2002, killer spared by
11 high court. Mildred Place's murder was not
12 deemed heinous enough for the penalty of death to
13 her killer. Heinous is defined as monstrous,
14 atrocious, terrible and dreadful. My mother was
15 beaten, sodomized, tortured and finally
16 strangled. What else was the Supreme Court
17 looking for to fulfill their meaning of heinous?
18 At this point, security has been shattered again.

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

22 On October 9, 1998, I became a
23 member of a club with a very limited number of
24 members, survivors of homicide awaiting death row
25 execution of their loved one's killer.

1 On February 14th, I became a member
2 of a club with an ever-growing membership,
3 survivors of overturned death penalty sentences.

4 My family did not advocate for the
5 death penalty. We put our trust in the legal
6 system and prayed for the jurors to make the
7 decision that was right for them. These 12 men
8 and women whom the judicial system chose and
9 approved, made a life changing decision. Their
10 decision not only impacted the life of my
11 mother's killer, it impacted my family and
12 friends as well.

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

22 My mother was brutally murdered.
23 All aspects fit the stringent criteria for the
24 death penalty. Twelve citizens working within
25 the parameters of the law determined that the

1 crime was heinous enough for capital punishment.

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

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

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

17 As a result of the death penalty
18 being overturned and not being commuted to a true
19 life sentence, I face the dreadful task of
20 telling my children about the nature of their
21 grandmother's death. This is necessary, as one
22 day they may need to be the ones advocating for
23 justice. I've spent the last ten years trying to
24 protect my children from this horrific tale and I
25 foolishly thought that if their grandmother's

1 killer was on death row or ultimately executed,
2 they wouldn't have to learn of the fallibility of
3 the justice system, or suffer from it.

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

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

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

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

1 greatly deserve.

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

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

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

19 If you have any questions?

20 CHAIRMAN COLEMAN: Thank you,
21 Ms. Place.

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

24 Does any member of the Commission
25 have a question for Ms. Place?

1 I see your light on.

2 COMMISSIONER GARCIA: I'm sorry, no.

3 CHAIRMAN COLEMAN: Thank you. You
4 may step down.

5 Patricia Harrison.

6 You may proceed, Ms. Harrison.

7 MS. HARRISON: My name is Patricia
8 Harrison. I am the sister of Jacqueline
9 Harrison. I became a victim of crime on August
10 24, 1987 when my sister Jacqueline was brutally
11 and sadistically murdered in Pemberton Township,
12 Burlington County, New Jersey. The murder was as
13 gruesome and as heinous as one could imagine.
14 The details are public information and would turn
15 the stomach of even the coldest human beings.

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

23 After the 19 years of her absence, I
24 think of her and the joy that she brought to me.
25 Her meaningless death leaves a void in my daily

1 life. This void permeates through her immediate
2 family. Family gatherings during holidays, which
3 are normally festive and full of cheer, are
4 diminished because of this void in our lives.
5 This sadness almost always turns to anger when we
6 realize that the individual who did this to us is
7 still living and has the opportunity to feel the
8 happiness and the joy and all the other wonderful
9 emotions that define our species.

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

20 Our grieving will probably never
21 end. Clearly, the crime goes far beyond snuffing
22 out another human life. Handling death of a
23 loved one is always difficult, but handling the
24 death of a loved one for a senseless reason and
25 living with the brutality involved in Jackie's

1 death is a lifelong burden that is suffered by
2 all the victims of a murder, particularly, when
3 the murderer continues to experience life itself.

4 Prior to the death of my sister, I
5 viewed capital punishment differently than I do
6 now. I looked at it objectively and felt that
7 the important thing to do with dangerous
8 criminals was to remove them from society and try
9 and rehabilitate them. Since I am viewing this
10 issue subjectively -- since then - excuse me - I
11 am viewing this issue subjectively and I feel
12 quite differently. Those of you who are trying
13 to be objective today should walk in my shoes or
14 the shoes of the many living victims of this
15 crime, only then could you experience the
16 unfairness and grief caused by missing a loved
17 one while having the knowledge that the killer
18 continues to enjoy life.

19 It seems to me here that the issue
20 goes beyond simply administering some punishment
21 to a murderer. The issue must address the
22 responsibility that society has towards the
23 victims of crime. Simply taking the murderer out
24 of society for a long period of time does not
25 address the lifelong emotional problems created

1 by the crime. Our society was built on
2 understanding and helping our neighbors. In the
3 case of a brutal murder, the best way for society
4 to help the victims is to give them the knowledge
5 that the murderer is no longer experiencing the
6 joys of life that he has ended for another human
7 being. Thank you.

8 CHAIRMAN COLEMAN: Thank you,
9 Ms. Harrison.

10 Is there any question?

11 Thank you.

12 Jo Anne Barlieb.

13 MS. BARLIEB: Good afternoon. My
14 story begins 21 years ago. It was July 1985 when
15 Cynthia Barlieb, a 25 year-old mother of four,
16 was brutally shot to death. She was a clerk for
17 a local Cumberland Farms convenience store. Her
18 and my father had recently bought their first
19 home and my mom had worked part-time earning
20 extra money to pay bills. I was eight years old
21 and had three younger sisters. Melaney was five,
22 Kristin, three, and Kimberly, 15 months old. It
23 was a Sunday, at 12:30 in the afternoon, when her
24 assailant boldly walked into the store, intent on
25 committing armed robbery. As she worked the

1 store alone, he made idle conversation with her
2 until the other customers had left, at which time
3 he locked the front door and flipped the open
4 sign to closed. Cindy fatally refused his
5 demands to open the register. She was punished
6 with a shot to her chest. Frustrated with his
7 inability to open the register, he shot her twice
8 more as she laid face down at his feet; one shot
9 in the back of her neck and a final shot to the
10 back of her head. He hadn't finished with her
11 yet; barely still alive, he dragged her body to
12 the back of the store and hid her inside the
13 walk-in cooler. The killer attempted to cover
14 his tracks and then fled the scene. Eventually,
15 it was his arrogance, partnered with a small
16 reward, that led to his capture; thus began my
17 family's involvement with the criminal justice
18 system.

19 The defendant was tried and
20 convicted of capital murder, then sentenced to
21 death by lethal injection. At the time, my
22 sisters and I were too young to know anything
23 about the trial. Over the years, I became none
24 the wiser. It was enough for me to know that the
25 man who viciously took my mother's life was on

1 death row. After all, he literally deprived her
2 of everything; left four little girls without
3 their mother and bruised many hearts that still
4 ache for her to this today.

5 I was introduced to our so-called
6 justice system in 1993 when I first learned that
7 the killer's death sentence was overturned by the
8 Supreme Court. Subsequently, the State moved to
9 retry the penalty phase of the case, once again
10 seeking a death sentence. In search of justice,
11 I committed to attend every portion of that
12 second trial. Our family was forced to relive
13 the nightmare. We sat through the gruesome
14 evidence and vivid testimony that tore at our
15 wounds. Even more aggravating, was that the jury
16 could not know Cindy as a real person. Her dead
17 body was only evidence of the crime and any
18 personal information about the victim was
19 withheld so as not to bias the jury. It was the
20 State versus the defendant. Cindy was a murder
21 victim, and as a result, lost every single one of
22 her basic human rights. The killer, on the other
23 hand, is entitled to every single human right in
24 the book, and then some. We heard how bad his
25 childhood was and that he was a model prisoner

1 and so forth. Thankfully, that wasn't enough.
2 The jury once again sentenced him to death, and
3 for the time being, it seemed that justice had
4 prevailed.

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

16 For the third time, our family
17 braced for yet another trial. This time around,
18 thanks to the victim advocates and resulting
19 legislation, I was able to read a victim impact
20 statement to the jury. This was a major
21 breakthrough; we could finally share personal
22 information about Cindy's life. Ironically, that
23 same information is what caused the appeal to
24 begin with. Also as a result of the impact
25 statement, the defense fought to have me barred

1 from the courtroom as a witness. It was
2 eventually ruled that I could attend the trial
3 with my family, and all over again, we relived
4 our trauma.

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

15 I'd support the death penalty if the
16 State of New Jersey could limit the appeals
17 process and actually utilize it. Unfortunately,
18 I sit here following a more realistic approach in
19 favor of abolition. I can testify from
20 experience that our current system is most unjust
21 for the victims and their loved ones. I can only
22 hope to save other families from the grief of the
23 never-ending appellate process. I promote the
24 substitution of the death penalty only with a
25 life sentence that truly means life in prison

1 with no possibility of parole.

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

8 Thank you for hearing my statement.

9 CHAIRMAN COLEMAN: Thank you,
10 Ms. Barlieb.

11 Is there any question from any
12 member of the Commission?

13 Ms. Garcia.

14 COMMISSIONER GARCIA: Jo Anne, thank
15 you.

16 MS. BARLIEB: Thank you.

17 COMMISSIONER GARCIA: I'm going to
18 try to keep what I say to questions, but as you
19 know, and I both know, when you've gone through
20 this, when it's a reality, not theory, it's very
21 difficult to hear some of these things when it's
22 so focused on the perpetrator and not the victim
23 or the survivors, but I do want to ask you, would
24 you agree that, over the last 21 years, that on a
25 daily basis, what you struggle with is anger, not

1 only anger about the brutal murder of your
2 mother, but anger over the fact that the system
3 enabled him to escape justice and that he will be
4 one day walking the streets again?

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

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

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

16 COMMISSIONER GARCIA: And lastly, I
17 don't want to embarrass you here, but I remember
18 that about five years ago you were chosen to
19 represent New Jersey at the Victim Assistance
20 Academy in Washington, D. C. You joined
21 advocates from across the State and part of your
22 assignment there was to bring a hat that
23 represented your state, and you won first prize
24 for that hat. Could you tell the Commission what
25 it said on your hat?

1 MS. BARLIEB: My hat said, New
2 Jersey, a great place to live, just ask our death
3 row inmates.

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

6 CHAIRMAN COLEMAN: Thank you,
7 Ms. Barlieb.

8 MS. BARLIEB: Thank you.

9 CHAIRMAN COLEMAN: Stephen Raymond.

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

14 CHAIRMAN COLEMAN: Richard Pompelio.

15 You may proceed, Mr. Pompelio, when
16 you're situated.

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

25 The Constitution of the State of New

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

12 In 1989, a few days after my 17 year
13 old son Tony was murdered, the county prosecutor
14 told my wife and me that he would not seek the
15 death penalty of our son's killer, because,
16 quote, and I'll never forget those words, the
17 crime was not heinous enough. The facts
18 indicated otherwise; however, we were in such
19 shock and pain that we just nodded a sheepish
20 acceptance and resolved to the dictate that we
21 were just given. If the death penalty had been
22 pursued by the prosecutor and awarded by the
23 jury, perhaps my family and I still would be in
24 the criminal justice system today. This is a
25 nightmare I could wish on no one.

1 When my son was murdered, I had been
2 a lawyer for 17 years and thought I understood
3 what the criminal justice system was all about.
4 How wrong and perhaps arrogant I was to be so
5 presumptuous. What has the criminal justice
6 system become? Perhaps not much more than the
7 mechanical processing of violators, with
8 unreasonable requirements placed on judges --
9 trial judges and prosecutors to resolve cases.

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

16 Many assistant prosecutors
17 throughout this State who actually work in the
18 trenches each day, complain to me often that they
19 are frustrated because they are mandated by
20 numbers, and the name of the game is plea
21 bargain. Our criminal justice system has become
22 a platform for politicians to promote to their
23 populous that they are tough on crime. It has
24 become a forum for appellate judges to espouse
25 the human rights principles that they have held

1 so closely. Unfortunately, too often they must
2 do so on behalf of a violent criminal who
3 committed the crime, but the cleverly articulated
4 right somehow greases his path to an unjust
5 freedom. Just ask the survivors, Susan Green,
6 Leon Hanjian, Rosetta Lucas, Donna Lucas, Stanley
7 Caswell and Esther Friedman, to name a few. The
8 killers of their loved ones were all found guilty
9 and sentenced to death, but today they all walk
10 the streets as free men, having served only an
11 average of 13 years in prison. And this list
12 goes on and on.

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

23 I am not a cynic. Trained in
24 appreciating the richness and the splendor of our
25 American system of justice, and then thrust into

1 it personally with all its human factors, I
2 maintain a burning and passionate hope that the
3 words of the interpretive statement to Article 1,
4 paragraph 22, of the New Jersey Constitution will
5 someday have true meaning. When the Legislature
6 approved, and 1.2 million voters of this State
7 confirmed that crime victims shall be placed on
8 equal footing with the accused, the words were
9 never meant to be empty promises by the
10 legislators and wishful thinking on the part of
11 the citizens of this State. As Justice Marie
12 Garibaldi opined in the 1996 landmark victims'
13 rights case of State versus Muhammad, and I quote
14 her, We know exactly what the founders of this
15 constitutional amendment intended, fair treatment
16 for victims.

17 Judges are trained as lawyers, and
18 all lawyers are trained in understanding and
19 appreciating the beauty of our Constitution and
20 our Bill of Rights. We hunger and thirst for the
21 opportunity to advocate and advance these rights,
22 because that is the essence, that is the
23 foundation for what we see as the purity of our
24 democratic system. We all have justice in our
25 hearts and a burning desire to achieve that

1 justice.

2 And then there is the death penalty
3 and the process that has developed in our
4 criminal justice system from it. The death
5 penalty is an abomination. The author, Albert
6 Camus, wrote, For centuries the death penalty,
7 often accompanied by barbarous refinements, has
8 been trying to hold crime in check; yet crime
9 persists. Today his observation may be
10 alternatively stated, For decades the death
11 penalty in New Jersey, often accompanied by
12 illogical refinements, has been trying to hold
13 crime in check; yet crime persists and victims
14 continue to be revictimized by the justice system
15 that exists to protect them, at a cost to the
16 taxpayers of millions of dollars each year.

17 The death penalty process in New
18 Jersey over the last quarter century has been, in
19 my opinion, the greatest failing of the justice
20 system in the history of our State. It is the
21 failing of those in power, the politicians and
22 the judges, but it is a failing that has been
23 spawned from good and righteous intentions, and
24 also pride, a pride on the part of these people
25 in power to do what they believe is right. The

1 system can no longer suffer the pride of those in
2 power. The taxpayers of this State can no longer
3 bear the cost of this failure. And as for the
4 victims, well, truly, enough is enough.

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

17 What has death penalty jurisprudence
18 been like in New Jersey over the past quarter
19 century? The case of State versus Gerald is a
20 good example. In 1982, Walter Gerald and his
21 accomplice broke into the home of 89 year old
22 John Matusz. When Gerald left, less than an hour
23 later, he had savagely beaten John's daughter and
24 his disabled son Paul, who ultimately succumbed
25 to death. To make sure his elderly victim could

1 not identify him, Gerald stomped on his face and
2 dropped a television on his head. Gerald was
3 identified as the killer because the imprint of
4 his sneaker matched the marks on the victim's
5 face, the 89 year old victim's face. He pleaded
6 guilty to the murders, and after the death
7 penalty trial, the jury voted unanimously for
8 death.

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

22 We've seen the Supreme Court apply
23 the Gerald rule in cases like State versus
24 Jackson, in which the death penalty was also
25 thrown out on the same basis, under the following

1 facts which I've taken right out of the case, and
2 I quote, There was evidence of an attempted rape.
3 Defendant stabbed the victim, in the words of the
4 State, wildly, viciously, repeatedly, 53 times.
5 Defendant stabbed her 18 times in the genital
6 area with an obvious sadistic intent. After the
7 murder, he stole her car and drove around
8 casually with a man he happened to meet, drinking
9 beer and looking for marijuana. Defendant was
10 arrested two days later and confessed to the
11 murder.

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

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

24 MR. POMPELIO: You're the boss.
25 Thank you.

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

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

6 CHAIRMAN COLEMAN: Well, we have
7 your written presentation.

8 MR. POMPELIO: I appreciate that.
9 Thank you very much.

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

12 COMMISSIONER HICKS: I have a
13 question.

14 MR. POMPELIO: Of me?

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

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

22 MR. POMPELIO: I'm sorry, sir?

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

25 MR. POMPELIO: Justice Coleman, can

1 I at least state, it will only take me a minute,
2 what I'm recommending to this Board. May I
3 please have that?

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

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

9 I respectfully seek the following:
10 Abolish the death penalty now in favor of life in
11 prison without parole. Take some of the
12 taxpayer's money, which has been a quarter of a
13 billion dollars since 1982, that continues to be
14 wasted, and do the following: One, increase the
15 services available to homicide victims; two,
16 appropriate some of this money to help the
17 nonprofit homicide organizations who do so much
18 work for victims, but who are struggling to keep
19 their doors open; three, fund the State
20 scholarship program that I mentioned in my piece,
21 and I didn't have a chance to speak on; and,
22 four, increase funding to law enforcement and to
23 county prosecutor victim-witness programs to
24 enable them to expand the good work they do for
25 survivors of homicide.

1 The reality is that we have spent a
2 quarter of a billion dollars on the death penalty
3 process alone, and I challenge anyone to show me
4 where we have spent more than \$1,000 on any death
5 penalty victim from the taxpayers' money. Thank
6 you.

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

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

15 COMMISSIONER GARCIA: I know.

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

21 MR. POMPELIO: I have absolutely no
22 doubt that there will never be an execution in
23 the State of New Jersey -- that there will ever
24 be, I'm sorry. We are just sitting here playing
25 with words and playing with taxpayers' dollars.

1 I don't know what direction the Supreme Court
2 will ultimately go in, but it doesn't matter in
3 my opinion. The New Jersey Supreme Court will
4 never, at least in my lifetime, and any of yours,
5 allow an execution to take place. That's the
6 reality of it.

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

1 for the victims.

2 I don't know if I've answered your
3 question.

4 COMMISSIONER GARCIA: Thank you.

5 CHAIRMAN COLEMAN: Any other
6 questions?

7 COMMISSIONER SEGARS: Just one.

8 CHAIRMAN COLEMAN: Okay, please
9 proceed.

10 COMMISSIONER SEGARS: Sir, just for
11 a point of clarification, you are in favor of
12 abolishing the death penalty in favor of a life
13 sentence; yes?

14 MR. POMPELIO: Yes, Ma'am.

15 COMMISSIONER SEGARS: Thank you.

16 CHAIRMAN COLEMAN: Life without
17 parole, meaning natural life?

18 MR. POMPELIO: Meaning every single
19 minute of his life. I'm sorry if I didn't make
20 that clear.

21 Thank you very much. I appreciate
22 your time and the time you gave me.

23 CHAIRMAN COLEMAN: Has Stephen
24 Raymond arrived?

25 We'll next call on Former Attorney

1 General Del Tufo.

2 MR. DEL TUFO: Good afternoon,
3 Justice Coleman and members of the Commission.
4 Thank you for allowing me to appear here today to
5 talk about capital punishment.

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

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

23 In any event, I'm here to urge the
24 Commission to recommend to the Legislature that
25 the death penalty be replaced with the punishment

1 of life without parole. There's more discussion
2 in this statement, but the reasons are really
3 right on the first page.

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

19 The plain fact of the matter also is
20 that the death penalty just costs us too much.
21 It costs us a lot in resources. Certainly, very
22 skilled resources have to be allocated to these
23 types of cases and they take much more
24 preparation than an ordinary case. And the
25 dollar expense is extraordinary. I'm sure you've

1 heard, and Mr. Pompelio mentioned, that -- the
2 figure I've heard is that we've spent \$250
3 million since 1982 on capital cases and have had
4 valuable resources who could be working on other
5 types of crime devoted to that endeavor.

6 Certainly, it has not been an
7 effective remedy if you say the death penalty is
8 supposed to put people to death. There has not
9 been anyone who has been executed, so we have a
10 \$250 million bill, but certainly that law has --
11 I don't mean to be insensitive, but the law has
12 not ever being effectuated.

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

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

25 My experience in law enforcement

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

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

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

22 There's also a further section on
23 the expense and the diversion of resources. And,
24 in a word, and, again, this is insensitive,
25 perhaps, but I think it need be said, and I guess

1 Mr. Pompelio was saying that to some extent as
2 well, it's just not a good investment for our
3 society.

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

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

24 So I think, as you'll read in the
25 statement, that type of penalty has collateral

1 merits, such as avoiding the possibility of
2 innocence being killed. And, frankly, I think
3 it's more consistent with what should be the
4 mores of a civilized society, not to engage in
5 premeditated killing because someone else has
6 killed.

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

13 CHAIRMAN COLEMAN: Thank you,
14 Mr. Del Tufo.

15 Ms. Garcia.

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

20 MR. DEL TUFO: Thank you.

21 COMMISSIONER GARCIA: Survivors just
22 can't trust the system at this point when you
23 have families that think that the person who
24 murdered their loved one is going to be executed
25 and they are faced with the reality that these

1 people are walking the streets. We heard
2 testimony today where that is the case and will
3 be the case. And we have Trantino out there
4 giving the speeches in communities.

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

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

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

24 The dragging out of these
25 proceedings has got to have a toll on families.

1 They cannot end this. They have to look and see
2 things that you're talking about, and this person
3 is walking around and the proceedings go on
4 forever.

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

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

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

23 CHAIRMAN COLEMAN: Commissioner
24 Haverty.

25 COMMISSIONER HAVERTY: Mr. Attorney

1 General, I just have a real quick question. When
2 you're talking about replacing the death penalty
3 with life in prison without parole, are you
4 talking about essentially taking what is
5 currently the death penalty statute and just
6 simply changing the penalty to life without
7 parole? In other words, those people who are
8 death eligible under the statute that
9 Commissioner Russo drafted when he was in the
10 Senate, that would just be converted, rather than
11 taking all homicides, as they're defined under
12 statutes, and making those all life without
13 parole?

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

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

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

24 COMMISSIONER HAVERTY: That's what I
25 wanted to know.

1 CHAIRMAN COLEMAN: Are there any
2 other questions?

3 COMMISSIONER DeFAZIO: Justice, may
4 I?

5 CHAIRMAN COLEMAN: Yes.

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

12 MR. DEL TUFO: Yes, and that's
13 mentioned in my statement here. At the
14 conclusion, I say that no one can promise that
15 someone who has life without parole is not going
16 to get out of prison, but that goes for a death
17 sentence as well. The Governor can commute, you
18 can have a reversal by an Appellate Court, you
19 can have new evidence that shows that the person
20 is innocent, but the statistics are that the
21 reversal rate for life sentences now, even not
22 life without parole, is significantly lower than
23 the reversal in cases that involve death
24 sentences, because they evoke more emotions and
25 more issues. And, frankly, people who commit

1 capital crimes are not, I would think, the sort
2 of people that a Governor is going to pardon or
3 commute the sentence.

4 CHAIRMAN COLEMAN: Thank you,
5 Mr. Del Tufo.

6 MR. DEL TUFO: Thank you.

7 CHAIRMAN COLEMAN: Senator Robert
8 Martin.

9 SENATOR MARTIN: Thank you.

10 CHAIRMAN COLEMAN: You may proceed,
11 Senator.

12 SENATOR MARTIN: Thank you, Justice.

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

21 In an earlier question, it would
22 separate out certain murders under the
23 aggravating standard that we have, which would
24 make those in the category of life without parole
25 as opposed to the current ones which wouldn't

1 rise to that level and would maintain the same
2 penalties.

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

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

21 But my approach has been largely in
22 thinking about why it's unworkable. I think that
23 the individuals, the players, if you will,
24 involved in the death penalty, there's so many of
25 them, and in almost every instance there is at

1 least some problems that they have in trying to
2 get it right.

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

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

22 I think about prosecutors, both the
23 prosecutor who is assigned to a particular murder
24 trial, as well as the prosecutors' office. We
25 run into questions about whether they are

1 overzealous, about how prepared the actual
2 prosecutor is who is presenting the case.
3 Perhaps more importantly, we have this issue
4 about the unevenness, given our current system of
5 justice in which the county prosecutors have raw
6 discretion in New Jersey and the ability that
7 they have to provide resources in deciding
8 whether to try somebody with capital punishment
9 as the potential punishment.

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

18 I can tell you, I actually did serve
19 in the -- I represented a defendant about 20
20 years ago in a murder trial, in an appeal, and I
21 did not feel that, in looking at this case, it
22 was a horrendous murder, and the gentleman was
23 found guilty in the case of State v. Laska, but I
24 represented him on his appeal. And I felt that I
25 didn't get much in the way of resources and I

1 also had some real concerns about whether there
2 was adequate representation of him at the trial
3 level.

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

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

22 I can't imagine, you know, what it
23 would have been like if we had actually been in a
24 criminal trial where we were facing the issue of
25 whether to impose the death penalty. And I think

1 with that degree of different voices, it does
2 become somewhat arbitrary as to what jury you may
3 get at any one given time. And the consequences,
4 of course, are enormous as far as the defendant
5 is concerned.

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

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

23 My understanding is that there's not
24 very much because of the limited resources with
25 issues involving mental health and counseling

1 needs of victims, and that would be something I
2 would personally like to see, perhaps, this money
3 put to use for.

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

19 COMMISSIONER RUSSO: Mr. Chairman,
20 may I?

21 Senator, Bob, I made some notes as
22 you were talking to compliment you on well
23 thought out reasons why you opposed the death
24 penalty. And I was going to compliment you,
25 particularly, until the last paragraph when you

1 said, it had nothing to do with cost. Because I
2 think that this issue should not be discussed in
3 terms of dollars and cents.

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

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

23 There were people in the
24 Legislature, some who are still there with you
25 now, who argued at the time we passed this bill

1 that we should pass it because it would cost so
2 much to keep people in prison all of their lives,
3 that it would be cheaper to execute them. I
4 thought that was a terrible argument. I share
5 not that at all. I don't think it should be in
6 any way affected by what it's going to cost.

7 I think we have to make a judgment,
8 we on this Commission, you in the Legislature
9 now, as I did some years ago, whether we think
10 this is the right thing to do. I have a view,
11 I won't go through the reasons now, but I don't
12 think it ought to be in any way equated with
13 dollars and cents. It doesn't matter if it costs
14 \$250 million, we're dealing with the ultimate
15 punishment, we're dealing with people's lives.

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

23 Now, I don't know whether that's
24 shared by any of my colleagues on this Commission
25 or by you, but for some reason, that's been the

1 reason given by so many people, some in this
2 room, who are against the death penalty if it
3 didn't cost a dime, so they use that as an
4 argument. Some, though, really just simply
5 believe that it is a valid argument. But with
6 the amount of money we spend and the amount of
7 money we waste in this State, that shouldn't be
8 the determining factor as to whether we should
9 have capital punishment, at least I think. And I
10 think basically that's your view. You sort of
11 threw in that last comment.

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

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

22 I also, you know, would just --
23 while I have the chance, I know you have spent
24 more time thinking about this than anyone, as the
25 original sponsor, and I do respect you for it. I

1 would just say that some of us have changed our
2 positions over time. And it's not even,
3 necessarily, as you know in some cases, because
4 of some moral -- it's just that, given New
5 Jersey, and I think our real effort, as you have
6 tried to do, to get it right, I just don't think
7 we're able to pull that off. And when you have
8 people's lives at stake, I think we have to sort
9 of give that up, even though in some instances,
10 there are some individuals, if we could have done
11 it, it might have changed where we are.

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

16 What's the rationale, however, for
17 believing that someone faced with the sentence of
18 life without parole would not engage in the same
19 type of extensive proceedings, if for no other
20 reason, but the person has nothing to lose?
21 They're sitting in prison, they have access to
22 the libraries, they can file, and, in fact, do
23 file. There's a very small amount of those
24 appellate proceedings that are capital in nature.
25 Murderers who receive noncapital sentences are

1 just as adept at repeated filings and
2 postconviction proceedings and appeals.

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

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

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

25 I guess, and I don't know whether

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

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

17 CHAIRMAN COLEMAN: Is there any
18 other question?

19 Yes.

20 COMMISSIONER HAVERTY: Senator
21 Martin, not to put too many legal niceties on it,
22 but isn't there a difference between the statute
23 as it's written now, which provides automatic
24 appeals to the Supreme Court of New Jersey, for
25 example, when the sentence is death, as opposed

1 to if it's less than death and it's under a
2 different statute, the Supreme Court need not
3 necessarily hear an appeal from somebody who is
4 being convicted. Isn't that one area that might
5 have some type of closure on that?

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

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

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

22 COMMISSIONER RUSSO: Did I
23 understand you to say that sometimes the court
24 would rule one way because it's a death penalty
25 case on the same issue, but a different way if it

1 was not.

2 SENATOR MARTIN: No.

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

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

23 SENATOR MARTIN: Just the attention it's
24 given by the Supreme Court -- I was advised, and
25 correct me if I'm wrong, Justice, but the chief

1 justice, I believe, has one law clerk who is
2 solely involved with looking at death penalty
3 cases. So the time and attention and resources
4 that the Supreme Court is giving it, suggests
5 that it is just fundamentally different, at least
6 from the court's eyes, than other cases,
7 including other murder cases.

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

17 COMMISSIONER RUSSO: It should be
18 that way.

19 CHAIRMAN COLEMAN: Yes.

20 Thank you, Senator.

21 SENATOR MARTIN: Thank you.

22 CHAIRMAN COLEMAN: Has Stephen
23 Raymond arrived yet?

24 Patrick Murray.

25 CHAIRMAN COLEMAN: You may proceed.

1 MR. MURRAY: Thank you very much.

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

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

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

20 So starting in 1999, we have a
21 wealth of polling data on this issue. And before
22 I start talking about the numbers, I wanted to
23 point out that most polsters agree that when you
24 talk about the death penalty and public opinion
25 on the death penalty, that you're talking about

1 two dimensions. And one of those dimensions is
2 support and principle and the other dimension is
3 support as a preference, a policy preference in
4 terms of criminal justice. And when you ask
5 those questions, you get two different answers.

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

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

20 So starting in 1999, we found that
21 44 percent supported capital punishment; whereas
22 37 percent preferred life without parole.

23 Moving through to 2002, there was a
24 change through those years. And basically
25 opinion flipped to being 48 percent for life in

1 prison without parole to 36 percent who still
2 preferred the death penalty as the choice for
3 punishing capital crimes. We asked that question
4 again back in 2005 and found that that position
5 had basically held.

6 And so -- we also found that this
7 swing from a 7 percentage point advantage for
8 capital punishment, or a preference for capital
9 punishment, to a 13 point advantage or a
10 preference for life in prison without parole, a
11 20 point swing, happened at the same time when we
12 looked at the national data where there was no
13 movement. So something happened in New Jersey,
14 particularly between the years of 1999 and 2002,
15 that public opinion, in terms of the role of the
16 death penalty and the policy of criminal justice,
17 had changed.

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

1 points from 1999 to 2002.

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

14 We also found that the issue of
15 support for life in prison without parole or the
16 preference for life in prison without parole
17 versus the death penalty as a policy preference,
18 may be impacted by belief in whether life in
19 prison without parole means just that. And we
20 found that only 12 percent of New Jerseyans said
21 that they were very confident that a life
22 sentence meant a life sentence, that the person
23 would serve their time and die in prison; whereas
24 52 percent said that they were not confident,
25 that they felt that the person would most likely

1 get out at some point in time, and that certainly
2 has an impact on the preference as well.

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

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

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

25 When we went back and asked in 2005,

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

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

25 Now, the death penalty is an emotive

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

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

24 So there's a lot of ambivalence in
25 the public about it, but there has clearly been a

1 movement in New Jersey over the past few years,
2 and that movement has stabilized in terms of a
3 switch in preference as a criminal justice
4 policy.

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

7 CHAIRMAN COLEMAN: Does any
8 Commissioner have a question?

9 Mr. Hicks.

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

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

22 There are probably another third of
23 the public say that the death penalty is an okay,
24 they're fine with that as a punishment, but if
25 presented with evidence that it doesn't work or

1 if it's not effective, that they would move their
2 opinion.

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

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

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

19 CHAIRMAN COLEMAN: Ms. Segars.

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

24 MR. MURRAY: Sure. I should explain
25 that. The numbers that have been put into my

1 testimony, I reviewed all polling data that was
2 done, so we're looking at polling data that was
3 done by -- in New Jersey, it was done by three
4 different groups that included the Star
5 Ledger/Eagleton poll, Blaustein Center for Survey
6 Research at Rutgers University and the Quinnipiac
7 University Poll. All of those have done surveys
8 in New Jersey, and asking basically the same
9 questions and using basically the same
10 methodology, so that we can compare across those
11 trends across time.

12 I conducted two of those polls
13 personally myself. The methodology was basically
14 the same, which was a random sample -- a random
15 digitized sample, a telephone sample of New
16 Jersey household, the same poll that's used in
17 almost every media poll that's reported in the
18 State, which is representative and weighted to be
19 representative of all age groups proportionally;
20 races, proportionally; educational levels,
21 proportionally; gender, proportionally; as well
22 as region, proportionally. And the sample sizes
23 range from 800 to 1,000 in each of those
24 different polls, so they have basically the same
25 margins of error throughout each of those polls.

1 COMMISSIONER SEGARS: Do you know or
2 did you ask the question if any of the people who
3 you were questioning were victims of crime?

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

10 CHAIRMAN COLEMAN: Commissioner
11 DeFazio.

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

22 MR. MURRAY: Yes.

23 COMMISSIONER DeFAZIO: You would
24 agree with that.

25 So what I'm asking is, I believe

1 that we received from our esteemed Committee
2 staff here, Commission staff, some information
3 that revealed that, if a more specific question
4 is asked, like if somebody was convicted of
5 murder and this person was a serial murderer who
6 killed a kidnapped victim after the ransom was
7 paid, once again the percentage that would
8 support the death penalty under those
9 circumstances rises.

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

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

16 MR. MURRAY: The reason why I
17 mentioned those is, there have been polls on all
18 three of those individuals, including Timothy
19 McVeigh, and, yes, the number has been higher on
20 that. And as I stated, the initial response that
21 most people have to the death penalty is an
22 emotive one. It's an eye for an eye, a tooth for
23 a tooth. And in individual cases, they may, in
24 fact, support that. But if they were looking at
25 it as a larger policy issue and not focusing on

1 specific cases, but looking at how it's
2 administered overall, then preferences, as a
3 policy issue, may change.

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

19 COMMISSIONER DeFAZIO: Well, just to
20 follow-up, though, you made an interesting point,
21 that underlying all of this is the theory that
22 the punishment should fit the specific crime.
23 And when you say "specific crime," that doesn't
24 mean that all murderers should be subject to
25 eligibility for capital punishment. So that's

1 why I was just thinking that the more specific
2 questions in polls where you would try to discern
3 public opinion based on the various, let's say,
4 aggravating factors in the case, public outrage,
5 whatever.

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

19 COMMISSIONER DeFAZIO: Thank you
20 very much.

21 COMMISSIONER HAVERTY: Did I
22 understand your testimony a little bit earlier,
23 because you went through it so quickly, it was a
24 great presentation, but just across the board on
25 all of these different aspects of polling, is New

1 Jersey trending away from the national average on
2 this?

3 MR. MURRAY: Yes.

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

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

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

24 COMMISSIONER HAVERTY: Do you have
25 any information at all about whether or not

1 events in other places have affected that? For
2 example, I think it was in 2000 or 2001 when
3 Former Governor Ryan in Illinois had a moratorium
4 on all executions because of his expressed
5 concerns about the failure of the death penalty
6 to be properly met. Did that have any impact on
7 the thinking in New Jersey?

8 MR. MURRAY: That may have. None of
9 the polls asked that specific question, whether
10 they heard about that moratorium or whether
11 states had done it. But we did see -- there's
12 polling numbers from 1999, there was a poll done
13 in 2000 and another one done in 2002 on this
14 question, and we saw the trend cross, that, in
15 1999, there was definitely more support for the
16 capital punishment over life without parole; in
17 2000, that support was even; and then in 2002,
18 that number had switched. And so I think a lot
19 of things had come into play, and that was
20 probably one of them.

21 CHAIRMAN COLEMAN: Ms. Garcia.

22 COMMISSIONER GARCIA: Couldn't the
23 reason that people support the death penalty in
24 cases like Timothy McVeigh be due to the fact
25 that they feel more vulnerable themselves to that

1 sort of victimization?

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

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

7 MR. MURRAY: Sure.

8 CHAIRMAN COLEMAN: Thank you.

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

13 MR. MURRAY: I can't respond
14 specifically to that, because I haven't seen any
15 polling that says that this will happen to me,
16 and that's why I support capital punishment in
17 this particular case or not. I've done a number
18 of different survey research projects on criminal
19 justice, including prisoner reentry into the
20 community. And the reason why I bring that up is
21 that's something that could affect people as
22 prisoners come back into the communities, but
23 they tend to come back into certain communities
24 and not into others. And we found that, yes,
25 when people feel that it's not going to affect

1 them at all, their opinion is going to be less
2 emotional or it's going to be a motive of the
3 movement.

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

15 CHAIRMAN COLEMAN: Yes, Rabbi.

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

20 MR. MURRAY: Yes, that's been asked
21 I think once or twice, and it's somewhere down
22 around ten percent of voters look at that as one
23 of the foremost issues that they make a choice
24 on. And it's almost evenly split pro and con on
25 that. I think maybe it's six percent pro death

1 penalty to four percent against death penalty
2 make a decision on the death penalty in their
3 vote choice.

4 CHAIRMAN COLEMAN: Yes.

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

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

16 MR. MOCZULA: In fact, the
17 system, as we have it here, as the Prosecutor
18 mentioned, is not applicable to all murders, it's
19 applicable to a certain set of murders.

20 The second question is another one
21 about the type of inquiry you made. Did you ask
22 the question, do you favor the death penalty
23 versus life without parole, but with the
24 possibility of executive clemency?

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

1 question.

2 MR. MOCZULA: Thank you.

3 CHAIRMAN COLEMAN: Any other
4 questions?

5 Thank you, Mr. Murray.

6 MR. MURRAY: Thank you.

7 CHAIRMAN COLEMAN: Vicki Schieber.

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

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

24 Shannon Schieber, my daughter, was
25 murdered by a serial rapist in Center City

1 Philadelphia in 1998. Here in New Jersey,
2 especially in Southern New Jersey, many of you
3 likely saw the frequent press coverage of this
4 very high profile crime. Shannon was the light
5 of my life and of my family's life. She was a
6 gift beyond incredible words. She was not only
7 brilliant, she was beautiful; most importantly,
8 in the inside. She graduated with top honors,
9 national merit scholarship, president of the
10 student body at her high school, got accepted to
11 almost every Ivy League school in the country and
12 was accepted and took on Duke University. And at
13 the age of 22, she got a full scholarship with
14 stipend to the Wharton School of Business in
15 Philadelphia. We were so incredibly proud; what
16 a gift. I tell you this because you need to
17 understand the enormousness of this loss and what
18 this does to a family.

19 We would ultimately learn that there
20 were four women in this three- or four-block area
21 of Philadelphia where Shannon lived in Center
22 City that were sexually assaulted in that nine or
23 ten months prior to her murder, all using the
24 same MO. Although the Philadelphia Police now
25 claim they had linked these other cases, they had

1 not warned the community.

2 CHAIRMAN COLEMAN: Your microphone
3 is off.

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

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

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

15 From August of '99 until late in
16 2001, we would hear nothing of the stalker,
17 rapist and murderer. Then it was announced that
18 a DNA link had been made between Shannon's case
19 and a series of assaults in Fort Collins,
20 Colorado during 2001. Following these leads in
21 Colorado, and with the information provided by
22 the Philadelphia Police, the Fort Collins Police
23 arrested Troy Graves on April 23, 2002. He
24 ultimately pled guilty to assaulting, raping and
25 murdering Shannon and committing 13 other sexual

1 assaults in those two states.

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

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

20 I'm here today to tell you that
21 these assumptions are false. Many victims'
22 family members oppose the death penalty for a
23 variety of reasons. My husband and family
24 represent this growing, and for the most part,
25 underserved segment of the crime victim

1 population. We believe that the death penalty is
2 harmful and already interferes with a difficult
3 healing process. For us, that harm is
4 exacerbated by our belief that responding to one
5 killing with another does not honor our loved
6 ones.

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

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

21 Now, the notion that only the death
22 penalty is justice for murder victims' families
23 is also false and very harmful for other reasons.
24 The supposed justice of the death penalty is only
25 available to a small percentage of victims'

1 families. What about the families of victims of
2 the most heinous cases in which the death penalty
3 is not sought or not imposed? What about the
4 families of victims where it is imposed, but then
5 reversed on appeal? What about the families of
6 victims that are morally opposing the death
7 penalty but are forced to endure long capital
8 trials regardless of their beliefs?

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

15 Assumptions about victims and
16 justice feed notions about other things. It was
17 also mentioned today about the word closure.
18 Providing closure to victims' families is so
19 frequently invoked in these discussions in murder
20 victims' family members, we refer to it as the C
21 word. It's a joke about the C word. But I can
22 tell you with all seriousness that there is no
23 such thing as closure when a violent crime rips
24 apart the life of your child, no such thing as
25 closure. I see her every day in every wedding

1 I've gone to that I will never have and I see her
2 every day in going to church and seeing other
3 people with young children and I will never have
4 her grandchildren. There is no closure. And it
5 certainly isn't given to anybody, who believes as
6 I do, through the death penalty.

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

1 through this?

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

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

16 My family and I believe that we, as
17 a society, must move beyond these vague
18 sentiments about being tough on crime or seeking
19 justice for victims through the death penalty and
20 look closely at what actions we can have and
21 develop that will prevent violence and help
22 victims heal in the aftermath of this violence.
23 We need - really need - to create a new paradigm
24 about crime that establishes a goal, an
25 aspiration for healing for both the individuals

1 and for our society. That focus would be on the
2 needs of the victims, instead of the desire of
3 some for blind retribution without regard to any
4 of the harmful consequences of the death penalty
5 which you've heard about a lot today. By
6 focusing on the needs of the victims, we believe
7 we truly honor the meaning of justice.

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

22 If your goal is, as I believe it
23 should be, to do what is best for the victims,
24 you should recommend an end to the death penalty
25 in New Jersey, and I am here to support the

1 belief that life in prison without the
2 possibility of parole is a goal that would be
3 very, very welcomed by many murder victims'
4 families that I represent today.

5 Thank you.

6 CHAIRMAN COLEMAN: Thank you.

7 Is there any questions?

8 Mr. Hicks.

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

13 MS. SCHIEBER: Yes, thank you.

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

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

25 MS. SCHIEBER: I'm sorry, I couldn't

1 hear the last part of the question, please.

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

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

16 My situation was a little different,
17 in that this person pled guilty because they had
18 all of this evidence and this DNA evidence, and I
19 only had six weeks between the time he was caught
20 and put behind bars for the rest of the life.
21 But this is not the situation for most of the
22 members of the victims' families that I work for
23 and represent. And what I'm asking on their
24 behalf is that we, because of the problems that
25 exist in the system now, eliminate it entirely

1 and have this life without the possibility of
2 parole. It makes it much, much easier from the
3 State's point of view in helping us. And then
4 giving the support services through the State
5 funding to give them extra help, give them
6 support in trying to heal, and not go through all
7 the machinations of going through long capital
8 trials and all the pains that they have to
9 endure.

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

17 COMMISSIONER HICKS: Thank you.

18 COMMISSIONER RUSSO: Ms. Schieber,
19 it's a little delegate, but may I suggest, first
20 of all, that the issue before this Commission is
21 not whether or not more should be done for
22 victims and their families. I think all of us
23 would support that overwhelmingly. Perhaps,
24 that's something when I was in the Legislature we
25 should have focused more on; we didn't. That's

1 another issue. It's not an either/or. It's not
2 that, if you support the death penalty, you're
3 opposed to helping victims' families.

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

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

22 So I would suggest that that's
23 really the purpose of the death penalty is, not
24 seeking justice for victims, so much as, I mean,
25 that's certainly part of it, seeking justice for

1 society; is that the right thing, it may or may
2 not be.

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

10 COMMISSIONER RUSSO: Legitimate
11 point.

12 CHAIRMAN COLEMAN: Thank you.

13 Ms. Garcia.

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

19 MS. SCHIEBER: Absolutely.

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

24 MS. SCHIEBER: Thank you.

25 COMMISSIONER GARCIA: Wouldn't you

1 agree, however, that if you believe in the death
2 penalty, and because you're here, I know that
3 you're aware of the situation here in New Jersey,
4 that the situation we have now, wouldn't you
5 agree that that also -- that that is harmful to
6 the survivors, even if they support the death
7 penalty --

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

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

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

25 COMMISSIONER GARCIA: And what

1 position they're in.

2 MS. SCHIEBER: Yes. Absolutely.

3 Thank you very much.

4 COMMISSIONER HAVERTY: Ms. Schieber,

5 thank you very much. I happen to live just

6 outside of Philadelphia, so I remember very

7 vividly what was going on with your daughter.

8 MS. SCHIEBER: Thank you.

9 COMMISSIONER HAVERTY: My best

10 friend in the world, someone I grew up with, his

11 mother was murdered. And his mother was like a

12 second mother to me.

13 MS. SCHIEBER: I have a hard time

14 hearing you.

15 COMMISSIONER HAVERTY: I'm sorry.

16 I was just trying to say that my

17 best friend in the world who was like a brother

18 to me, his mother who was like a second mother to

19 me was murdered as well. Interestingly enough,

20 he was a police officer. And after his mother

21 was murdered, they caught the murderer very

22 quickly, and he confessed. He said that he did

23 not want the death penalty at all, he just did

24 not support it for the murder of his mother.

25 And I just wanted to thank you for

1 calling to attention the fact that there are
2 murder victims' families out there who do not
3 necessarily support the death penalty, just
4 because of the fact that they are murder victims,
5 and I just wanted to point that out. I thought
6 that that was --

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

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

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

24 CHAIRMAN COLEMAN: Mr. DeFazio.

25 COMMISSIONER DeFAZIO: I'll pass.

1 CHAIRMAN COLEMAN: Thank you for
2 coming, Ms. Schieber.

3 Juan Roberto Melendez-Colon.

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

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

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

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

25 I know that the State of New Jersey

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

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

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

20 I can say with certainty that I was
21 not saved by the system. I was saved in spite of
22 the system. My case was upheld three times on
23 appeal by the Supreme Court of Florida. If it
24 had not been for two unfortunate circumstances in
25 my case, I would not be here talking to all of

1 you. The first one was when my case was moved to
2 another county and it fell to the hands of a
3 courageous woman, a female judge that wanted to
4 do the right thing that go by the name of
5 Honorable Barbara Fletcher. I can sincerely say
6 that I owe her my life.

7 The second unfortunate circumstance
8 was, they found, after I had been convicted for
9 16 years in death row, they found a taped
10 confession of the real killer. Eventually, it
11 was found that the killer confessed to more than
12 20 witnesses, including the wife and sister of
13 the real killer, including law enforcement
14 officers, including a former prosecutor
15 investigator, a former FBI agent, criminal
16 lawyers, friends of the real killer. In the end,
17 they also found physical evidence against the
18 real killer.

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

22 But let me tell you a little bit
23 about death row. Death row is hell. I lived in
24 six by nine cell infested with rats and roaches.
25 And every time they moved me out of that cell, I

1 got shackles on my legs, chains on my waist and
2 handcuffs on my wrists. I even developed a
3 critical case of arthritis. I have suffered a
4 lot, but my family also suffered too, very
5 especially my mother.

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

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

19 But I learned originally not too
20 long ago, that in spite of all the hope that my
21 momma have in God, she also was saving money to
22 bring the body back from Florida to Puerto Rico.
23 For me, at times, it was real hard. After ten
24 years, I was tired of it, I wanted to commit
25 suicide. And believe me, lots of condemned death

1 row prisoners committed suicide. What saved me
2 was dreams, happy dreams, awesome dreams of my
3 childhood. Every time I was depressed, every
4 time I wanted out of there, every time suicide
5 thoughts came to my mind, I would pray to God
6 send me a awesome dream. And I was wise enough
7 to grab those dreams in the hope that, one day I
8 would be out of there, that one day I would be
9 free.

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

25 Some of them are innocent. I can

1 tell you four right from the top that are
2 innocent, Jesse Tafero, Leo Jones, Benny Demps
3 and Pedro Medina, whose mommy lives right here in
4 New Jersey. I'm also grateful to make
5 friendships with the death row inmates. You see,
6 when I went in there, I did not know how to read,
7 I did not know how to write, I didn't know how to
8 speak English. The worst of the worst, the ones
9 that some people called monsters, taught this
10 Puerto Rican how to write, how to read and how to
11 speak English. If they would never have taught
12 me, I believe I would never have survived in
13 there, I would not able to learn law, I would not
14 be able to communicate better with my lawyers, I
15 would not be able to reply to the letters of the
16 pen pals, some of them from this great State of
17 New Jersey that show me so much love, compassion
18 and make me feel like a human being.

19 To conclude, I owe all of you to
20 recommend to the New Jersey State legislators
21 that they abolish the death penalty. It brings
22 too much pain, too much suffering to others.

23 It's a law made by humans, it's
24 carried out by humans, and we humans make
25 mistakes. As long as this law exists, there

1 always will be a risk that the State of New
2 Jersey will execute an innocent person.

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

6 MR. COLON: Okay. Forgive me for
7 that.

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

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

22 God bless you and love to you all.

23 CHAIRMAN COLEMAN: Thank you.

24 Is there any question of any
25 commissioner of Mr. Colon?

1 Thank you, Mr. Colon. You may step
2 down.

3 CHAIRMAN COLEMAN: Dan Carluccio.

4 You may proceed, Mr. Carluccio.

5 MR. CARLUCCIO: Thank you, Justice
6 Coleman, distinguished members of the Commission.
7 I am a 65-year-old lawyer. I've been a lawyer
8 for 41 years, most of which was spent as a trial
9 attorney. In fact, I've actually tried cases
10 against two members of this commission, and I
11 lost both, some many, many years ago.

12 CHAIRMAN COLEMAN: Was I the judge?

13 MR. CARLUCCIO: I've spent a good
14 deal of my professional career practicing
15 criminal law, first representing people accused
16 of crime, later prosecuting them, and now again
17 on the defense side. I had the good fortune to
18 be designated as the deputy public defender for
19 the Ocean and Burlington Vicinage by Stanley
20 VanNess and was honored to have been associated
21 with such a distinguished citizen of New Jersey.
22 I defended approximately 15 murder cases as trial
23 counsel and supervised countless others. I won
24 acquittals on many. And I came to understand
25 firsthand how our system of justice works in the

1 eight years that I served. I had the honor to be
2 appointed and confirmed to serve as Ocean County
3 prosecutor for a five-year term in the '90s. I
4 personally prosecuted several murder cases and
5 tried two as the county prosecutor. I also
6 supervised many others and made decisions on
7 strategy, pleas, investigations and death
8 eligibility.

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

19 You see, I oppose the death penalty.
20 I oppose it not on moral grounds, because
21 morality is really another form of religious
22 expression, and I believe that our Government
23 should stay as far away from acting on religious
24 principles as it possibly can. Most religions
25 tolerate killing in one form or another, so I'm

1 not persuaded by religious beliefs on the issue
2 of whether our Government, in the name of all of
3 its citizens, should take a life for any reason,
4 short of self-defense.

5 Our nation was founded on principles
6 of the enlightenment, the age of reason. And our
7 founders knew what they were doing when they
8 separated Church and State. But where does
9 reason lead us? Certainly, our founding fathers
10 accepted the death penalty, but does that mean we
11 should be blindly led by the past? I think not.
12 I think that a reasoned approach would consider
13 that the entirety of human history is a slow and
14 steady march out of the slime toward the stars.
15 2500 years ago, the Greek dramatists recognized
16 that murder begets murder and presented the
17 consequence of that endless circle of violence as
18 a limitation on what man could become.

19 As we learn, as we evolve, as our
20 society is enriched by ideas, people and cultures
21 from around the world, should we not grow and
22 develop in our ability to reason about something
23 as significant as Government-sanctioned killing?

24 The fact is that we know that the
25 death penalty is mostly an emotional response to

1 heinous acts. It serves no purpose other than to
2 brutalize ourselves, because if killing is wrong,
3 killing of a police officer, killing of a child,
4 killing of anyone under any circumstance, short
5 of self-defense, it is wrong for the State to do
6 it as well.

7 But let's look at what the death
8 penalty does accomplish. Wouldn't that be a
9 reasonable thing to do, if we're studying whether
10 or not to have a death penalty? We know that it
11 generates a lot of public interest. Newspapers
12 and the media outlets have a lot to write about
13 and talk about when a death penalty case is in
14 trial. We know that human nature and political
15 interests being what they are, prosecutors and
16 police officials respond to that notoriety, as
17 do defense lawyers and defendants, but I can tell
18 you that prosecutors also know that they have
19 limited resources. Taking on a death penalty
20 case ensures that some of your best and brightest
21 will be tied up for a long, long time. You see,
22 death is different. A murder case, even without
23 the death penalty, is a very consuming
24 undertaking for the entire system. What is the
25 value in multiplying the costs in time, money and

1 resources in a murder case with a death penalty,
2 when a perfectly reasonable alternative is life
3 without parole? My answer is none.

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

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

19 During my tenure as prosecutor, we
20 discovered, apprehended and convicted a serial
21 killer. One that none of you have even heard of.
22 He had killed and sexually assaulted an elderly
23 woman at the shore. A year or so later, with the
24 case becoming cold, a retired couple were found
25 murdered in their home in an upscale community

1 near Newark. The report in the Ledger caught the
2 attention of the police chief in Seaside Park,
3 who noticed some similarity to our case at the
4 shore. He called me, and I asked my detectives
5 to do a follow-up.

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

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

25 His guilty pleas and sentencing were

1 reported in the press for one day each, then he
2 was put where he belonged, locked away where he
3 could not further contaminate our society. Isn't
4 that a better outcome? Let's not create folk
5 heroes or folk villains. It's far better that we
6 do not know his name.

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

21 The rule of law is a rule of reason.
22 And as we write our rules, reason should be our
23 predominant tool. There's no reason for the
24 death penalty, and we should not have one.

25 I abridged my remarks from my

1 written testimony, but that was because I was
2 concerned with the ten minutes.

3 CHAIRMAN COLEMAN: Thank you,
4 Mr. Carluccio.

5 Are there any questions?

6 Ms. Garcia.

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

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

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

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

25 COMMISSIONER GARCIA: If.

1 MR. CARLUCCIO: If what?

2 COMMISSIONER GARCIA: They are
3 locked away.

4 MR. CARLUCCIO: Believe me, I think
5 that a capital crime, such as we call it, capital
6 meaning that we're going to kill someone over it,
7 but let's call it a crime that qualifies for life
8 without parole is a crime that we would all
9 pretty easily identify and we would find that
10 jurors would easily identify, and we would find
11 that the law could be carried out efficiently and
12 effectively. And, in fact, I think that was
13 already testified to by Attorney General Del
14 Tufo, when I think I heard him say that the
15 reversal rate, or the overturn rate, if you will,
16 it's not necessarily reversal, sometimes people
17 get new trials or new sentencing hearings, but
18 the rate of appellate interference with
19 convictions in life term murder cases is an
20 insignificant piece of what it is in capital
21 cases. And that's for a good reason, because, as
22 I said in my statement, death is different. And
23 when there's a death case, and there's a lot of
24 lawyers here, whether it's an accidental death,
25 whether it's a death in a civil trial or a

1 criminal trial, the whole proceeding is
2 different, because there's that dead presence,
3 dead person in the room, and everybody takes it
4 very seriously. And our system should take it
5 seriously, and it does.

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

13 CHAIRMAN COLEMAN: Senator Russo.

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

17 MR. CARLUCCIO: Hi, John.

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

25 Dan, though you say you've never

1 tried a death penalty case, I did, but that makes
2 you no less qualified for that position, and I
3 respect that position and you stated it well.
4 And as a prosecutor, you conducted, as you said,
5 many death penalty reviews, and you always
6 followed the law, but you feel the law should be
7 changed, and that's the reason for your being
8 here.

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

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

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

21 MR. CARLUCCIO: No, I do. I think
22 that it was very much influenced by the politics
23 of the times, quite frankly. I think that our
24 whole society is influenced by something. You
25 know, there's a famous person that I studied when

1 I was in college. Peter Finley Dunn was a
2 newspaper writer back at the turn of the century
3 and he had a character called Mr. Dooley. And
4 one of Mr. Dooley's famous quotes was, the
5 Supreme Court follows the newspapers. And I
6 think the political establishment follows the
7 public will.

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

20 COMMISSIONER RUSSO: Well, just for
21 whatever it's worth, Dan, when I first prosecuted
22 that murder case in Ocean County, I believed in
23 the death penalty, that's in the 1960s, this is
24 2006, I still believe in it under certain very
25 restricted circumstances. And at no times do I

1 feel it was because of a weather vane, a poll, as
2 that fellow suggested. You believe in it or you
3 don't believe in it, and you have to respect each
4 other's views. And the fact that I believe in it
5 doesn't mean that I was just catering to the
6 views of the people.

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

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

12 Do we have a copy of that handy?
13 All right. Let's see if we can.

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

22 MR. CARLUCCIO: No, that's not true.
23 No, that's not true at all. As I said, I sat and
24 made decisions on who should face the death
25 penalty.

1 COMMISSIONER RUSSO: That's not what
2 I mean, no, no, not as prosecutor. I mean today,
3 you today do not feel that anyone should be
4 executed by the State, in any State, as I read
5 your statement.

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

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

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

22 COMMISSIONER RUSSO: You would not
23 have executed Timothy McVeigh?

24 MR. CARLUCCIO: I'm sorry?

25 COMMISSIONER RUSSO: Timothy McVeigh

1 in Oklahoma.

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

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

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

20 I remember we had a case where a
21 couple of kids, young kids, punks in a town
22 decided to rob a local fast food place. The kid
23 who was running the fast food place was a
24 teenager himself. They got him to open the safe.
25 And after he opened the safe, one of the kids,

1 who was really the worst of the bunch of them,
2 shot him in the head and killed him. And it was
3 a horrible, horrible case. But they were all
4 teenagers, except there was one who was 18, and
5 we had to decide who was the one who might be
6 responsible for what could have been a capital
7 murderer. That's a tough decision to make, of
8 course.

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

1 But as we came around to it, there
2 was unanimity among our committee and with the
3 family, that that should not have been a death
4 eligible case.

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

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

20 COMMISSIONER RUSSO: The last point
21 I wanted to make is that you mentioned in here,
22 and I don't think really that you use that as a
23 basis, you don't feel that our decision should be
24 based on the cost of the death penalty or lack of
25 it?

1 MR. CARLUCCIO: No, I think that
2 when you're talking about cost, to quantify it in
3 how much money was spent on this or that is a
4 slippery slope, because cost should not be really
5 a factor in trying to establish a just result.
6 But I can tell you, from a practical side, and
7 you know this, too, John, because you were there,
8 when you have to go to the freeholders to get a
9 budget passed and you really think you need a
10 couple more investigators to go after some bad
11 stuff going on in your county, it's hard to tell
12 them it's because there's a death penalty case
13 pending, you're not going to get the budget you
14 need to hire those people and the investigators
15 you need, so that costs do end up figuring into
16 it, as it does in all levels of Government, so
17 that would be my response.

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

22 MR. CARLUCCIO: Thank you.

23 COMMISSIONER DeFAZIO:
24 Mr. Carluccio, you've been on both sides, but I
25 have a question about the case that you

1 referenced in your presentation, the 50-year-old
2 man, serial killer, sexual assaulter. This
3 defendant that you referenced, he was a death
4 eligible case?

5 MR. CARLUCCIO: Yes.

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

9 MR. CARLUCCIO: Yes.

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

20 MR. CARLUCCIO: That is absolutely
21 correct. In fact, the way that happened was, he
22 retained private counsel, a very competent
23 counsel, who contacted both myself and the
24 prosecutor in Essex County and said, I would like
25 to plea this guy guilty and get him away forever

1 so that we don't have to go through whatever.

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

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

19 CHAIRMAN COLEMAN: Ms. Garcia.

20 COMMISSIONER GARCIA: Isn't the real
21 question not whether we're for or against the
22 death penalty, but actually, is the system
23 working? I think the system, in my own personal
24 opinion, is working for the accused, but it's
25 certainly not working for the survivors.

1 MR. CARLUCCIO: Well, I agree with
2 you. I think that you've really then answered
3 the question of this Commission, that you have to
4 make a change, and I don't know what change you
5 would make, other than to throw out due process
6 of law, and that's certainly not a viable
7 alternative, so that's why I think the life
8 without parole is the alternative, and I felt
9 that for some time. I think it takes just a lot
10 of the bad parts away from it all and puts us
11 back on track of what we're supposed to be doing
12 here in administering a system of justice.

13 CHAIRMAN COLEMAN: Commissioner
14 Russo has one final question.

15 COMMISSIONER RUSSO: Dan, I said
16 before that the basis I felt to support the death
17 penalty -- and, incidentally, let me say this,
18 that perhaps surprising many people, I do not
19 believe the death penalty is a deterrent.
20 I don't believe any penalty is a deterrent,
21 and I think you and I probably know that
22 criminals don't think they're going to get
23 caught, so that's an issue that's out. But the
24 real reason that I always felt that there was a
25 need for a death penalty in very unusual, heinous

1 cases, very unusual, not indiscriminately
2 applied, is best stated in one paragraph, if I
3 may read it, by Justice Stewart when the death
4 penalty was reinstated in Greg versus Georgia.
5 And he said, "On that score I would say only that
6 I cannot agree that retribution is a
7 constitutionally impermissible ingredient in the
8 imposition of punishment. The instinct for
9 retribution is part of the nature of man, and
10 channeling that instinct in the administration of
11 criminal justice serves an important purpose in
12 promoting the stability of a society governed by
13 law. When people begin to believe that organized
14 society is unwilling or unable to impose upon
15 criminal offenders the punishment they 'deserve,'
16 then there are sown the seeds of anarchy -- of
17 self-help, vigilante justice and lynch law."

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

22 MR. CARLUCCIO: You know what, I
23 wrote my thesis in law school on Justice Stewart,
24 and he's a very practical guy. And I think that
25 what he said is almost what I said, because he's

1 saying that it's an emotional response, it's not
2 something that's based on reason, and he's saying
3 that it has to do with public opinion in terms of
4 feeling good about our society. So I think maybe
5 from the time that was decided back in 1976, was
6 that, or '78.

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

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

16 COMMISSIONER RUSSO: Okay. Thanks,
17 John.

18 CHAIRMAN COLEMAN: Commissioner
19 Abbott.

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

1 know his present address.

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

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

17 COMMISSIONER ABBOTT: It was a team
18 effort.

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

21 CHAIRMAN COLEMAN: Thank you,
22 Mr. Carluccio.

23 CHAIRMAN COLEMAN: I now call
24 Marilyn Flax and Marilyn Zdobinski.

25

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

11 The death penalty was designed for a
12 select few, the most evil of evil of killers. My
13 husband's killer, John Martini, is one of them.
14 He's been on death row for 17 years.

15 What I would like this Commission to
16 do is not change the law, but enforce the law. I
17 think that's what needs to be done today. The
18 frustration with the victims of crime is that
19 it's taking so long. I don't know whether it's
20 political moves. Quite honestly, John Martini
21 should have exhausted all of his appeals and
22 should be able to be executed, but a commission
23 was formed.

24 I have written a letter to the
25 Acting Governor Codey telling him how I felt. I

1 never got a response from him. If I could roll
2 back the clocks of time 17 years ago when my
3 husband was kidnapped and murdered, shot in the
4 head three times, the case is a little bit
5 different, is that I spoke to the killer over the
6 15 minutes on one phone conversation and I had
7 four other conversations with him.

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

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

25 What I also would like to say to you

1 is the death penalty was designed for the worst,
2 worst criminals, that's why we have it. That's
3 why we have execution. The same way that God,
4 who is a forgiving God, created hell for a select
5 few, he had a way of punishing them as well. We
6 need to execute in New Jersey. We need to stop
7 being soft on crime and we need to care about
8 crime victims.

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

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

17 MS. ZDOBINSKI: I won't, your Honor.

18 Your Honor, I heard earlier, and I
19 know, and with in all due respect to Senator
20 Russo, it is not a matter of, cost, I agree with
21 him that we should not be considering cost,
22 however, it is a question that is before the
23 Committee today and it has been mentioned by
24 legislators here today, that it has costs the
25 State of New Jersey a quarter of a billion

1 dollars to prosecute the death penalty since
2 1982.

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

19 And you know what, on page 15 of
20 that report, there's a little sentence that
21 reads, The Administrative Office of the Courts in
22 2004 stated that abolishing the death penalty
23 would result in no cost savings to New Jersey.

24 And you know what they said in that
25 report, without checking anything factually, they

1 said, that's impossible, and they discarded the
2 opinion of the Administrative Office of the
3 Courts. They then went on to say, and when I say
4 "they," I mean the perpetrators of this report
5 which grabbed the headlines, they said that it
6 cost prosecutors three times as much as the
7 public defenders to prosecute these death penalty
8 cases. You know what, they didn't ask any
9 prosecutors about what it cost. They didn't find
10 out what it costs. Instead, the report tells you
11 that relying on the opinion of a former
12 prosecutor who estimated that it probably cost
13 three times as much as it cost the public
14 defender's office to prosecute these cases. They
15 then multiplied the public defender's figure and
16 said, that's what it cost prosecutors. And they
17 said that this is buttressed by the figures from
18 other states.

19 Well, you know what, if they had
20 asked prosecutors who prosecuted these cases,
21 you'd find out, that that's what makes New Jersey
22 different. New Jersey is not the states who do
23 not provide the public defender's office with
24 many, many millions more than prosecutors have to
25 put these cases through. Prosecutors rely on

1 their talent and on the bear bones of the case.
2 They rely on the facts of the case.

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

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

23 MS. ZDOBINSKI: That's why I'm
24 asking you, your Honor, to find out what the
25 costs are. Because I can tell you about two

1 death penalty cases and I can tell you about
2 Martini, and that it costs \$2,000 apiece for the
3 two experts I hired during the trial. During the
4 prosecution of the appeals, and I was involved
5 even up until my retirement and afterwards, I
6 came and attended the appeals, I don't think we
7 hired one expert for those appeals.

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

20 In Passaic County, now, this is two
21 counties, in Passaic County, I tried the only
22 death penalty case that was prosecuted in the
23 last now 16 years; I tried it. It didn't get to
24 the penalty phase, but we only spent - you're
25 paying me a salary anyway and I tried it - we

1 spent, I think, \$6,000 for a psychiatrist in that
2 case. Any other expenses are the ordinary
3 expenses that a prosecutors' office would
4 undertake to prosecute any serious crime.

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

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

17 Robert Marshall is going to be
18 coming up for parole in, I think it's what, seven
19 or eight years. His sons have just embarked on
20 what I hoped they would never have to embark on,
21 and that is, they're not going to have any
22 healing. In fact, they're going to be at each
23 other's throats every time he comes up for
24 parole, and he's coming up for parole. There was
25 already an indication in the newspaper that his

1 one son, contrary to the younger son's position,
2 he said that he will fight to keep his father in
3 prison the rest of his life. Well, I suggest to
4 you that that's not a lot of finality. And I
5 suggest to you that those who have nondeath
6 penalty cases, and I'll give you two examples,
7 Marshall was one. Joan Delasandro was a
8 seven-year-old girl in Hillsdale in Bergen County
9 who was murdered while she was trying to deliver
10 Girl Scout cookies back in 1973. Her mother's
11 life was completely taken over by this crime.
12 She was murdered, Joseph McGowan was then, it was
13 before the death penalty, he was given life. He
14 came up for parole first I believe in 1993 and
15 he's been coming up periodically ever since. Her
16 two grown sons now, who at the time, hadn't even
17 been born when Joan was killed, they carry the
18 burden of -- and we all know what happens, it's
19 the families that carry the burden with parole
20 hearings. They carry that burden. There will
21 never be finality for them.

22 But Marilyn Flax's case is
23 different. The appeals for John Martini are
24 pretty much concluded, that's 17 years. It's
25 about time. It's about time the law is carried

1 out. There's no question of innocence. Have you
2 heard anyone, anyone come before you in all the
3 sessions you've had to indicate that someone on
4 death row is not guilty, is innocent. Is there
5 some question about their case; no. You keep
6 hearing from people from Florida. I understand
7 there may be flaws in other cases in other
8 places, but you know what the New Jersey Supreme
9 Court is like, Justice Coleman. You know how
10 carefully they consider the cases that come
11 before them. How did the New Jersey Supreme
12 Court in a 6 to 1 decision this July have no
13 question about Martini's eligibility to be
14 executed.

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

19 MS. ZDOBINSKI: Is the public safer
20 when --

21 CHAIRMAN COLEMAN: Your microphone
22 is off.

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

25 Your Honor, I don't want anybody to

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

19 I suggest to you that Mr.
20 Carluccio's example of an individual who pled
21 guilty, and there are still appeals when you
22 plead guilty, but there's just not as many, I
23 suggest to you that that example does not fit the
24 kind of murderers like Robert Weldon, who, in
25 1979, was finally convicted of murdering two

1 young girls in Howarth. In 1979, he's been
2 serving his time. Do you when his last appeal
3 was filed; two years ago, and I'm not suggesting
4 that that's going to be the last.

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

7 COMMISSIONER SEGARS: Yes.

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

13 MS. ZDOBINSKI: Yes, I did.

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

18 MS. ZDOBINSKI: Have you seen any
19 evidence --

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

23 MS. ZDOBINSKI: I know that the term
24 exoneration is thrown around quite a bit. I
25 don't know anything about his particular case,

1 but I would like to see whatever was submitted to
2 you in terms of court rulings or documentation
3 about his story in Florida. I understand -- I
4 know our system. I don't know the Florida
5 system. And I think it's a terrible thing to be
6 incarcerated if you are innocent, but I suggest
7 to you that our system here in New Jersey won't
8 let that happen.

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

14 MS. ZDOBINSKI: You mean Larry
15 Peterson?

16 COMMISSIONER SEGARS: I believe that
17 was the name.

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

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

24 MS. ZDOBINSKI: If you see the
25 Burlington County Prosecutors' Press Release with

1 regard to the motion to dismiss the case against
2 Larry Peterson, you will see that they did not
3 use the word exoneration, they did not exonerate
4 him. They indicated that after the passage of
5 time and after review of the case, they did not
6 have enough to put to a jury to prove his case
7 beyond a reasonable doubt.

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

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

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

23 MS. ZDOBINSKI: The piece of mind
24 that this State owes and the protection of future
25 victims that this State owes to the good citizens

1 of this State, I don't think it's too much to ask
2 for the death penalty, particularly, in the way
3 that it is prosecuted and reviewed in this State.
4 New Jersey does it better than anybody else, and
5 I know you know that.

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

11 COMMISSIONER GARCIA, you have a
12 question.

13 MS. ZDOBINSKI: If I could just
14 comment, most of those reversals came early on.
15 You know, your Honor, that this has been a
16 refinement process, and that there are very few
17 reversals in recent years, as opposed to the
18 beginning when everyone was learning the system.
19 It was very difficult. And, you know, I feel so
20 bad for those people who spoke earlier. I don't
21 walk in a victims' shoes, I don't know how they
22 feel. But if the case was prosecuted in the
23 '80s, there was a great likelihood of a reversal,
24 because the system was just learning. The system
25 has been very, very refined. How else could the

1 Supreme Court be comfortable in a 6 to 1, there
2 should be no impediment to his execution.

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

6 MS. FLAX: Thank you.

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

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

17 MS. ZDOBINSKI: Yes.

18 MS. FLAX: I thought about that,
19 actually driving here today, and if we had a
20 choice how to die, whether die of terminal
21 cancer, Lou Gehrig's Disease, maybe being burnt
22 90 percent to your body and dying of burns, or
23 being given a lethal injection, a shot to be put
24 to sleep, I'm sure all of us would choose the
25 latter. You know, I think it's too easy. I

1 mean, I would have loved Martini to, quite
2 honestly, be executed by the electric chair. I
3 think this is a very pleasant way of going out of
4 this earth, probably a little too pleasant.

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

21 MS. FLAX: I listened to it. And
22 you what, there really shouldn't be a trial by
23 jury. There is no reason to have a trial where
24 12 people listen to evidence and make a decision,
25 because 12 people unanimously have to decide upon

1 a death penalty. My time was wasted in going to
2 two trials, not one trial, but two. Seventeen
3 years waiting for justice to be served. I don't
4 believe anything that I'm told anymore.

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

12 CHAIRMAN COLEMAN: Any other
13 questions?

14 Jonathan Gradess.

15 MR. GRADESS: Thank you.

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

24 I'm the executive director of the
25 New York State Defenders Association. I was

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

23 I hope that Senator Russo will come
24 back. I do so want to answer this question for
25 him.

1 CHAIRMAN COLEMAN: He will not.

2 MR. GRADESS: He'll be gone. Well,
3 I hope someone will pick up the baton for him.

4 I also must tell you that, as a
5 result of my work, I was thereafter asked to
6 testify before the Kansas Legislative Research
7 Service, the Missouri Legislature, the general
8 accounting office, the United States Senate. It
9 is something that we've continued to look at
10 because of that experience. I've been an expert
11 witness in two capital cases, and we, for many
12 years, were most immersed in this question.

13 Our findings were, and you'll find
14 them at page four, I believe, of this report,
15 were really pretty clear, and I don't think they
16 differ in New Jersey by any means. First,
17 there's a widespread misconception among the
18 general public that life in prison is more
19 expensive than the death penalty. Second,
20 capital cases cost more than noncapital cases.
21 Criminal justice systems with death penalties
22 face higher design and maintenance costs than
23 criminal justice systems without capital
24 punishment. The main aspect that drives the cost
25 of capital punishment is not necessarily lengthy

1 appeals, although that adds to it, it is an
2 upfront cost associated with the guilt and
3 penalty phases of cases. And, most importantly,
4 I think for you and the questions that you've
5 raised here today, is that the exponential costs
6 of the death penalty continue to create resource
7 strains on the remainder of your criminal justice
8 system.

9 Now, I agree -- I tried to read your
10 transcripts before. Let me at the outset say
11 what you're doing I think is really a great job,
12 and I'm honored to be before you. I read the
13 transcript so I could sort of be prepared, and I
14 got the sense that there are some here who
15 believe that there is no price that you can put
16 on justice, and I agree with that. It really is
17 an elemental proposition. But there is a price,
18 and it's a real and concrete price that you can
19 put on the diversion of the resources that arise
20 from the expenditures of monies for capital
21 punishment, and that is not going to go away.
22 If you're a person or a study commission or a
23 legislator or a Governor who is interested in
24 saving lives, who is interested in protecting
25 your communities, who is interested in the

1 question of whether or not you're diverting
2 millions of crime fighting dollars, you must look
3 at cost of the death penalty. And you will not
4 be alone. For the last quarter century, most of
5 the states, a majority of the states in this
6 country have looked at this question and they
7 have concluded - and I'll share with you later
8 specifically - they have concluded that the death
9 penalty is inordinately expensive and it is a
10 resource drain. And when they begin to look at
11 it, they look at it this way, and I want to take
12 the specific figures of the New Jersey Policy
13 Perspective, and I want to assert that that is
14 your starting point for this issue. That
15 conclusion was that the death penalty only costs
16 you \$11 million a year.

17 As of yesterday, your State Police
18 told our staff that that would provide to you 160
19 more police officers protecting your communities,
20 if you spent it there. Those are the choices
21 that you have. The choice to spend it through
22 your Crime Victims Compensation Board and gain
23 850 more grief counseling sessions, the choice to
24 do elsewhere in your state as we are doing in
25 Rochester, as you are doing in Newark, to take

1 Operation Ceasefire, assuming it is all that it
2 is reported to be in the press, and bring it
3 elsewhere, not just expand it by the \$750,000
4 that Governor Corzine did, but to take all of
5 these kinds of dollars and use them usefully.
6 And I must tell you that, in all of the states
7 that I've looked at, your budget is wonderful
8 because you have two columns, you have a column
9 that says, here is what we're cutting, here is
10 what, if we had more money, we would spend it on.
11 It's a delightful document. And I would think
12 that that should be your starting point. And I
13 think that you should look, for example, at your
14 Crime Victims Compensation Board because it is
15 rhetorically attractive to say that we'll spend
16 whatever it takes. But it's not rhetorically
17 attractive to spend it in this context. You've
18 spent a quarter of a billion dollars, that's \$250
19 million over the cost of life imprisonment
20 without parole since 1982. You've had 600
21 aggravator death notices, 197 trials, 60
22 sentences, which if you pause there for a moment
23 and divide it, is about \$4.2 million per case,
24 but go on, because as your Acting Chairperson
25 said, you have lost 51 of those convictions

1 either through reversal, vacatur or the death of
2 the people on death row, so you're now left with
3 nine people on death row in New Jersey, and the
4 cost of getting them there is now up to \$28
5 million a case. This is not smoke and mirrors.
6 This is the evidentiary proposition that New
7 Jersey does not have two spigots to turn on for
8 money, there is one. And if you choose to turn
9 it on for the death penalty, you will turn it off
10 for other things, whether you are a prosecutor
11 and you would like to prosecute more hazardous
12 waste on the New Jersey Turnpike, whether you are
13 doing victims services and you'd like, instead of
14 leaving the budget flat, you have, as I
15 understand it, a statutory scheme in New Jersey
16 that allows you to pay up to \$25,000 per victim,
17 per case for what is needed under your
18 compensation board. Your average payment last
19 year was \$6,000, as I understand your budget.
20 Your average payment this year is projected to be
21 \$6,000 per case.

22 So as I listened to the victims who
23 spoke before and urged you to spend this money
24 elsewhere, and I hear the response, well, why
25 don't we go to the Legislature, the answer to

1 that question is, the Legislature in virtually
2 every state of the union fails dramatically to
3 fund victim services.

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

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

1 executions after 24 years. That's what is
2 happening here.

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

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

23 And I say that with all deference to
24 the remarks that have been made here with
25 reference to technicalities, etcetera, but when

1 you come out of Texas, you're grateful that
2 someone is applying the law of the land, because
3 they've chosen consciously to denude their system
4 of resources, but you haven't done that. You've
5 infused your system with resources, but the
6 effect of that is to give this process the kind
7 of long-term delay that you're experiencing, the
8 kind of reduction, the failure of executions.

9 Now, let me just tell you a little
10 bit about the 25 years of studies, because you're
11 not alone, and the New Jersey Policy Perspective
12 is not unique. First of all, there have been
13 studies all across the country, the most
14 prominent one of them was done in North Carolina,
15 and it established the way to look at this is to
16 take a look at capital cases and noncapital cases
17 and track them together. And it is not the case
18 that these things are all fungible, they all
19 merged, there's not an extra expenditure. There
20 is one. And in North Carolina, the finding was
21 that that expenditure is \$2.16 million more per
22 execution. In Florida, the state is spending \$51
23 million extra per year above life. In
24 California, it is an extra \$90 million per year.
25 In Texas, the state I'm talking about, they're

1 spending \$2.3 million a case, which comes out
2 eventually three times the cost of 40 years in
3 tell. Indiana has just recently reported, and
4 all of this is in my testimony, that it's costing
5 38 percent more than it would cost for life in
6 prison without parole. Kansas, where I was in
7 1987, and has just done the study again, 1.2
8 million per case, 70 percent more than noncapital
9 cases.

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

17 CHAIRMAN COLEMAN: Your time is out.

18 MR. GRADESS: I'm running out?

19 CHAIRMAN COLEMAN: Yes.

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

22 CHAIRMAN COLEMAN: Let me just
23 remind you that the statistics are a little
24 difficult to remember much after we've heard
25 them, so we're going to rely rather heavily on

1 your written presentation to be accurate in our
2 memory. I know the transcript is important.

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

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

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

18 CHAIRMAN COLEMAN: Is there a
19 question from any Commissioner?

20 COMMISSIONER DeFAZIO: I have
21 questions, Justice.

22 The \$7.8 million per year for the
23 prosecution of capital cases in New Jersey, that
24 includes, I'm assuming, and correct me if I'm
25 wrong now, Mr. Gradess, that includes

1 investigative costs, correct?

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

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

23 I think that your Attorney General's
24 Office, and it may be something that you wish to
25 do, could supply a much greater amount of detail,

1 and in this respect, I agree, to your Commission
2 about what is happening. Because I think you
3 would confirm at least a ratio of 3 to 1, if not
4 more.

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

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

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

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

24 My point was that I would not be at
25 all surprised to find that the ratio, when you

1 take and aggregate the actual amounts being spent
2 on cases and you capture from police budgets and
3 you capture from local sheriff's budgets and
4 capture the investigative costs and accurately
5 report them and look internally at the case and
6 how it is handled, extended voir dire, the number
7 of people that are called as experts, the greater
8 the scope, a prosecutor's efforts to answer
9 mitigation, the numbers are inordinately more
10 than noncapital cases, and the ratio may be
11 debatable, but in my view, the debate moves that
12 number upward, not downward.

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

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

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

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

25 MR. MOCZULA: What is

1 there, other than tripling defense costs, just
2 taking the arbitrary tripling of defense costs,
3 what specific prosecution costs were relied on in
4 that report?

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

12 MR. MOCZULA: A former
13 prosecutor --

14 MR. GRADESS: A former prosecutor.

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

17 MR. GRADESS: If your point is that
18 you think that impeaches this report; my point
19 is, I do not think it does. If your point
20 simultaneously is, could the report be
21 strengthened; my point is, yes, that it could be.

22 And I would think that you should,
23 because I believe there is no question, if you
24 gave it to the Attorney General of New Jersey and
25 said, pick your toughest pro-death prosecutors

1 who don't want abolition and have them define
2 your costs, I'm sitting here to say to you, the
3 prosecution costs will inevitably be higher. I
4 would be absolutely flabbergasted if they were
5 not.

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

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

23 MR. MOCZULA: Well,
24 actually, my question dealt more with the
25 proclivity of noncapital defendants to continue

1 to file, as opposed to the system as it is in
2 place. Their appeals may be rejected, but that
3 really doesn't answer the question of the
4 numerous times that defendants continued to file.
5 And, again, as I mentioned before when prior
6 witnesses were testifying, if for no other reason
7 than they're put away for life in prison,
8 arguably, if we get to that system, and have the
9 time and the inclination to file. They don't
10 have the inclination to do anything else in that
11 sense. They have every inclination to challenge
12 the sentence.

13 MR. GRADESS: That's absolutely
14 right.

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

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

24 So the point is that, without
25 counsel, they're really in deep trouble and it is

1 simply not true that they will be in the same
2 position as capital defendants who have not only
3 in federal court statutory authority for counsel,
4 but a cadre of lawyers that I've been trying to
5 recruit the noncapital cases for years, who will
6 do death cases, and will not do ELWA cases. It
7 simply isn't the case that that's going to
8 happen.

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

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

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

20 MR. GRADESS: No. I'm relating it
21 specifically to New Jersey. I'm talking about
22 Rule 3.22 of your rules regarding postconviction
23 relief. I'm talking about the scope of your
24 postconviction relief in this state. It is not
25 as extensive --

1 MR. MOCZULA: My question
2 went to whether, in actual experience, can you
3 take a number of defendants, have you studied a
4 group of defendants to find out how long their
5 appellate process took, how many appeals they
6 filed to make a comparison between capital and
7 noncapital cases running through the system?

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

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

13 MR. GRADESS: No, we've done it for
14 New York. We have not done it for New Jersey.
15 New Jersey Policy Perspective has done it and I
16 commend you, if the view of this study commission
17 is that that study needs more work. I think I
18 would do that more work, because I'm confident,
19 as I think every state that has looked at it,
20 would tell you, look at it any way you want, look
21 at this upside down and inside out, hire
22 consultants, get an economist, go to the same
23 school that a couple of weeks ago reported that
24 you're in an economic decline at Rutgers, have
25 anyone look at it, you will find that the cost of

1 capital punishment, maintaining the system is
2 inordinately more than the noncapital system you
3 have. And you are diverting resources that will
4 not be absorbed if you stop the death penalty,
5 you will release resources for other things, and
6 I would recommend that you do it.

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

24 MR. GRADESS: Well, I would describe
25 that the person who had that prescience then

1 should have been listened to earlier.

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

4 MR. GRADESS: Well, not surprised.

5 MR. MOCZULA: So we are on
6 point in that, this is nothing new in a sense.
7 We know exactly where that public defender
8 estimated the costs to be.

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

21 CHAIRMAN COLEMAN: Any other
22 questions?

23 Thank you, Mr. Gradess.

24 Sharon Hazard-Johnson.

25 Ms. Johnson, we're aware that you

1 presented testimony before, so we'll ask you not
2 to repeat yourself, but tell us what it is
3 additionally you wish to present.

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

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

24 I was a little surprised when I sat
25 here and listened to a former prosecutor say that

1 he had prosecuted a capital case and that he
2 couldn't say that he didn't interject any
3 personal beliefs in how he handled the case to
4 make sure that it wasn't handled as a capital
5 case. I would present that that person, as a
6 prosecutor, was not qualified to perform the
7 duties for which he was hired. He should have
8 been on the other side. A person that prosecutes
9 a case, a prosecutor, a judge, the Supreme Court
10 justices should all be death qualified just as a
11 jury has to be death qualified to listen to the
12 facts of the case and render a decision based
13 solely on the facts and the law. That's why
14 they're hired or elected or selected, that's why
15 they're there, to carry out the laws of the land,
16 not to interject a personal opinion, position or
17 belief.

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

23 In 1982, the State reinstated the
24 death penalty after a 10-year process of
25 performing a death penalty statute investigation

1 in order to ensure that the statute that came
2 back would meet Federal and State constitutional
3 standards.

4 New Jersey's laws have been
5 continuously reviewed and revised so that the
6 death penalty process would assure as close to
7 100 percent accuracy as possible, that no
8 innocent person is executed and that an execution
9 is carried out as fairly and humanely as
10 possible.

11 Death qualified juries voted
12 unanimously that many of New Jersey's most
13 inhumane murderers be sentenced to death. Some
14 of these include, but are not limited to Robert
15 Marshall, who had his wife Maria Marshall
16 murdered; Leslie Nelson, who murdered Officers
17 John McLaughlin and John Norcross; Peter
18 Pappasavas who murdered Mildred Place, they and
19 others were removed from death row by the State
20 of New Jersey. And today, Marko Bey who murdered
21 Cheryl Austin and Carol Pennison sits on death
22 row. Sean Kenney also known as Richard Bester
23 who killed Keith Donagey sits on death row. John
24 Martini who murdered Irving Flax; David Cooper
25 who murdered Latasha Goodman, Brian Wakefield

1 also known as B-Love and Burger-time because he
2 went for an burger after he murdered my parents,
3 Richard and Shirley Hazard, sits on death row,
4 Ambrose Harris who murdered Kristin Huggins,
5 Jessie Timmendequas, who murdered Megan Kanka,
6 Donald Loftin who murdered Gary Marsh, Anthony
7 DeFrisco who murdered Edward Kocher, although
8 just weeks ago was released by the State of New
9 Jersey from New Jersey's death row, Nathaniel
10 Harvey who murdered Irene Schnapps, all these
11 murders, with the exception of DeFrisco, are
12 sitting on death row just waiting for their time
13 to come when the State of New Jersey is going to
14 release them from death row.

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

23 One is that evolving standards of
24 decency demands that punishments for crimes must
25 evolve to become more serious and severe as

1 murderers evolve to become more vicious and vile.

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

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

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

22 Finally, the numbers of us that are
23 for the death penalty when it fits the crime have
24 not dwindled. Survivors are simply exhausted and
25 people are fed up because of the continued

1 interference and overturning of death sentences
2 by the State of New Jersey at our expense.

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

12 Thank you.

13 CHAIRMAN COLEMAN: Any questions?

14 Thank you, Ms. Johnson.

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

21 My parents lived a wonderful life,
22 or I should say wonderful lives, there were two
23 of them, not one. I want to remember my parents,
24 and I want you to know my parents and I want you
25 to remember them, too.

1 But I also can't forget their
2 deaths, because it was so vile and inhumane.
3 I refuse to forget their deaths. I'm not looking
4 to be a celebrity. I'm not looking for them to
5 be celebrities. I'm not even looking for a Brian
6 Wakefield to be a celebrity. It's the law, it's
7 simply the law, and it's time.

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

16 You made a comment, though, that you
17 think that the people who are opposed to the
18 death penalty should be doing things to prevent
19 it from happening, and I just want you to know,
20 me personally and I know at least a couple of
21 other people who are involved in a program with
22 the State Department of Corrections where I
23 travel the State and I go inside many
24 correctional facilities up and down North Jersey,
25 all the way down to Cumberland County, you name

1 it, the State doesn't compensate me for gas or
2 anything, and I happily do this, because what I
3 do is, I speak to the inmates. And many of these
4 inmates, some of these inmates are murderers,
5 they're not capital cases, they will someday be
6 released, but I let these inmates know the pain
7 that they put me and my family through and
8 continue to put me and my family through,
9 hopefully, to reach some of these inmates, so
10 that when they are released, they will think
11 twice before they commit these crimes again. So
12 there is that avenue, and I'm taking advantage of
13 it, because I don't want another family to go
14 through what me and my family have gone through,
15 and I want you to be aware of that.

16 MS. JOHNSON: Thank you, Mr. Hicks.
17 I am familiar with that program. It's called
18 Focus on the Victim, and I too am involved in
19 that program. I have visited at least six
20 prisons and talked with probably about 75 to 100
21 inmates. And I even have a couple of other
22 visits still on my calendar. And there's one
23 reason I get involved in that program. And
24 ironically, about a month or two before my
25 father's and my mother's death, my father said to

1 me one day, he said -- we used to always get
2 together, we were a very close family, and we
3 talked about what they wanted when they died. My
4 father said -- he was a Navy man, he says, well,
5 cremate me and put my ashes out to sea. My
6 mother was a Jehovah's Witness, and she said, you
7 know, it doesn't matter what you do with me, what
8 you do with my body, because the body is only my
9 vessel, my spirit is what will live on. And my
10 father said to me, just a couple of months during
11 a regular family outing, he said, Sharon, there's
12 an old Negro hymn called, If I can help somebody,
13 and then I chimed with him, along the way then my
14 living shall not be in vein.

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

24 CHAIRMAN COLEMAN: Commissioner
25 Garcia.

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

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

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

24 MS. JOHNSON: I think it makes it,
25 for lack of a better word, maybe inactive,

1 paralyzed, somewhat complaisant. But you know
2 what, the ironic thing is, when a system doesn't
3 work, do you know whose advantage that is, the
4 advantage is to the criminals who are willfully
5 and intentionally performing these acts every day
6 on innocent people. They don't fear anything.
7 They don't have a barometer.

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

16 Thank you.

17 COMMISSIONER SEGARS: Justice
18 Coleman.

19 CHAIRMAN COLEMAN: Yes.

20 COMMISSIONER SEGARS: Ms. Johnson,
21 again, I am sorry for your loss, and I mean that
22 with all sincerity, I think I said it before.
23 But the last time you testified, I did ask you a
24 qualifying question at the end of your testimony,
25 which was, if there were life without the

1 possibility of parole, would you favor adopting
2 that model, and your answer at the time was yes.

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

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

14 Looking at the history of what's
15 happening with the death penalty over the years,
16 so many people said, well, he's going to be
17 released from prison one day. My position is,
18 just as even before the trial where people said,
19 he'll never get the death penalty, my position is
20 that my strength, my energy, my belief is that,
21 ultimately, the State is going to carry out the
22 law, but I think what I conveyed to you is that,
23 if this Commission intends to submit to the
24 legislators to abolish the death penalty and
25 replace it with life without parole, that what

1 this Commission should do is present to the
2 legislators that the taxpayers and voters take a
3 vote on whether or not to keep and impose the
4 death penalty.

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

11 COMMISSIONER SEGARS: Thank you.

12 Ms. Johnson.

13 CHAIRMAN COLEMAN: Thank you,

14 Ms. Johnson.

15 Brian Kincaid.

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

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

20 You may proceed.

21 MR. KINCAID: My name is Brian
22 Kincaid. I am a certified civil trial attorney,
23 but I have engaged in criminal practice over the
24 years since 1989. It may seem like an odd match
25 being from Northern New Jersey up by Lake

1 Hopatcong, but I have become friends with Sharon
2 Hazard-Johnson. And I actually became aware of
3 her case many years before I got to speak to her.
4 In my service as a volunteer fire fighter, we
5 have a magazine called The Responder, which comes
6 out, and the case was featured. And part of
7 Brian Wakefield's weapon he welded against these
8 victims was fire. And as a firefighter, I know
9 that's a particularly horrible way to go.

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

23 Last week's Star Ledger had an
24 interesting article, Cop Killer's Art Cancelled
25 by School. Thomas Manning, not only a cop

1 killer, but a terrorist, part of the weather
2 underground who killed State Trooper Lamonaco in
3 1981, his artwork, artwork - this is a fellow who
4 is serving basically 80 years to life, so it
5 means no parole - was on display at the
6 University of Maine, called, Can't Jail the
7 Spirit - art by political prisoner, Thomas
8 Manning, and others.

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

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

20 So question, cop killer, artwork on
21 display at the university; how on earth, in
22 essence, is a life imprisonment without parole a
23 just sentence here, when this known terrorist
24 could still spew his venom from a jail cell? And
25 how could any legislation this committee would

1 recommend to the Legislature prevent this, or
2 could it?

3 I also take umbrage with the fact --
4 the allegations that the appeals just stop under
5 the life sentences. I've written at one point
6 about the Joseph Aulisio murder case, which
7 occurred up in Old Forge, Pennsylvania. Joseph
8 Aulisio was 15 years old in 1981 when he
9 kidnapped and murdered two children that lived
10 next door to him. He was sentenced to death in
11 Pennsylvania in 1982. That death sentence was
12 reversed in 1982. I've written about the case on
13 and off, and the last appeal so far that was
14 done, because there have been appeals all the way
15 since the reversal of that death penalty in 1987,
16 was in 2003 before the third circuit. The
17 appeals, for people to say the appeals stop on a
18 life sentence is just intellectually dishonest;
19 it does not occur.

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

1 rights because of the death penalty.

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

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

21 Now, that life imprisonment without
22 parole for Clarence, it was supposed to be so
23 cost-effective and bring so much money to crime
24 fighting; what was the life of those three
25 victims worth; what was each of those lives worth

1 that he was able to order, from general
2 population, life without parole, the murders of
3 three other individuals?

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

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

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

22 Question: The abolitionists, nor
23 Senator Lesniak, nor Senator Martin seem to
24 adequately argue, well, how do we prevent that
25 that would never happen, that there would never

1 be a Joanne Chesmire in the New Jersey system
2 under life imprisonment without parole, or a
3 Clarence Allen; they didn't answer it.

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

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

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

22 John Martini; Marilyn Flax, I've
23 talked to her today and become friendly with her.
24 John Martini has tried to escape. I think his
25 prosecutor told you that during the last -- I

1 think it was diamond wire being smuggled in by a
2 jail guard. How do you protect society from
3 these people with life imprisonment without
4 parole when we've had proven escapes, when we've
5 had proven murders ordered from prison?

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

19 We could even go further back. If
20 you look at the case of Tex Watson, he was one of
21 the Manson murderers in California. He's
22 essentially serving life without parole. I think
23 it's an outrage to society that Mr. Watson has
24 fathered four children while in prison. He runs
25 a website. He has become an evangelist now. You

1 can go onto his website. That is an insult to
2 society for which there is no cost.

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

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

24 The abolitionists pushed for many
25 years the name of Roger Coleman from Virginia.

1 The DNA specialist said this was going to be the
2 individual that DNA was going to exonerate and
3 prove once and for all that an innocent man has
4 been executed. And they had never mentioned, in
5 my hearings of this testimony, the name of
6 anybody innocent actually executed, post-Furman.
7 Well, the DNA showed, when they did DNA tests
8 last year, that Mr. Coleman was guilty, and the
9 revelation that these death row inmates lie.

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

14 CHAIRMAN COLEMAN: Any questions
15 from the Commission?

16 Ms. Garcia.

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

20 MR. KINCAID: Yes, I have, because I
21 represented, as a defense attorney, Francis X.
22 Brand. Franc Brand was prosecuted. It was a
23 1988 murder of his brother, a hit on his brother.
24 I defended Mr. Brand. I went to New Jersey State
25 Prison postconviction for Mr. Brand, so I've been

1 there.

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

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

25 COMMISSIONER HAVERTY: My question

1 is very simple. You talked about meeting your
2 client in Trenton State Prison. You met with
3 your client in an area where attorneys and
4 clients meet, correct?

5 MR. KINCAID: Excuse me?

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

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

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

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

23 Incidentally, when you're talking
24 about prison cell blocks, I represented a young
25 man from a Northern New Jersey high school. It

1 wasn't a scared straight program, but it was a
2 program where they were taken on a tour of
3 Jamesburg. And they're not cell blocks, but
4 they're cottages there at Jamesburg, but they're
5 very dangerous individuals there at Jamesburg.
6 And what happened with this high school field
7 trip, two guards were prosecuted for this, they
8 decided to have some fun with the high school
9 students and the students were led through this
10 cottage and attacked, close to rape. The
11 prisoners were prosecuted as adults for this. I
12 had to walk through the cottages down there in my
13 investigation as a plaintiffs attorney there, so
14 I have been on cell blocks, if that's what you're
15 asking.

16 COMMISSIONER HAVERTY: I was just
17 talking about Trenton State Prison.

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

20 CHAIRMAN COLEMAN: Ms. Garcia.

21 COMMISSIONER GARCIA: I'm certainly
22 not an abolitionist. I would say that I have as
23 much compassion for these individuals as they had
24 for their victims. I've never made any bones
25 about that. I'll be very clear on my position.

1 You stated that -- you said
2 something about mocking society.

3 MR. KINCAID: Yes. Go ahead.

4 COMMISSIONER GARCIA: Could you
5 repeat that statement for me.

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

20 I can even remember that coming home
21 from college, driving through 80 and being stuck
22 by the road blocks there when that happened. And
23 now his artwork, now this is supposed to be
24 punishment, ostensibly, his artwork, so we know
25 he was doing artwork, is being displayed at the

1 University of Maine. And, again, the quote was,
2 if this isn't a mocking of society, if this isn't
3 a lack of remorse for killing a police officer,
4 who really stands as the symbol of society, a
5 symbol of our civilized society, and the name of
6 the art exhibit, Can't Jail the Spirit - art by
7 political prisoner, Thomas Manning.

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

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

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

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

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

25 COMMISSIONER GARCIA: I know, but

1 don't you also think, when we don't execute these
2 death row inmates, that they are mocking society
3 and we are enabling them to mock society?

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

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

16 And if you think about this, if I
17 had any suggestion to save on the time, but not
18 dilute in any way the legal protection of these
19 inmates, currently we have the automatic appeal
20 to the State Supreme Court, then there's usually
21 a motion for a new trial and then we go to the
22 State Supreme Court again, because we combine the
23 proportionality reviews, to my knowledge, now in
24 the first appeal. Why not have an automatic
25 motion for new trial while you still have the

1 same sitting trial judge, because judges in the
2 Superior Court do get rotated, that all the
3 evidence could be gone through, that there's a
4 transcript produced, and that the Supreme Court
5 consider, at the same time, the motion for the
6 new trial, the proportionality review and the
7 death sentence itself. I think that that would
8 probably save at least a few years on the process
9 here and maybe that begins to dilute the mockery
10 of society that we've now come to here in New
11 Jersey.

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

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

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

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

20 COMMISSIONER HICKS: Yes. You made
21 a reference to the fact that inmates who receive
22 life without parole can commit other crimes, like
23 you gave the example of the guy who ordered three
24 people murdered. Isn't it possible for someone
25 who is sentenced to prison for robbery, for rape

1 or maybe noncapital murder cases, can do the same
2 thing? So, in effect, the only way you can
3 prevent any prisoners from committing crimes once
4 they're incarcerated is to execute all of them?
5 I mean, what's stopping an armed robber from
6 doing the same thing; what's stopping a murder
7 case that's not a capital case from doing the
8 same thing? I can't understand the logic. To
9 me, it's something that could happen, regardless
10 of what the person is in prison for.

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

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

25 CHAIRMAN COLEMAN: Any other

1 questions?

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

4 (Recess.)

5 CHAIRMAN COLEMAN: The next
6 presenter is Anna Rivera.

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

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

22 The mission of the Latino Leadership
23 Alliance is to mobilize and empower Latino
24 communities, to obtain political, economic, and
25 social equity. The vision of the Alliance is for

1 a better New Jersey, a New Jersey as it should
2 be. The Alliance's vision is to challenge New
3 Jersey to build a state that can lead the nation
4 in carrying out inclusive policies that empower
5 and tive dignity to all residents. Today I am
6 presenting you with Resolution No. 2006-008,
7 passed on July 29, 2006 by the Alliance Board of
8 Delegates. The resolution calls for an end to
9 the death penalty in New Jersey. It recognizes
10 the many complex issues involved with the use of
11 the death penalty from concerns about racial and
12 economic disparity to the risk of executing an
13 innocent person.

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

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

25 The resolution calls for a serious

1 exploration of alternative punishments and this
2 Commission has an historic opportunity to do jus
3 that. We urge you to examine alternative
4 punishments carefully and thoroughly.

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

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

1 that create opportunity.

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

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

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

25 If any of you asked me, which you

1 have asked many who sat in this chair today, what
2 my opinion would be about the McVeigh type of
3 guy, and would I consider that death penalty to
4 be sufficient for him, someone who has committed
5 heinous acts like that, in my personal opinion, I
6 would say that that would be too easy for him, in
7 my personal opinion as someone may have killed
8 one of my children.

9 I also celebrate 13 grandchildren.
10 I could not imagine the pain, the inhuman pain of
11 what I would go through thinking if one of my
12 grandchildren were murdered.

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

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

25 Those are my comments.

1 CHAIRMAN COLEMAN: Any questions
2 from any Commissioner?

3 Thank you. You may step down.

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

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

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

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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