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PUBLIC HEARING

before

ASSEMBLY JUDICIARY COMMITTEE

on

"DEATH PENALTY"

(An examination of the death penalty statute, N.J.S.A. 2C:11-3,
in light of recent court decisions)

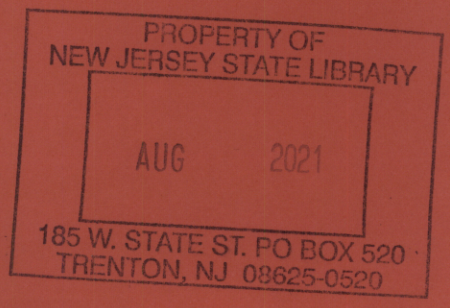
March 2, 1989
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

- Assemblyman Thomas J. Shusted, Chairman
- Assemblyman William P. "Pat" Schuber, Vice Chairman
- Assemblyman Robert J. Martin
- Assemblywoman Barbara F. Kalik
- Assemblyman John A. Girgenti

ALSO PRESENT:

- Patricia K. Nagle
Office of Legislative Services
Aide, Assembly Judiciary Committee



* * * * *

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
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State House Annex
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Trenton, New Jersey 08625



THOMAS J. SHUSTED
CHAIRMAN
WILLIAM P. SCHUBER
VICE-CHAIRMAN
ROBERT J. MARTIN
JOHN A. GIRGENTI
BARBARA F. KALIK

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ASSEMBLY JUDICIARY COMMITTEE
STATE HOUSE ANNEX, CN-068
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NOTICE OF PUBLIC HEARING

The Assembly Judiciary Committee will hold a public hearing on Thursday, March 2, 1989 at 10:00 a.m. in Room 424 of the State House Annex.

The purpose of this public hearing is to conduct an examination of the death penalty statute, N.J.S.A. 2C:11-3, in light of recent court decisions.

Anyone wishing to testify should contact Patricia K. Nagle, Committee Aide at (609) 292-5526.

Anyone wishing to submit written testimony to the committee is requested to bring 10 copies to the hearing.

Issued 2/16/89

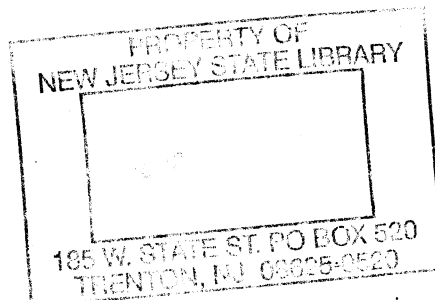


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ASSEMBLYMAN THOMAS J. SHUSTED (Chairman): Can I have your attention please? I'm sorry for the delay, but I would just like to make a brief opening statement. I would like to welcome you to this meeting of the Assembly Judiciary Committee. As you know, today, we'll be discussing the death penalty, an extremely difficult topic which generates strong feelings on both sides.

With this in mind, I would ask that, while you may not be in agreement with some of the views expressed here today, please remain courteous and respect each other's right to speak.

In addition, I would ask that all witnesses keep their comments brief, since we must adjourn by noon, and we have a large number of people wishing to testify. Before I call the first witness, I would like to make a few comments concerning capital punishment and the purpose of this hearing.

In the criminal law, subtle distinctions are often drawn among types of crimes in order to determine appropriate punishment. This is true when distinguishing the various types of homicide, but while the difference between punishments for aggravated manslaughter and manslaughter may be ten to twenty years in the life of the defendant, no distinction is more important or more stark than that drawn between a sentence of life imprisonment and a sentence of death.

Understanding this, the New Jersey Legislature took pains to craft a death penalty statute which would be imposed selectively and would balance the rights of defendants with the needs of society. In August of 1982, the death penalty was signed into law. In subsequent years, several amendments were adopted, which were intended to guard the statute against constitutional attack. The careful and thoughtful consideration afforded this statute

by the Legislature appeared to pay off in March of 1987, when the New Jersey Supreme Court upheld the constitutionality of the death penalty in capital cases, in the case of State against Biegenwald and State against Ramseur.

In both cases, however, the death sentences were invalidated. Biegenwald was remanded for resentencing and has since been resentedenced to death, while Ramseur had his sentence overturned with no remand. The court stating that sentencing proceeding errors were so prejudicial to the defendant, that he could not be subjected to the death penalty, thus commenced a string of eleven death penalty appeals, which have yet to yield a valid sentence. While it is incumbent upon the court to insure that no person is wrongfully convicted and punished for a crime, some questions have been raised as to whether the courts are being unreasonable in their interpretation and implementation of the death penalty statute.

For instance, are the trial errors which have formed the basis for overturning several sentences of such a serious nature as to warrant new proceedings? Quite simply, is the court looking for a perfect trial in an imperfect world? Then there are questions about the statute itself. Is the death penalty statute unconstitutionally brought as the court held in the State against Gerald, when defendants are made eligible for death, when they purposely inflict serious bodily injury which then results in death, even if they did not intend to kill the victim? If the statute is flawed, what should the Legislature do about it, if anything?

We wish to gather information which will permit us to answer these questions and many other questions. It is the Committee's desire to review the record to evaluate the current state of capital punishment in New Jersey. And we enter these proceedings with open minds and wish only to

see that the will of the people, as expressed through their elected representatives, is carried out within the constitutional framework in which we live.

With that, I would like to introduce the other members of the Committee and ask if they have any remarks. To my left is Assemblyman Bob Martin. Next to Assemblyman Martin is Assemblyman Pat Schuber. To my right is Assemblywoman Barbara Kalik, and next to Assemblywoman Kalik is Assemblyman John Girgenti.

If any of the members of the Committee have any comments, they are certainly welcome to make them now.

ASSEMBLYMAN MARTIN: I don't know if I'm speaking for the Committee. I'm very, very troubled by the fact that we've had as many cases as we have wherein there has been, to date, no use of this particular punishment. While it's extreme, it certainly was the intention of the Legislature that for heinous crimes, it could be a tool. And right now, we have a paper tiger, as far as I'm concerned. If that's what it is, then I expect, and would hope that we will come out of these hearings with some legislation which will put some more teeth back into the law.

ASSEMBLYWOMAN KALIK: I'd like to state that I'm going to try to listen with as open a mind as I can possibly have. I am opposed to the death penalty, have always been opposed to the death penalty, probably will always be opposed to the death penalty.

It is the law of the State, and, as such, certainly ought to be administered as any other law, and that is the best that the law can be administered. I think that in presenting cases for tightening this law or broadening this law, certainly statistics ought to be presented to show that it has worked, could work, would work, that it's fair, that it's just, that it's reasonable,

and that it is accomplishing what it was supposed to accomplish. I, personally, debate all those questions and think that the answers to all of them are, "No." But I will listen, and I will try to be swayed. I just wanted you to know where I stood before the hearings, so that you understand my questioning.

ASSEMBLYMAN SCHUBER: I would indicate that, if I might, just before the hearing opens, this was one of the first matters that came before the Legislature when I entered the Legislature in 1982. And I gave a lot of time and effort to reviewing the situation at that time, and listening to the tremendous amount of debate both pro and con by some excellent constitutional experts in this particular area and was very, very troubled, until I cast my vote in the affirmative, with the belief that this does provide a deterrence, and it is a necessity for the safety of the public and the public welfare. But, a great deal of time and effort was placed in drafting this legislation, so that, in my understanding and my belief, it embodied all of the constitutional safeguards that were possible and that are required and maybe more so to make sure that an error is not committed in the implementation of what is really the ultimate penalty. That being the case, the Legislature having overwhelmingly supported it, the Governor of this State having supported it, the overwhelming majority of citizens of the State having supported it, there is an ultimate concern on my part, as to what has happened as a result of that. All of us have reviewed the numbers of cases, I think over thirty-two of them, involving the implementation of this penalty. I think it's of grave concern to all of us, as to what has happened to prevent the implementation of this penalty that has been so overwhelmingly supported by the Governor, the Legislature and the public. I'm looking forward hopefully through the

testimony that's elicited today, that it will shed some light on it and give some light to the legislature whether something remedial should be done.

ASSEMBLYMAN GIRGENTI: Not to be redundant, I just want to say I had supported the death penalty and it probably was one of the toughest decisions I have had to make as a legislator. I think it's important that we go through this process because we should examine this particular piece of legislation and evaluate it and see the effectiveness of the situation that we have with it. We know that a number of years have gone by, and we see that there has really not been -- not that we have to advocate that there has to be, I would like to see what the factors are in this, and if we can make this a better, more effective law. I think this process will do a great deal in showing this, so I look forward to this.

Hopefully, if there is a problem with this law, if this law has to be tightened up, or changed to any degree, because the public, I feel, wanted the death penalty at the time, and I think there's a concern out there that something has gone awry when we see the process is beginning to drag out, that there's really no result. So, I look forward to these hearings for some input.

ASSEMBLYMAN SHUSTED: The first witness will be the Speaker of the General Assembly, Assemblyman Chuck Hardwick.

ASSEMBLY SPEAKER C H U C K H A R D W I C K: Good morning to you, and members of the Committee, I commend you for holding this hearing. I thank you for taking up my suggestion some time ago that we need to review the actions of the State Supreme Court. We need to review the statute to see where the problem lies. This is one of a series of hearings that you're holding. I hope at the end of these hearings there can be a mechanism developed where there can be an exchange of views between

the Legislature and the State Supreme Court. While respecting the separation of powers, it's frustrating to me, there doesn't seem to be an understanding on the part of the Court of what the Legislature has truly been trying to do. Since enactment, some thirty-two killers have been sentenced to death, and in March of 1987, the State Supreme Court upheld the constitutionality of the death penalty. That affirmation should have been a clear signal to potential murderers that New Jersey will deal the harshest penalty possible to someone who takes another person's life, but it has not worked out that way, and we're left to asking, why?

I believe one of the reasons is the Supreme Court's protracted reviews of death penalty cases. I assure you I am not suggesting that a thorough review should not be done, because it must be in the interest of justice. But what I think we need is a solid deadline for the time that this review would take. This would not be, curbing the appellate review process, rather it would be telling the State Supreme Court the death penalty cases are a high priority and should be considered ahead of lesser cases. A speedier review also is a joint step in victim's rights or survivor's rights.

The survivors of murder victims should not be put through a lengthy ordeal of not knowing the final disposition of the case at the State level. Perhaps a one year time limit for the review process would not be unreasonable at all.

Next August will mark the seventh anniversary of the reinstatement of the death penalty for murderers in New Jersey, and while it would be wrong to criticize the law simply because no one has been put to death under its provisions, I think it's become increasingly more apparent that the law is not working as it was intended. A death penalty that's never used is not a deterrent.

The State Supreme Court has been asking the question, "Did the murderer intend to kill his victim?" in deciding whether the death penalty should be imposed. I don't think that's quite the whole question.

The right question should be, "Did the murderer through acts of violence or heinousness cause the death of another human being?"

There's a glaring example of the injustice and it is the case of Walter Gerald. Gerald was sentenced to death by a jury of his peers in Atlantic County for the brutal 1982 murder of fifty-five year old Paul Mateus. On the night of August 13, 1982, Gerald and two other men entered the home of Paul and John Mateus. Paul's sister Lottie Wilson was also staying at the home that evening. Paul was awakened by the screams of his sister who was being attacked by two of the men and as a good brother he went in to help. He was hit in the face with a television set, he was then repeatedly beaten by the intruders, and he died later that night at Shore Memorial Hospital. His father, an eighty-nine year old crippled man, was dragged from his bed and beaten, and he died two months later.

Once Gerald was in custody, an alert police officer noticed the design on the bottom of his sneaker matched a print left on the face of Paul Mateus who had died and who had been stomped to death.

In court Gerald testified that he accidentally stepped on Mateus' face as he was leaving. He didn't explain how he did it four times. Medical experts at trial testified that the foot print could not have been made by someone stepping once on Paul Mateus' face, but rather there was evidence of four of them inflicted with significant force.

This past October, the New Jersey Supreme Court overturned Gerald's death penalty, saying he did not

knowingly and purposefully murder Paul Mateus. He was only trying to injure him.

We must have a law or constitutional revision that would allow the imposition of the death penalty in a case such as the one involving Gerald. The collective wisdom of the State of New Jersey determined seven years ago that we will make certain heinous crimes punishable by death. It was not an easy decision. No one would lightly take the life of another, but we made that decision and it's important that we follow through. We cannot stand by, while the State Supreme Court guts the death penalty. They should eliminate the loopholes that allow people like Walter Gerald to literally get away with murder.

I believe we should also take out the provision in our law that says there should be a proportionality review of death sentences. This provision is designed to insure that similar sentences are given for similar crimes. It was included in the death penalty statute because we then thought the United States Supreme Court would require it. The United States Supreme Court did not include this criteria in ruling on what a capital punishment statute must include to pass constitutional muster.

It is time for this unneeded provision to be dropped in State law.

I'm accompanied this morning by two very courageous people on this panel and also in the audience is another one, Janet Barton, who has dedicated her life to helping victims of crime. On my left is Jim O'Brien, whose daughter Deidre was a victim of a heinous murder, from Morris County. Mr. O'Brien, in the memory of his daughter, has done everything he can to prevent such a terrible tragedy from striking another family. He has been speaking out very eloquently on the need for capital punishment.

On my right is Helen Drucker who represents Justice for Murder Victims. Her sister was a murder victim, and she too is trying to do her best to prevent such a similar tragedy from happening again.

Mr. Chairman, I'd like to ask Mr. O'Brien, with your permission, to make some comments.

J A M E S O' B R I E N: Mr. Chairman, in October of 1984, James Jerry Koedatich was found guilty of the murder of Amy Hoffman, a cheerleader from Randolph High School in Parsippany. The next morning they were going to start the penalty phase of this trial. And a newspaper reporter Robin Lally who is present in this room today was able to gain an interview from the jail cell with Mr. Koedatich, and the following morning in the newspaper appeared the article on the interview, and the headlines read, "Koedatich, I want to die."

James Koedatich in May of 1985 was convicted and found guilty of the murder of my daughter Deidre. The murder occurred twelve days after the murder of Amy Hoffman. At that time he continued to protest and say that he wanted to die, and the reason he wanted to die was he did not want to spend ten to twelve years in jail with one appeal after another taking place, knowing that full well within ten or twelve years he was going to die anyway. He made the statement to the reporter that he felt that it was cruel and unusual punishment for him not to be put to death. Incidentally, he did not allow any defense in his penalty phase, and he asked for no appeals, and the Legislature did not have an automatic appeal at that time. Since then, of course, we do, and they have appealed his case. Mr. Koedatich said he felt that for his family and for himself it was cruel and unusual punishment.

Ladies and gentlemen, as I said in an article in The New York Times this morning, it is cruel and unusual

punishment for the survivors as well. We've lived with this for six-and-a-half years on a daily basis. We thought it would end when our trial was over. We were naive. It did not end when our trial was over, and it has not ended today, four-and-a-half years later. For James Koedatich is still within the system. The Supreme Court overturned his death penalty. He will be retried on the death penalty phase in two months. Pretrial hearings are going to start shortly.

During that four-and-a-half years, we have seen him on TV constantly, film clips of him. We have seen him in newspapers. Two of my children have married and moved out-of-state, probably trying to separate themselves from this and get on with their lives, not only geographically but psychologically. Today we start the process all over again of retrying Mr. Koedatich again. And my wife and I will go through it as well, by the way, as will his family.

I agree with Mr. Koedatich. He is a very evil man, but he is a wise man. This appeals process is a disgrace. Time involved is unbelievable. And I give you an example. They had a pretrial meeting of the judge, the prosecutor, and the defense lawyers in October to set the stage for the trial. Since then there has been one delay after another, and as I sit here now, into March, there has never been a pretrial hearing. The motions were only filed two weeks ago, and there is no date now set for the trial. That's been cancelled, and no pretrial motion date has been set. We're going to go through the delay process again.

In my opinion, there is nothing wrong with the death penalty law that we have today. It's the procedure that's wrong. And I think the majority of the fault lies with the defense lawyers, public defender's office, and those that they hire privately to do these appeals. They drag them out to the point where I feel that it eventually

comes down to the fact that they are not trying to get this man's case overturned. They are simply trying to keep him alive. And they will file appeal, habeas corpus, appeal, appeal, just to keep him alive, not to get him off death row.

In closing, I would just like to repeat a conversation I had in 1983. A grand jury was meeting in Belvidere on our case. And I was having lunch with the Detective Sergeant Gary McWaters who was of the major crime unit of the State Police who was in charge of our investigation.

I was very frustrated over the time it was taking for the grand jury to hand down a decision. Gary stopped me and he said, "Jim, there's no use getting upset over this, because," he said, "I want to tell you something: You and I will both be dead before Mr. James Koedatich or anybody else on death row is put to death in this State." Thank you very much.

SPEAKER HARDWICK: We thank you very much for sharing that. I would now like to introduce to you Helen Drucker for Justice for Murder Victims.

H E L E N D R U C K E R: Thank you for inviting me here today. As Assemblyman Shusted said, this is a very difficult subject.

It's very difficult for me, because my sister, as Mr. O'Brien's daughter, was an innocent victim. We can all listen. We can all talk about it, but the bottom line is, these victims were real people. They were somebody's flesh and blood. They were not statistics in newspapers. They were our loved ones. My sister did nothing wrong in her life, as Deidre O'Brien, and many other victims. She was in her home sleeping in the middle of the night minding her own business. At that time Mr. Nathaniel Harvey who was out on parole for raping a woman -- he was out in four

years, after serving four years of a fifteen or twenty year sentence -- entered her home, beat her up, punched her in the face, broke her jaw and took a hatchet which fractured her skull and penetrated her brain. He was the judge, the jury, and the executioner all wrapped in one. He absolutely showed no mercy. And now we sit here today, while he sits on death row waiting for appeal, and we talk about rights. No way do we want to take away criminals' rights, but the bottom line is, you cannot give rights to one group without giving them to everybody. The Constitution says, "We, the people," not, "We, the criminals." There has to be rights for everybody. And as Mr. O'Brien said, it is cruel and unusual punishment for the victim's family.

Professor Ernest Vondenhog, a proponent for the death penalty said, "The purpose of doing justice is to give people exactly what they deserve."

William Tucker in his book, "Backlash Against Crime in America," talks about the judiciary's reluctance to implement the death penalty. On page 295, he says, "The judiciary is unwilling to acknowledge that its own stubbornness is probably accountable for the death of far greater numbers of innocent people, those unnamed, unknown, and unrepresented individuals who might not have been murdered had the courts not stood in the way of capital punishment."

As I said, we can sit here. We can talk about everything, but the bottom line is, if anybody else, God forbid, had the unfortunate experience we've had, you'd feel very differently.

As far as a deterrence, we will never know how many murders it's going to prevent. Secondly, in order to be a deterrence, punishment must be immediate, and consistent. As we can see with the Supreme Court, none of

that has been true. In William Tucker's book he talks about a study done in 1975, by Professor Isaac Erlich, University of Chicago. Professor Erlich did statistical regressions comparing murderers in states where those were frequently executed, to murderers in states where they are not executed, and he came to the conclusion that every execution probably saves about eight innocent lives. Of course, Professor Erlich has been under attack, and he has since then refined his figures, defended it and redone his study, and has come to essentially the same conclusion.

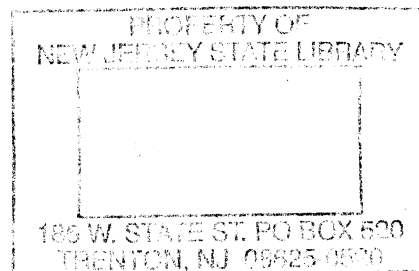
And what we are saying right now is that the murderer's life is more important than the victim's life. Somewhere along the line, the rights of the innocent person have been forgotten.

In closing, I would like to quote an article written by Mona Cheron and she says, the phrase, "Justice delayed is justice denied," used to refer to the accused. To keep an innocent man too long under suspicion is unfair. But today the phrase has taken on new meaning, permitting a vile murderer to retain his life for years and years after his victims have forfeited theirs, is denial of justice to them and to us. Call it vengeance, if you like, but the need for vengeance is an element of just punishment. It is not wise to thwart it, nor is it disreputable to admit it. Thank you.

ASSEMBLYMAN SHUSTED: Thank you very much.

SPEAKER HARDWICK: Thank you. Let me assure you, if this Committee comes back with recommendations on how to improve our law so that we have a death penalty that is constitutional and can serve as a deterrent, I'm suggesting, on the intent portion, or any other statutory changes to improve this law, I assure you, it will be a very expeditious hearing by the entire Assembly.

ASSEMBLYMAN SHUSTED: We'll have a lot of sponsors.



SPEAKER HARDWICK: I suspect that it will.

ASSEMBLYMAN GIRGENTI: Mr. O'Brien, you said basically you agree with the law. You're saying the process is where the problem is basically being drawn out; deliberations, and ongoing procedure. Based on your experience, what would you like to see it come to?

MR. O'BRIEN: Assemblyman, I've had the dubious honor of attending two complete capital murder cases and three penalty phases, including the latest in Biegenwald, because I wanted to see the change in the law, which I was shocked at. And then I followed the appeals process on Mr. Koedatich's case, attended the oral arguments before the Supreme Court. My feeling is that there are several flaws in the procedure, but the main flaw is what I alluded to before, and that is, the time element in filing appeals, having the arguments, and if you have a retrial and a penalty phase, getting those retrials on with. And defense lawyers and the public defender, who I know is overworked -- overworked and underpaid, I know that's the case -- but something should be done in that area where deadlines are given. As he said, a year, two years, I don't care what it is, but let's put a deadline on it. And then everybody, including the accused, their family, and ourselves as well as society will have a schedule. And I don't think that would impair the rights of the accused in any way, shape or form.

ASSEMBLYMAN SHUSTED: I don't know whether we could constitutionally legislate that.

SPEAKER HARDWICK: You can try for it.

MR. O'BRIEN: Certainly, pressure could be put on the public defender's office to start coming down with quicker appeals. I think this is where the long process begins.

SPEAKER HARDWICK: Mr. O'Brien has a point, too: Should there be a Supreme Court that does not want a

death penalty carried out, the delay, the delay, the delay, turns the death penalty then to life imprisonment, simply by delaying it. Ipso facto becomes life in prison, which is not the intent of the legislature or the will of the people.

MR. O'BRIEN: Justice Rehnquist is deeply concerned. There are law firms and lawyers around the country, who they call themselves S.W.A.T. teams, and all they do is go around on the Federal level and help defense lawyers in those appeals and writs of habeas corpus. When it gets down to the nuts and bolts, before a man is executed and all they are trying to do, as I said before, they are trying to delay the process, not get the man off death row. This is a fact that we've got to come to realize. That's all we're trying to do.

ASSEMBLYMAN SHUSTED: Thank you very much, Mr. O'Brien.

The next witness is Cary Edwards.

CARY EDWARDS: Thank you, Mr. Chairman. I do have a schedule to be somewhere else out-of-state. I appreciate your giving me the opportunity to make some quick comments to you, which I will elaborate on in much more detail in writing later on.

I want to start off by saying, I was first elected to the Legislature and voted for the death penalty as a member of the Legislature, before I was appointed Counsel to the Governor in 1982, and I negotiated the existing death penalty statute with this Legislature and the members of it.

Subsequent to that, I became the Attorney General for three years. During that particular period, as chief law enforcement officer of the State, we prosecuted most of the death penalty cases either in trial or through the appeals process. And I am not going to try to stand up

here and tell you what the outcomes of each and every one of those cases are, but I would request that you reach out to the Attorney General -- because now I am a private citizen, at this point I do not want to speak for either him or the law enforcement community officially in that capacity. Review each and every one of those cases, go through the status of the statute in each and every one of those cases, and listen to what the Supreme Court has said and the justification for their refusal to impose the death penalty.

When I first became Attorney General, and the death penalty was found constitutional, I was a very happy person. I was a happy person, because I felt my legal interpretations and the will of the public was going to be adhered to through the Supreme Court process. I have come to be frustrated as the Attorney General in prosecuting those cases and appealing those cases. There is not a will that exists in the Supreme Court -- if you really sit down and read those particular opinions, they seem to be reflecting what they sense; the Supreme Court sense is not a will and a commitment by either this Legislature or the people of New Jersey to see that the death penalty really gets implemented.

I think you'll find another string running through those particular line of cases, and that is, they are not finding or making their findings or delays based on anything material in the statutes. They will use the statutes as one of their reasons for their justification, but they will rely much more heavily on the New Jersey Constitution first, and the United States Constitution second.

I think it is important for the Legislature during this particular process to voice the will of the Legislature; to tell the court what Mr. O'Brien is talking

about. While I was the Attorney General, we put together the Victims Advocacy Program, which this Legislature passed and funded and gave us the dollars to put a Victims Advocacy Program in every single prosecutor's office in this State, managed and operated through the Attorney General's Office. You heard Mr. O'Brien go through-- I've heard that story a hundred different times in various criminal proceedings as to the delay.

In capital cases, there is not a sense either by the court or the public or anyone else that this court intends to impose a death penalty in this State. And they are basing that, I think, primarily, on the New Jersey Constitution and on their unique and independent powers as a court in this State. I think a message has to be sent, whether it's a message to rewrite the legislative intent, the need for and write legislative intent and public policy in this State, that the courts must act within a judicious period of time to deliver justice. Justice in this case has not been delivered. If, regardless of the debate on whether you believe that a death penalty is a deterrent or is not a deterrent, the purpose of passing the death penalty was very specific: to provide whatever deterrent was there, and provide a significant measure of punishment in certain cases. Neither has been accomplished. Seven years is too long to have a criminal law on the books that never ever gets implemented, and it doesn't matter whether you agree with that law or not. Once it is on the books and it is a public policy of the State, it is the obligation of that court and that system to deliver swift and proper justice in accordance with that statute. There is no question.

ASSEMBLYMAN SHUSTED: Do you think a time frame?

MR. EDWARDS: I don't think you can impose a time frame -- you know that and I know that -- based on the

Constitution. I do say that the Legislature can, through modifications to that statute, perhaps improve it a little. In doing that, they can state their intent to see that justice that is denied is no justice at all.

And when you read and you listen to the arguments and the questions of the court, as those Supreme Court arguments are made, you will come to the conclusions that I have; that the court does not sense a will on behalf of the people of the State nor the Legislature to really see the death penalty aggressively enforced and imposed. I don't think that's the truth. No one is more frustrated than I was. No one is more frustrated than those twenty-one prosecutors. No one is more frustrated than these victim witness advocates in each of those prosecutor's offices who must deal with those.

ASSEMBLYMAN SHUSTED: How do we do that?

MR. EDWARDS: I think you do that by taking the statute, by making whatever amendments that would clean it up, and in the statement attached to it, you can always write legislative intent into it. Write your time limits in. Make the statement as a matter of public policy to the court. Have these particular hearings. The court is not getting the message, in my opinion, that the Legislature and the people of this State want that death penalty imposed. Some of the judges don't agree with the death penalty.

ASSEMBLYMAN SHUSTED: I would agree with you, Mr. Edwards. If you take a look at some of the slip sheets on these decisions, Koedatich or Ramseur or Zola, you can take a look at any of those cases, there's a common thread that pervades all of them, to the extent that the Supreme Court will uphold the statute itself as it has done both in Koedatich and the Ramseur, but, there's an underlying theme that goes into almost every single case you look at. They

do not see a mounting legislative intent that this should be implemented. In fact, what happens is that you'll find they uphold the statute in every case, and maybe they will uphold the conviction but remand the penalty phase for some particular reason. And each reason is different. Every case has a different reason for it. I really don't believe that they believe that we are serious in what was done here. If anything comes out of these hearings, that was one of the concerns we had when we started, if we can deliver any messages, it is that we're serious. This is serious business. It's not something to be treated lightly, but it just does reflect overwhelming legislative intent, which I think was true in '82 and '89, and if we have to rewrite the statute, I agree with you, I don't think you can set a time limit, constitutionally. But if we have to rewrite it to provide for a more specific legislative intent, and I didn't think that was going to be necessary, there's no doubt in my mind that it's going to have to be done now.

Let's do that. I think that's one of the things we're going to have to do.

MR. EDWARDS: We have even done the opposite.

It was a modification to the death penalty statute that, in fact, clarified by indicating we did not want minors to be subject to the death penalty, which was a question, the opposite signal. I'm not saying we shouldn't have passed that statute. I think we should have. I do not say I oppose that particular activity, but the messages have been wrong, consistently wrong as they have been delivered to the court. I believe the Legislature and the Governor speaking on behalf of the people of this State, the elected representatives, the public policy makers have spoken. They need to speak more loudly on that. There are no major amendments that I can see that can be made to this

particular statute that would either withstand New Jersey State constitutional muster by any court, or United States constitutional muster. You cannot merge the two. There's no major amendments that I can see that you can make that would not cause the whole system to fall, and the entire death penalty statute to fall. I would guard against, from your perspective, making major modifications without having consulted with the best constitutional lawyers that you can find. We have them here in New Jersey. They worked for me for the last three years as Attorney General. If you do, you're liable to find yourself with no death penalty at all. That would be the biggest crime of all if that was not your intent. I urge you to be very careful. Don't buy into a whole lot of radical changes in that statute.

It will not withstand constitutional muster. But get the message across. Listen to the Attorney General. Listen to the Public Advocate and the Public Defender. Find out where there are modifications that you might make. I don't think they are material, and I don't think they will make any difference as to the ultimate implementation of what is the public policy of this State. Only the Legislature and the Governor can speak as to what the intent of public policy is. You need to speak loudly. You need to speak clearly. The judges need to hear it. And those judges that don't hear it need to be replaced on the bench. It's that simple. We need to appoint judges that have the ability to listen and follow what the public policy dictates are.

The victims, and I said before, I can't tell you how many times I've had reported back to me the frustration of the advocates, victims and the prosecutors, and even the defendants as was pointed out by Mr. O'Brien. We must, and I think we have, an absolute obligation to do something about it and the time is now, for this particular

Legislature to speak. And I commend you, Mr. Chairman, and all the members of the Committee, whether you're for or against the death penalty, if it's going to be there, it must be imposed as part of our law enforcement system or the whole system falls, respect for the whole system falls, and I say that as one who is out facing criminals each and every day for the last three years.

It is vital that you speak and speak firmly and swiftly.

ASSEMBLYMAN GIRGENTI: I want to say that, Cary, you were elected right when I was elected the first time. One of the frustrations that I felt running for office at that time was the unequal treatment of the victim as opposed to the suspect, and I was proud of the fact I was able to pass the Victim's Bill of Rights, into law, which will help in some way, and the tax on crime, which taxed the criminals, to help the fund, I think all of that was part of the backlash. We have seen the Miranda decision, and society kind of bent over -- we didn't say there was not fair and equal treatment for the victims. I think we see in this, moving further down the line, that we've come a great way in terms of the overall picture of the victim. Here again, I see a situation, where, in many cases, the victim is denied through this process, and I think we have to do something about it. I understand the situation with the time frame. Perhaps, it's an idea of looking at it and modifying it as you said, to kind of hone in to where the problems are. My compassion, my feelings -- and I don't say this, because my record speaks to it over the years, you've always been supportive and worked with us -- goes to the victims and their family first. And I think that we never should lose sight of that. I mean an individual is entitled to due process. They are entitled to the whole procedure in terms of the suspect, but, I think at some

point we have to go back to the area where it's an equal and fair treatment for the victim of this situation and the victim's family. And I think, from what I have seen and what I've read, we don't have that right now in terms of this particular category, because, you see, there's been justice denied over a number of years and the whole purpose of the death penalty or one of the key reasons for it was deterrence, and we have not had the opportunity to see if it has been effective. I don't think we should be hasty. I think we do need safeguards. I think everybody is in favor of that. I think there is not a philosophy, they don't agree. This is what I'm hearing; therefore, we're not going to put this act through to its fruition.

MR. EDWARDS: There is no question in my mind, if you listen to the arguments, listen to the questions, read the opinions, there is not a sense on behalf of this Supreme Court that we mean it; we really want a death penalty imposed. It's that simple.

Secondly, you know, John, going back when we were in the Legislature, we did together -- Tom Shusted, Barbara was involved it, Pat was, and later on Bob Martin, on the advocacy bill -- we have put together one of the finest, absolutely one of the finest victims rights and advocacy programs and protections in this country, and I'm as proud of it as you are. As Attorney General, I had to sit every day and listen to these victims. Can you imagine waiting six years going to trial after trial after retrial on a murder case, reliving over and over and over again that tragedy? That is as much of a crime as anything else we've done. There must be a reasonable time frame, and seven years is not the time frame in which one victim -- one victim has been satisfied that they will not have to go through that, and continue to be the victim of that crime, and they do continue.

The survivors continue to be the victims, and we've fought so hard in this State, to see that that isn't the case. And in my opinion, we have done better than anyone else in the country in doing that. And there was a lot of people putting a lot of work into it. All of it seems to get frustrated. The whole criminal justice system falls in disarray in the eyes of the public and the criminals if we do not deliver what we say is the law, and there are people there who should get the death penalty, and it should have been imposed by now.

ASSEMBLYMAN MARTIN: Cary, I don't know whether you could put any estimate on the costs involved. And let me just rephrase this question by saying, I think with the death penalty, certainly the defendant, as well as all the other parties involved, should have close scrutiny through the process, and I support the mandatory appeals, but there is a significant cost factor in going through all of these appeals, which, I have no problem with, as long as there is a potential to see that the law may be utilized.

Do you have any idea at all as to what some of the costs are involved, as far as the various appeal processes, both for the public defenders, as well as the Attorney General's Office or the county prosecutors?

MR. EDWARDS: No, I don't have the exact number for you. It's a very difficult one to get. It is in the millions and millions of dollars for these thirty-some-odd cases. As I said, the law is not at fault. The system, I have no regret about spending a lot of money. The death sentence is a very final thing. And as John said, it was one of the most difficult votes he had to make. It was one of the most difficult ones I had to make. I know it was for Pat and for Tom. I was there. I watched it happen. There should be no stone left unturned. It should not be something used frivolously or carelessly. I'm not

suggesting that. I'm also not suggesting that we shouldn't spend those dollars as we need it. I'm also not suggesting there's any major amendment to that statute that should be made or that would survive, but there does need to be a voiced intent. And you need to appropriate through the appropriations process the necessary dollars.

I heard it said the public defender's office doesn't have enough dollars. That's true. They don't have the dollars. That causes part of the delay process. Their job, however, is to thwart the system. Remember, the public defender is to use every tool at his disposal, including time, to delay and to protect his client. Guilty or not guilty is not the issue. That is how our system of advocacy works. It should work that way. We never, ever, under any circumstances, want to look back and say, we didn't do everything we could to be sure that someone who wasn't guilty got a death sentence. Of all the greatest tragedies in the world, it would be that. I have no regret about the money.

ASSEMBLYMAN MARTIN: My point was not that I begrudged utilizing the money, but, if in fact capital punishment is really just a statement of principle which is never really an actuality, then the monies are, I think, just being utilized for a frivolous purpose.

MR. EDWARDS: We talked about that in the prosecutors' meetings, as to whether or not we should be devoting the resources. The prosecutors are starting to get frustrated as to whether they should be pursuing capital cases or not, tying up their resources, not to deliver a final product. They ultimately decided they should. I decided that we should.

What I'm really saying is, the court has to get a message that they must act swiftly today, tomorrow, next week to provide in those cases where capital sentence is

warranted the imposition of that capital sentence, or the law is not worth all of the work and effort and sweat that we all put into it. And the victims and the survivors will continue to be victims forever. It is not by major modification. There's a court system that has not gotten the right message from us.

MR. EDWARDS: Thank you, Mr. Chairman.

ASSEMBLYWOMAN KALIK: Before we let you go, I'm glad that you stated what you stated, and that is, that the attorney's job is to in fact defend their clients, whether guilty or not guilty, and to thwart the system and to delay. And whether it be a case of an injury in an insurance claim or the death penalty, that is, in fact, the job of the attorney. We do get frustrated. We do get upset, but that is the attorney's job. I agree with you, there can be no change in the death penalty law that in fact, is going to meet the total constitutionality, and, therefore, you're going to throw out the very law.

I also want to say that, although it may be petty, the law of the land is the law of the land. The law of the State is the law of the State. And we have many laws on our books that are not, in fact, being adhered to. Just to mention one would be full funding of education, which is frustrating and impossible to live with.

MR. EDWARDS: I wish you'd change it.

ASSEMBLYWOMAN KALIK: I fear the broadening of the death penalty. I fear it, because I don't think it serves the purpose that it's supposed to serve, and I fear putting one more classification into that particular penalty. We expanded it this year. It was expanded to include drug related deaths. Now, there's another expansion request to include felony murders. Next year there may be another request to include some other kind of heinous crime.

And I think that that was why I opposed it in the beginning, and that's because there's never an end. Murder is terrible. The victim's family suffers forever. Whether the person who did the crime is put to death, left in prison, or dies at the hands of police officers, the victim's family lives forever with that tragedy. The tragedy is prolonging the process, whatever the final punishment is. The process is what is to blame. And we have to find a way to shorten that process, or to better serve the purpose.

MR. EDWARDS: Assemblywoman, this is not an issue, and I think you hit the nail on the head with it. There are probably half a dozen different crimes one might add to a death penalty statute and say that warrants the death penalty. That's not the issue that we're talking about. Because, no matter what you add to it in the circumstances, whether you agree or disagree, unless the system delivers an ultimate death penalty, even for the most heinous -- forget felony murder -- what about those deliberate, the prime acts that everyone would agree fall under the criteria that we can't get those cases, so it does us no good to talk about expanding that process until we've gotten to the point where we can deal with the most egregious through that court system. I don't believe there are many modifications that need to be made, or could be made, that could withstand constitutional muster in this State, under our State Constitution, coupled with the Federal.

It is a question of saying what your intent is. Once the law is passed, as I said, whether you agree with the death penalty or don't, whether you voted for or against it -- there was a lot of people who voted against the death penalty -- it still is the law. Your job as legislators is to do everything in your power to see the

public policy is adhered to. And I would urge you to act just as swiftly, even with your opposition to the death penalty to see it got enacted, because it is the public policy of the land. The victims are the victims of this, society is, and our whole criminal justice system is.

ASSEMBLYWOMAN KALIK: I'm on the side of the defense lawyer. My job is to thwart it, but I appreciate your comments. Thank you very much.

REPRESENTATIVE JAMES COURTER:
Thank you very much, ladies and gentlemen on the panel. I appreciate you taking me now.

I have a long day, and, of course, we all do. I appreciate the opportunity to testify here.

Capital punishment is, needless to say, one of the most difficult moral issues that we possibly can face. I'm very aware that there are those like Barbara Faith Kalik who are morally opposed to it. I respect that view. I sincerely do.

My view, however, is that the death penalty is both a necessary deterrent and just compensation for a particular set of crimes. It is clear that there is a consensus in New Jersey on the issue, and pursuant to that consensus, the Governor proposed, and the Legislature wisely enacted, the death sentence which we have today in the State of New Jersey. Despite public support for capital punishment, it is very clear that New Jersey has a death penalty in name only. Other witnesses have basically said the same thing. Since New Jersey reinstated the death penalty, obviously over thirty death sentences have been imposed and each one of them, at least ten or eleven that have been reviewed, have been altered and the death penalty, as a matter of fact, eliminated. In no case has Supreme Court reversed the death penalty because it concluded that a convicted defendant was actually

innocent. Technical and procedural reasons ruled the day. When a court reverses a hundred percent of the death penalty cases it reviews because of technical and procedural reasons, it is clear that the court is preventing the will of the Legislature. The court is not the Legislature. It should not use it to review criminal cases effectively to thwart the mandate expressed in carefully crafted legislation. Because the New Jersey Supreme Court has actively circumvented the death penalty statute, the Legislature, in my mind, Mr. Chairman, must reassert itself. It's going to have to, in my mind, go back to the drawing board and make some carefully crafted changes in the legislation of 1982.

To address the problem, I propose about eight or nine reforms. Mindful of what General Cary Edwards said, he's concerned about the fact that if reforms are too radical, that means the court, the Supreme Court of New Jersey, may throw the penalty out altogether, and we will end up with not even any death penalties. I was mindful of that as I went through the various types of reasonable reforms that I humbly recommend that you, as Chairman of this Committee, and the other members of the Committee look at very carefully. They are not difficult at all.

First, criminals who kill while committing violent crimes should be eligible for the death penalty, even if murder is not their prime intent. The statute specifies that a killer can receive the death penalty, if he knowingly caused death, and the statute reasonably goes on, serious bodily injury resulting in death by his own conduct. However, the State Supreme Court in effect amended this section of the statute when it ruled last year on the Gerald case that the defendant must intend to kill, for the death penalty to be imposed. In this particular case, Walter Gerald, and you know the facts, that his

accomplices broke into a home one night brutally beat Mr. Mateus, breaking several bones in his body. Speaker Hardwick mentioned the entire facts in the situation. The beating was clearly no accident nor was the severity of the injuries. They were intended. And it seems to me one should be responsible for the logical results of one's actions.

The United States Supreme Court has ruled that capital punishment is constitutional when the criminal shows a reckless disregard for human life. That's the United States Supreme Court. It seems to me that should be a fair test here in the State of New Jersey as well.

Those who intentionally and violently attack another person to the point of death, whether it be through assault, whether it be through rape, whether it be through arson, should be responsible for the actions like the defendants in the Gerald case. Our State Constitution should be amended to return the Gerald decisions, so the death penalty can be applied to those types of crimes. The United States Supreme Court has spoken again and again on the constitutionality of that type of a reform.

Second, and very specifically, the current requirement that the defendant caused the death by his own conduct -- "by his own conduct" must be modified.

And once again, I'm not at all saying that the statutes which were originally written were unreasonable. They were very reasonable. You could not have known the interpretations that the State Supreme Court would be placing on the language. So, the fault is not yours. The fault is not the Legislature's. The problem is the fact that the language has suffered from extraordinary interpretation. This provision for death sentence eligibility is designed to draw a distinction between an accomplice and a principal in murder, except in cases where

the accomplice contracted the murder in exchange for money. And the court has recently held that to be eligible for the death sentence, the defendant must have actively and directly participated in the homicidal act. While, no one would deny it is usually appropriate to punish a principal more harshly, obviously, than an accomplice, the defendant by his own conduct, language, and standard ignores the degree to which an accomplice is involved in a killing. There are cases in which the accomplice is a driving force behind the murder, even though he or she did not pull the trigger or pay the actual killer himself. For example, an organized crime chieftan, for example, can order a murder to be carried out and escape the death penalty, as long as he doesn't make a direct payment for the crime. That is the bizarre conclusion of the New Jersey Supreme Court interpretation of that particular language in the statute.

In State v. Marie Moore, the defendant was convicted of torturing, obviously, a young girl to death. The girl died after hitting her head on the bathtub to which she was chained each and every night. Her mummified body was later found in an attic crawl space in Moore's house.

The Supreme Court ruled that Moore could not be executed, because she only orchestrated the crime, and did -- actually, did not do the killing herself. I believe that a jury should have the right, the discretion, the right, to decide if people like Marie Moore bear enough of a responsibility for murder that they should receive the death penalty. I call upon the Legislature to reform our death penalty laws to allow the death penalty to be applied to those who decide to kill somebody else, carry out the murder, but seek to evade responsibility for the crime by avoiding direct physical involvement in the murder act.

Once again, there are people that are deranged in New Jersey, that know full well the interpretation of this particular statute. And they are having agents perform the acts themselves, so they will not be exposed to the death penalty.

Third -- and these are very specific recommendations -- third, the Legislature should add involvement in drug related crime to a list of aggravating factors to be taken into account in decisions to impose the death penalty. In Congress last year, I voted for an amendment to a major anti-drug bill that allows death penalty for killings by major drug traffickers. New Jersey has a clear interest in punishing serious drug pushers, since they are behind much of the crimes that we have in the State of New Jersey. In fact, more than half of all the crimes committed in the State are drug related.

Fourth, and there's just a few more, a defendant's history of serious, violent crime should be included in the aggravating factors in the sentencing phase of death penalty cases. A jury should know whether a defendant has a history of inflicting injury and rejecting rehabilitation. I recommend in addition to the prior murder convictions, the jury should be allowed to be informed of other serious violent crime convictions.

Fifth, the Legislature should drop the proportionality review. New Jersey law allows the Supreme Court to review a death sentence if it believes the jury's verdict is disproportionate to the penalty imposed in similar cases. This, obviously, is sometimes called the proportionality review test. This provision injects too much uncertainty in the system because the statute is unclear as to what is meant by "similar cases."

In fact, the court has been forced to retain a special consultant to advise it in interpreting the

proportionality provision. As a result, it is the court, rather than the Legislature, that is defining the important term. I oppose this type of judicial legislation. Because the United States Supreme Court has held that proportionality review is not required by the United States Constitution, we should remove this provision from the laws and statutes of the State of New Jersey.

Sixth, the Legislature should return to the pre-1985 statute standards for weighing aggravating and mitigating circumstances. This is the area that's gotten us into problems with regard to the review of many decisions and the reversal of murder requirements of capital punishment in positions during the past number of years. Prior to 1985, amendments to the death penalty statute, capital punishment would be imposed if the aggravating factors were, and the operable language is, "not outweighed by the mitigating factors." This whole area, obviously, of guided discretion to jurors has been hammered out by the United States Supreme Court over the past number of years. It's all relatively clear at the present time. The current language now requires that the State prove that all the aggravating factors outweigh beyond a reasonable doubt all the mitigating factors. The New Jersey Supreme Court has ruled that fairness, fundamental fairness, requires that those individuals who will receive the death penalty, now must undergo new trials because that test has changed, because there's now a higher burden placed on the aggravating factors. And the aggravating factors must outweigh beyond a reasonable doubt the mitigating factors, because the rules were changed in the middle of the stream, therefore, all these cases have to be retried. That's the thing that is basically creating the reversals that we have had during the past number of years, so we should go back to the pre-1985 standard with regard to weighing the aggravating and mitigating factors.

Seven, the Legislature must reform the provision of State law that allows one juror to prohibit the death penalty. When a jury decides a defendant is guilty of a capital crime, it must then enter a second deliberation over whether or not the death penalty should be imposed. At that point, if a jury is split, the death penalty is automatically not imposed. Under this system, obviously, one juror who previously judged that a defendant was guilty of the crime has the power to prevent the death penalty from being imposed. Currently, a split jury causes a defendant to automatically receive a lesser penalty. To remedy this situation, the statute could be amended to allow a second jury to deliberate on that sentence.

These recommendations, Mr. Chairman, if enacted, will make New Jersey's death penalty a real deterrent and a real punishment. I urge the Committee to consider those specific recommendations. What I tried to do here in helping you deliberate is to be as specific as I can, rather than just saying, we've got to give a signal to the New Jersey Supreme Court. Obviously, they don't construe signals. They construe language and the problem is they construed the language in such a way that capital punishment is no longer a deterrent. The fault does not lie with the Legislature at all. The language, as I see it, and as I heard it come down, seemed to be reasonable. The problem is the fact that the interpretation has been skewed in one direction by members of the Supreme Court, who I deeply believe are philosophically opposed to what the Legislature hammered out in 1982. I thank you very much. I'd like to answer any questions that you have. I appreciate, Mr. Chairman, again, your courtesy in allowing me to go early.

ASSEMBLYMAN MARTIN: Congressman, we've been, I think, frustrated in part because the New Jersey Supreme

Court has based some of its decisions on the New Jersey Constitution and seemingly creating a higher standard in that Constitution for its due process and equal protection arguments which it uses, and by that higher standard, then, doesn't have to base its decisions at the level of the U.S. Supreme Court. If that be the case and if that pattern continues, would you be prepared to support a position whereby we would be amending the State Constitution that would require its standards in this area to conform to that of the U.S. Supreme Court, so, in effect, we don't have a double standard between the U.S. Supreme Court and New Jersey?

REPRESENTATIVE COURTER: That certainly is something you can look at, if you can't clean up the problem this way. The New Jersey statute, the death penalty statute of 1982, was based, I believe, on the Georgia model. That model was declared constitutional by the United States Supreme Court, and, of course, the State of New Jersey in their review and decision of 1987 said because of various factors, and they are very narrowly delineated in the Ramseur case by Chief Justice Wilentz indicated that the New Jersey statute is constitutional because it has these various tests. What I've tried to do, Assemblyman Martin, is to outline those areas where the language can be changed, thus not to permit the liberal interpretation by our own State court. I would like to go that way.

If we are frustrated a second time around, even after these modifications, language such as you suggest perhaps should be taken under consideration. But in my mind, there is no reason why, if we make some very fundamental changes in the original language, particularly with respect, as I indicated, in the very beginning, to the area of serious bodily injury resulting in death. I mean,

the New Jersey Supreme Court rewrote the statute. They said they don't like that. It's got to be, you have to intend the death. So, we have to put that back in the Constitution. The statute is not good enough, because they will just reinterpret the statute the way they interpreted the statute a number of years ago. By one's own conduct language, obviously, has to be changed because they are construing that so narrowly. To answer your question directly, I think, if I were sitting in your position, I would make specific recommendations, one, in the New Jersey Constitution, the others in the statute and find out what we get with that.

ASSEMBLYMAN SHUSTED: Thank you very much.

ASSEMBLYWOMAN KALIK: Mr. Courter, Congressman Courter, do you in your personal opinion think that the death penalty is more retribution than it is a deterrent?

REPRESENTATIVE COURTER: I think it is both, to be honest with you, and I want to be totally candid. It is not a deterrent in each and every case. It may not even be a deterrent in all cases, but, I believe it is a deterrent in some cases. As I indicated on Monday, if it deters one vicious, heinous murder, that's good enough for me.

Secondly, I've come to the philosophical conclusion that there are some crimes that are so heinous and so awful, so repugnant to civilized society, that the death sentence is indeed the appropriate punishment.

ASSEMBLYWOMAN KALIK: Would you, if you were in the State Legislature today, have signed as a co-sponsor -- And I see Senator Jackman is here who had a bill in a couple of years ago that in fact would provide for castration of a rape crime.

SENATOR CHRISTOPHER J. JACKMAN:
Yeah, what's wrong with that?

ASSEMBLYWOMAN KALIK: I was a co-sponsor. So, I just want you to know where I'm coming from. I truly

believe an eye for an eye and tooth for a tooth is valid retribution, and if we were, in fact, to do violent death to a violent criminal, I probably would co-sponsor the bill.

What perturbs me about our death penalty is that it is racially unjust. It knows no particular ethnic or economic bounds. It harms those people who don't have the money for good defense. It harms those people who cannot provide for themselves. And it is not just. That's what bothers me about it. Morally, I am not morally opposed to a death penalty. And that's why I said that. I am opposed to it, because it is not just. It doesn't punish those people who ought to, in fact, be punished.

REPRESENTATIVE COURTER: The application of it is broad.

ASSEMBLYWOMAN KALIK: The application is broad and the methodology is broad.

REPRESENTATIVE COURTER: You're halfway there then.

ASSEMBLYWOMAN KALIK: If it is truly to be a deterrent.

ASSEMBLYMAN SHUSTED: Thank you very much.

Our next witness will be Senator Russo, President of the Senate.

SENATE PRESIDENT J O H N F. R U S S O: Thank you, Mr. Chairman, and members of the Committee, I really don't know whether to come here this morning and laugh or cry. If it wasn't such a serious, serious issue, I'd have to laugh at candidates stumbling all over themselves and all over each other to convince the public, let's execute them all on Saturday afternoon in town square and the hell with technical reasons. Forget appeals. One candidate wants to limit it to one year. Doesn't matter if we need more time to find out. This to me is shocking.

Let me make one thing clear before I start: I'...

a little bit uncomfortable in the fact that the three people I referred to happen to all be Republicans. Believe me, that's got nothing to do with it. If and when, for example, Jim Florio decides to tell us where he stands on issues, should he be of the same mind as the three before me, I'll say the same thing I'm going to say today, and the same would apply to Barbara Sigmund or Alan Karcher. I don't know that there's anybody that I left out.

This is a travesty. It's sad. And let me just correct Jim Courter on one thing, the Governor didn't propose a darn thing. The Governor signed, after we worked out some details, a law that I proposed ten years before that.

So, I don't come here with the same attitude philosophically as Barbara Kalik whose view I respect, as one opposed to the death penalty. Oh, no, it took me ten years to bring it back into the law of the State. I believe in it. I believe in it. But I also know, as I've said so many times, that one day, the phone call is going to come, maybe to some of you, but I know a lot will come to me if I'm still around, whether I'm still in government or out, it's going to say, "We've executed the first person under your law and how do you feel about it?" And that's going to be a traumatic moment for me, as for I think all of you who supported this bill, because then we're going to look into our hearts again and say, "Did we do the right thing?" I believe we did.

But it's sad to see this kind of a charade going on: "Hang 'em all!" It happens every year at election time. Remember, gentlemen, two years ago, you had certain Assembly candidates doing the same thing. Give us your vote; we'll hang them all and the hell with people's rights.

It's difficult when you believe in something, as I do on this issue, to accept that kind of an attitude.

And let me also make clear that I have a lot of sympathy as I think you all know for the people here in this room who have had family members victims of murder. I had to deal with that situation. I know how that feels.

I also know this. You fool around with this law in the manner it's been suggested, and you execute one person who shouldn't be and you won't have a death penalty, because public reaction will turn against it and the only way you're going to have it, if you believe we should have it, is to apply it properly. If you believe as Barbara does, then Barbara, you ought to vote for all these amendments, because it won't be long then there won't be a death penalty in this State, and that's the way to get to it.

ASSEMBLYWOMAN KALIK: I couldn't conscientiously do that, Senator.

SENATOR RUSSO: I know. I really, as you can tell, feel strongly that it would be a tragedy if anyone tried to exploit the pain and suffering of victims for the sake of making headlines in a gubernatorial and legislative election year, no matter what their party. Tampering with a law that literally has life and death consequences is not something that we ought to approach lightly.

You might recall that in February of 1987 we had similar hearings. We had similar proposals. And families of murder victims were paraded before committees in the Legislature, and the media took their pictures, and we saw it on television. But in the end, nothing was ever done, fortunately because the election was over.

Back in 1982 when we were debating whether or not to pass a capital punishment law, the legislative proceedings were somber and deliberative. Some of you were here. I'll never forget those deliberations. I was the sponsor of S-112. I didn't bring in the families of

victims. I didn't twist a single arm. I said to those who didn't agree with me who were there, vote your conscience. Don't ever vote for this bill if you don't believe in your heart that morally it's the right thing to do. That's the way this issue should be approached. Vote for or against it if you think it's needed or not needed, and not on emotional issues and not to get votes.

I respected the views of all the colleagues I had. For example, in the Legislature we had some interesting alliances. On the floor opposing the death penalty, because they didn't believe in it, Assemblyman Karcher, Speaker Hardwick. June 22, 1978, he voted no on my bill. June 21, 1982, he voted no on my bill. And, you know what, I don't remember, but the probability is that I walked up to him, if I did have the opportunity, and said, "You did what you believed in your heart was right and I commend you for it," as I know I did to Assemblyman Karcher.

So, I hope that the members of this Committee and the witnesses at this public hearing will respect my viewpoint on this issue, when I say that recent proposals to change the death penalty law to allegedly streamline the law and the appeals process would, quite frankly, make a mockery of the judicial process and of the capital punishment statute in this State. The fact that New Jersey has not yet had its first execution does not mean that our capital punishment statute isn't working.

And the fact that 11 of 33 death penalty decisions have been reversed or remanded by the State Supreme Court does not mean that the justices have devised a clandestine plot to make sure executions never take place in New Jersey.

In my opinion, and I'll say this slowly and carefully so it's not misunderstood. In my opinion, every capital case that has been reviewed by the Supreme Court so

far has been handled properly. The capital punishment law is complex. Prosecutors and judges are still acclimating themselves to capital litigation, and the defendants are properly being afforded every appeal opportunity. That's the way it should be. When that first execution takes place in New Jersey -- and don't kid yourselves, it will take place, I want to be as certain as humanly possible that the defendant was, in fact, guilty, and was given a fair trial.

Those of us who do believe in capital punishment -- as I said before, I strongly do -- know that the quickest way to undermine public support and confidence in the death penalty is to execute one innocent person, and it's all over. I don't want to ever see that happen, but I don't want to see the death penalty end, because I don't want to see one innocent person ever executed either. Let's be absolutely clear about one thing: People convicted of first degree murder in New Jersey and sentenced to die are not given a Caribbean vacation while their case is under appeal. During this period all death row inmates remain locked up in Trenton State Prison, where they cannot harm any other member of our society. Moreover, any first degree murderer who is spared the death penalty is still given a mandatory life term, and can't even be considered for parole for thirty years.

You know, we discussed this issue as though, if we don't execute him and give him the death penalty, they go free. Oh, no, they won't see that fresh air for thirty years at least, if ever. The sentence is life.

I can understand the frustration that people feel about the amount of time that's spent on appeals, but if you review the 1982 transcripts of hearings on S-112, my bill that was signed by the Governor and the subsequent news articles, it's clear the Legislature knew then that

the first executions would not take place for at least ten years or more.

I'd like also to point out that the death penalty appeals in New Jersey are taking no longer than appeals do in other states. So, don't kid yourselves. Don't attack this Supreme Court. Our neighbor Pennsylvania has put 91 people on death row since 1978 and still hasn't executed the first one. They will. And once they start, the floodgates will open. Of the 37 states that do have a death penalty law only 12 have executed a prisoner; but they will. The death penalty is irrevocable, gentlemen and ladies. So far, the State of New Jersey is obligated to take every precaution to insure that a mistake is not made. I ask you to take a hard look at this, and don't undermine or change that law unless it's really compelling that you do so.

Let me talk briefly about the comments of the speakers before me.

Frankly, I'm really surprised at the Attorney General. He helped negotiate this law when we finally put it together, and in his testimony today he's attacked the court. I'm disappointed. I reminded him on the way out of a great legislator that I considered one of my closest friends then, and I do today, who, I think, I'm glad he wasn't, but I think would have probably been Governor of the State, Ray Bateman, had he not compromised that integrity he believed in all his life for the easy way to get votes, he thought. It didn't work. And I urged my colleague that I have a lot of respect for, Cary Edwards, don't do it. Cary knows this court isn't to blame. And I think if you stand up and tell the people the truth and not compromise yourself to get votes, that's the path to the office of Governor.

I commented on some of the prior positions of my colleague, the Speaker of the Assembly. He has a right to

change his mind. I'm not saying he only changed his mind from being an opponent of the death penalty to one who wants to expand it to cover practically everybody that commits pickpocketing because he's running for Governor. He may have just had a change of his philosophy. And I'll talk about the Democratic candidates once we know where they stand too.

Jim Courter, I don't know Jim that well, but I respect him as a Congressman. But he suggested a number of things before you. He says we have a death penalty in name only. Nonsense. He hasn't looked at what the other states have done, and he treats life and death as though it were a vassal thing, but he says, you know, we haven't had one execution because a person was actually innocent, as though improper procedures, improper conduct should be overlooked. Let's execute them anyway, unless we can prove on appeal that they are actually innocent. You can't do that. Don't let anybody do that. I don't care if it takes two, three, four, five retrials. When that needle is injected and that life is ended, let's know we did the right thing, because it's going to come.

When Mr. Courter says, how can we reverse for technical or procedural reasons that's preventing the will of the Legislature? It is not. I can tell you it wasn't the will of the sponsor. It never was. This is not a new position of mine. What I'm saying to you today, I said in 1975 and '78 and '82, and every time since on the floor of this Legislature, before a television camera or wherever, my position hasn't changed. That doesn't mean it would be wrong to change positions. We can do that. But I feel, as I did then, on this issue. And when the Congressman says that the court has changed the law by saying that the court imposed a requirement of intent, bull. That was in the law when we drew it. That was in the statute when it was proposed the first time and voted on, and I think we passed

it. And it was vetoed by Governor Byrne three times, before we passed it, and it was signed by Governor Kean, for which I commend him. That was always the intent of this law.

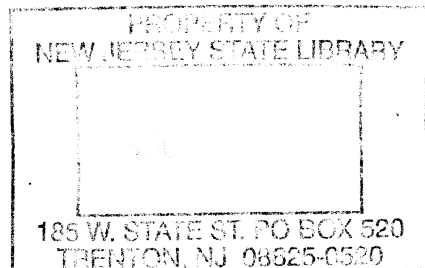
You see, the approach was that in New Jersey, if you're guilty of murder in any form, you get life imprisonment; you get thirty years without parole. However, if you did one or two other things, you will be executed. And what are those other things? You intended to murder. You were the perpetrator, not felony murder. The Governor and I specifically discussed that issue. He didn't want it in. I didn't want it in and the Legislature didn't, the majority didn't, so that shouldn't been touched or tampered or changed.

The court didn't put in intent. We did. You voted on it, those of you who voted for it. That's a requirement in the statute.

The other suggestion that the Legislature add involvement in drug related crimes. Come on, Congressman. In other words, if somebody gets killed because you're involved in a rape, or arson, that doesn't automatically trigger the death penalty. But if it involves drugs, that triggers the death penalty.

We all see what happens with drugs. That's the scourge of our society today. So, let's show we're tough on drugs. That ought to get a few more votes for somebody. Nonsense. The death penalty ought to apply or not apply depending on what you did to the life of another human being and under what circumstances, not whether you happen to be involved with drug or rape or arson or what have you.

That's like the other argument that was made that I resisted for fifteen years, the death penalty if you murder a police officer, but not if you murder a little



girl in a pink dress. Come on. That should have nothing to do with it. Just as sex, color, creed, ethnic origin of the murderer or his victim shouldn't have anything to do with it. Termination of human life, and under what circumstances, that's all that should matter.

And the Congressman proposed proportionality review. That's required. We amended that because that's required. I don't know what he would have done if he were here at the time. I'm not singling him out.

It's just that he has more testimony, more proposals to answer than the others had before.

As far as weighing aggravating and mitigating factors, the statute originally was interpreted as saying, we put in a requirement of a preponderance of the evidence; that, to me, gentlemen and ladies, is not what the test should be. We aren't talking about whether a defendant is guilty or innocent. We're talking about whether we should end that person's life, irrevocably, forever and ever. And under those circumstances, before that decision is made, I want to be satisfied beyond a reasonable doubt, because if I'm not so satisfied, even though I think by a preponderance of the evidence that he's guilty and perhaps should get the death penalty, at least I know he's going to go behind those walls and for thirty years he isn't coming out.

So, I would ask you to look hard at this, and look at the consequences of it. I'm not a coddler of criminals. I wasn't as a prosecutor. I know what it's like to be a victim, and I don't think that we should tamper with something so important as life and death every couple years just before elections come around. And that applies to any candidate of any party.

This is a serious, serious issue. Vote your conscience and your heart, but not the emotions of the

people on the streets who seem to be receptive to, "Let's hang 'em all." That's not what we're here for. Thank you very much.

ASSEMBLYMAN SHUSTED: Senator Russo, is it your testimony that we should do nothing with the capital punishment statute?

SENATOR RUSSO: I don't know of anything so far that's come up that we should do anything with, although I'm not ruling out any changes. You know, we've made at least three or four amendments.

ASSEMBLYMAN SHUSTED: The reason for my question, in the Gerald case, Justice Clifford suggested that part of the statute was unconstitutional, and--

SENATOR RUSSO: What are we referring to?

ASSEMBLYMAN SHUSTED: Where the defendant in that case was charged with inflicting serious bodily harm, Justice Clifford said there's an ambiguity in the statute because there was no evidence that he intended to kill. And that portion of the statute was thereby declared unconstitutional.

SENATOR RUSSO: I don't think-- I don't think it was declared unconstitutional. He may have suggested it. I mean, I'll stand corrected. I don't think the court declared that portion unconstitutional.

ASSEMBLYMAN SHUSTED: Let me read from page 69 from the decision, I'm quoting, "We hold on State constitutional grounds that a defendant who is convicted of purposely or knowingly causing, 'serious bodily injury resulting in death' under N.J.S.A. 2C:11-A(1) and (2) or either of them, as opposed to one who was convicted of purposely and knowingly causing death under those provisions may not be subject to the death penalty."

Maybe I'm misinterpreting it.

SENATOR RUSSO: Let me take a look at that,

Assemblyman Shusted, to see whether that, in fact, was held unconstitutional. I don't believe so. If there's an ambiguity, I have no concern that we should make the change.

As I started to say, we've made three or four changes in this law. In fact, after the first several cases, we had the prosecutors, judges, and the defense counsel before the Judiciary Committee that I was chairing at the time to invite their recommendations. This still is probably not a perfect law. I can't believe it is. And if there are changes that should be made, I'm receptive to those, not what we've heard here today or most of what we've heard here today by the witnesses. There may be things that you feel should be done. I'm open to those. Yes, sir.

ASSEMBLYMAN MARTIN: Maybe you should ask your question. I understand from your testimony, Senator, you're saying that the law is working. And even though so far there has been no imposition under the statute, it is working, and it will work, and given enough time, it will satisfy what the Legislature intended when we passed this law?

SENATOR RUSSO: No question in my mind about that at all. What I think you're going to see happening, Assemblyman Martin, as I said, if you look at the hearings, we knew that it would take at least, you know, perhaps as much or more than ten years. We knew that. We accepted that, because we didn't want innocent people executed and we didn't want anybody's rights not protected.

ASSEMBLYMAN MARTIN: I think that "we" has to be qualified. I don't think that the Legislature, as a whole, accepted some ten-year moratorium, where this court was going to work through the fine-tuning process.

SENATOR RUSSO: I never suggested a ten-year moratorium was ever mentioned at that time. You

misunderstood me. I said to you then, or I said to you today what I said then, and what the courts in other states have shown us, that it has taken that much a period of time before there have been executions, on the death penalty statute. In fact, under the old law, before it was declared unconstitutional, Edgar Smith sat in prison for sixteen years, Caryl Chessman for a similar period of time. This is nothing new. This isn't anything to do with this law. This is the way our society through its judicial system has felt it necessary to make sure, so that when that switch was pulled, or, in this case, the needle injected, that the right thing was done. I'm in no hurry, because they are sitting in that isolation cell until it happens.

ASSEMBLYMAN MARTIN: I can understand and appreciate your position. But I think when you talk about the legislative intent, it may have been your intent as a sponsor.

SENATOR RUSSO: That's all I really can answer to, because the point I'm making, though, is that the testimony at the time in the hearings, and I assume anyone who voted on the bill read the testimony -- we all do all the time, don't we? -- and it said in those hearings that that's what was anticipated. That doesn't mean that you, or any legislator who voted yes necessarily accepted that. All it means is, that you knew it at the time. And if you wanted to put in an amendment that said cut off all appeals after one year-- Is that what I understand was proposed here today? I mean, come on.

ASSEMBLYMAN SHUSTED: It wasn't really a proposal.

ASSEMBLYMAN MARTIN: I think you've been making some characterizations that haven't been said here. There may have been a proposal. That doesn't mean that we've

accepted that proposal. I think when you refer to the previous speakers as, "Hang 'em all," I didn't hear anybody say that, John, and I think that's an outrageous remark. If you did it for emphasis to get a point across to make some headlines as well as they have--

SENATOR RUSSO: I'm not running for anything, Assemblyman Martin.

ASSEMBLYMAN MARTIN: You're still a State Senator.

SENATOR RUSSO: I know I am, but I don't have to go before the voters for anything. The point I make to you is: The comments I made today I made since 1973. They are not new. They are not new.

ASSEMBLYMAN MARTIN: I'm just saying, I didn't hear anybody say, "Hang 'em all today." If you ask Mr. O'Brien, I don't think he felt he was paraded in here. He came in here as an advocate for a particular position about concerns he has with the procedure. And some of the statements you've made are -- I think have been gross generalizations. And I think that has to be corrected.

SENATOR RUSSO: Assemblyman, if you had listened to my testimony, I didn't refer to Mr. O'Brien being paraded in here today. I referred to the hearings before the last Assembly elections. That's also in my written comments. You must have missed that.

The point is, if you don't interpret the testimony you've heard today as a "Hang 'em all" approach, and I respect your view, as I respect the views of those who opposed the death penalty in the past. That's my view, and maybe to make my point, fine, but there's no other motive, because, as I said, I'm not running for anything.

ASSEMBLYMAN MARTIN: Just so it's clear that it's your view, and that is not a general statement that anybody here has come in and talked about "Hang 'em all,"

because that is not what was in the testimony. And I don't think there's anybody here who intended it to be.

SENATOR RUSSO: If you don't interpret what you heard here today to mean that, that's your opinion. I'm entitled to mine. And you respect mine, I know, as I do yours.

ASSEMBLYMAN SCHUBER: I would only indicate, myself, the only thing-- I would agree with in your statement, and I apologize for not having made it in the beginning just before you arrived, simply the fact that you certainly have been an advocate of this particular legislation in the beginning, and I think it was a lot of your testimony at the time in articles in the paper that I read as a new legislator at the time, and I did read the testimony on this at the time, because I did think it was at that time one of the most important votes I was going to cast in the Legislature in 1982.

I take this very, very seriously, and I give the benefit of the doubt to those who testified beforehand, that they do also, and I'll tell you the reason why. Number one, I don't think there's any meeting or public meeting that I go to on a year round basis when someone asks me what has happened to the death penalty, whether it be the issue involving the Trantino case in Lodi in our area-- I peppered the leaders on our side with questions with regard to that. I don't intend to be or claim to be a constitutional expert, but I read the cases, and I've kept up with the cases, whether it be Koedatich or Ramseur or whatever the case may be. And I'm not so sure, quite frankly, that the Supreme Court has understood what the intent of the Legislature was at the time that this was passed. I don't know necessarily that I lend my position to some of the recommendations that were made here today. But, I do believe that they were made in all sincerity,

given the nature that I think this is a significant public policy question. Whether this is an election year or not, I don't think is the issue, because with the legislative cycle every year is an election year, almost. The fact of the matter is, it's a legitimate matter of public inquiry. This was a matter that was taken care of by the Legislature after a tremendous amount of deliberation, a tremendous amount of work on your part over a ten-year period, and it was not something that was done lightly.

I don't think this Committee is looking at it very lightly. I don't think those who testified were looking at it lightly.

A matter of a person's life or death is not a light matter. But, for instance, I look at the issue of proportional rule, which, Congressman Courter had indicated should be removed as far as consideration, but, I think that you had sponsored legislation to do the same thing.

SENATOR RUSSO: To remove it? No, we put in an amendment to include it when it became apparent it was necessary. And I hope you all understand what proportional review means. I don't think any of you would oppose it. That means you weigh what happens in one case against another, so that nobody is being treated unfairly. Because, you see, I take great exception to remarks such as Barbara Kalik's about the death penalty being racist. I fought that argument for fifteen years. That's bull. That's nonsense. But proportionality addresses that issue, among others, to make sure that, in fact, we're not treating one defendant different from another.

And if I had at any time suggested to this Committee that you have adopted any of the recommendations that have been made here today, oh, I don't mean that. I didn't suggest that, I don't think. I'm urging you not to. I'm urging you not to. But the proportionality

review, as I recall, was an amendment, one of the amendments we added subsequent to the original law when it became apparent, if we didn't, we were in some serious trouble with the court.

ASSEMBLYMAN SCHUBER: I have a copy of the bill from the '84 session that was decided in the judiciary which is sponsored by yourself, which it indicated the purpose of the bill was to eliminate the present requirement New Jersey Supreme Court conduct a proportionality review in each case in which the death penalty was proposed.

SENATOR RUSSO: Yeah, I think that's right. I think what happened was, the court required-- I'd have to check that. The court made a requirement that that be addressed. And whether or not it was for constitutional reasons, I don't know. I'm going to have to find out and get back to you on that.

ASSEMBLYMAN SCHUBER: It's a legitimate requirement. It's a position where you both are different on the issues.

SENATOR RUSSO: Yeah, yeah.

ASSEMBLYMAN SHUSTED: Any other member have any questions?

SENATOR RUSSO: Thank you very much.

ASSEMBLYMAN SHUSTED: Next we have Ms. Janet Barton.

JANET BARTON: First of all, I thank you for letting me come here, and I want to say, nobody is parading me in front of this Committee. I am a victim. I am the mother of a murdered son, a second degree murdered son, because, even though that's the definition that the court gave it, my son is just as dead as any other person who has been murdered.

I understood that we were here today to consider

Assembly Bill No. 2186. I didn't realize it was going to be a debate of the death penalty. I thought the capital punishment issue had been reasonably determined and that there would be time to time when it would be amended.

I also hear today a lot of references to the Constitution. Whether they were referring to the Constitution of the United States or the Constitution of New Jersey was not always made clear, except that Assemblywoman Kalik said the law of the land is the law of the land, and the law of the State is the law of the State.

Now, as a layman, I always felt that the Constitution of the United States took precedence over everything, even though we do have state's rights, and I considered evidence of that in things like the Miranda ruling and the exclusionary rule, which come directly from the Federal government and were approved and ruled okay by the United States Supreme Court. I find some confusion here, because the United States Supreme Court already ruled, as mentioned in the explanation of the bill that I thought we were going to consider today in Tices v. Arizona, that it was acceptable to try to execute criminals who had been convicted of felony murder.

And I'm kind of puzzled. Maybe somebody can help me out later, as to why we have to go through all of this discussion when the Ninth Amendment of the United States Constitution specifically states that states are bound by the Federal laws, and that judges-- I have it here.

I would like to quote it exactly, because it says: "The Constitution of the laws of the United States, which shall be made in pursuance hereof, shall be the supreme law of the land and judges in every State shall be bound thereby, anything in the Constitution or laws of the state to the contrary to the notwithstanding." So, of course, I have no legal training. So, I am really quite puzzled by all of this jumping back between the New

Jersey Constitution and the State (sic) Constitution.

Even putting that aside, I mentioned before the Miranda ruling, and the exclusionary rulings, that the states are bound by, and I feel that-- I don't know about whether the State adopted those or whether they are automatically required to fit them. But, I will say about this bill that's before you today, and about the death penalty, I read --

ASSEMBLYMAN SHUSTED: We're not considering any individual bill. We're considering whether or not the death penalty as we know it in New Jersey is effectively operating.

MS. BARTON: Well, I misunderstood. I do want to quote from the State Constitution; article one, item two of the New Jersey State Constitution, which says: "Government is instituted for the protection, security, and benefit of the people." And as far as I was taught in my high school civics class, the government has three branches, administrative, legislative and judicial, and I think the judicial branch has lost sight of the fact that some of their decisions are not providing protection and security for the people, and certainly have no benefit to the people; that they are benefiting individuals which, again, is in violation of United States Constitution, which, through the Bill of Rights provides it for individual and specific rights for criminals in the Ninth Amendment. It provides that those certain rights, and apparently it is referring to criminal rights, shall not be construed, denied or disparage others retained by the people. And I feel that many of these rules and regulations and acts that are passed have definitely disparaged my rights as a survivor of a homicide victim.

I'm here today not for myself. Nothing can be done about what's happened to me or what happened to my

son. He was brutally murdered in another State by two men. His body was found decomposed. His body had been robbed, his house was burglarized. That was done by two men who plea bargained to second degree murder, and I will say that I think I know how it feels to be the parent of a murderer that was punished by capital punishment. One of the men that killed my son was killed in prison. He wasn't executed. I did not feel any kind of revenge. I felt extreme relief. In fact, my feelings were very ambivalent, because that man also had parents. I really wouldn't want his parents to go through the experience that parents of murdered children go through.

So, I would ask you, please, if there's anything that I've said that helps what I feel should be the law of the land, please remember it. Thank you very much.

ASSEMBLYMAN SHUSTED: Sandra Chapman? (no response) Ms. Ann Bilger?

Mr. O'Brien and Ms. Drucker have asked for an opportunity to sum up. Do you want to come forth?

MS. DRUCKER: I just wanted to say that I was not paraded here before this Committee today, and to say also that we do not have a "Hang 'em all" attitude.

All we are saying, these victims were people as the relatives of a homicide victim whose murderer is now on death row. We're just asking you to remember our rights and their rights.

Secondly, we appreciate the Legislature being tough now. We know that first degree murder is thirty years minimum. However, every victim here, death penalty is irrevocable, and every murder victim is forever dead, and forever is lot longer than thirty years.

I don't happen to agree with Assemblywoman Kalik, but, that is her choice. That is our freedom of speech, the great part of this country. However, I do have a comment to make.

The death penalty does serve a purpose, whether or not you agree with it. We are the victim's family. We do-- I think it is unfair to characterize to say it's not equally applied. Everybody in this world has a choice. As you know, the death penalty is reserved for a certain class of murderers, a very small group, who knowingly and willingly taking a life. That person had a choice. The man who came into my sister's house-- When you break in at two o'clock in the morning, the chances are there's going to be somebody there. You also have a choice whether or not you're going to take a weapon and kill that person.

So, we must make people accountable for their behavior. I think it is really unfair to say that these people -- to make excuses for them. I think it's about time, the public is fed up, that we hold people accountable for their behavior.

ASSEMBLYMAN SHUSTED: Ray Kalainikas.

R A Y K A L A I N I K A S: I come before this Committee with an argument different from what you're normally used to hearing and the reason I say that is because I would like to say, first of all, that I hold that a person's religion or a person's meaning of life, that you attempt to live or to put into practice determines whether or not you can accept the death penalty within the justice system or within the political system. If your own meaning of life says it's wrong to destroy human life for any reason, you would not be able to accept the death penalty within the political structure or within our justice system.

So, obviously, if an individual supports the death penalty and wants to see it put to use, it is predicated on that person's meaning of life. So, the heart of the problem, the heart of the issue is our meaning of life, because our meaning of life determines our actions politically, judicially, and so forth.

I would simply like to say because this Committee is meeting and dealing with the issue of what seems to be taking so long with regard to the death penalty coming to fruition, and with the whole notion of punishment -- and at this particular time of the year, in the Christian realm, there is the story that often comes up -- of the adulteress.

Everyone knows that story. Let the individual without offense cast the first stone. Obviously within this Committee meeting, everybody, at least, is willing to cast the first stone at some point.

Barbara Kalik indicated to me she was against the death penalty before this meeting started, but, as I listen to her, I see that actually she is in certain circumstances and in certain ways, and morally, actually for it.

So, actually everyone on this panel in some form or shape supports the death penalty. The notion of punishment -- are we capable of punishing our fellow human being? Are we really capable of knowing what happens in the minds of individuals, the actions that occur, and exactly what punishment should be dispensed? When the individual said let the individual without offense cast the first stone, he was telling humanity, we are not capable of knowing the mentality and the actions of all the people involved in the crime, and we are not capable of knowing what that punishment should be.

Therefore, punishment is only to be dispensed, by the essence of life, or that which we call God. The only argument I want to convey here-- This is an argument that is not brought forth to the public, and this is Gandhi's argument concerning Christianity. Gandhi held that there were two laws expressed by this carpenter at Nazareth. The first law is the absolute law of love that

says we must build and foster the life-giving movement of the essence of life within the human body and human mind. We never have a right to violate that law under any circumstances. And he said the law that forces us to live that law is the law of equal return. If we destroy God's life within the human body, be it a murderer or a jury or a judge, or a political system or military unit, at some point within existence, ten seconds, ten years, ten lifetimes away, God sets up the circumstances where our life will be destroyed the same way. And that's the way justice is dispensed by the essence of life, and that is the deterrent to keep people from murdering people. That's the deterrent to keep our justice system from murdering people under the guise of legality.

What I'm saying to you is, if you support the death penalty, as I hear, and if someone is executed in the State of New Jersey, all of you at some point in the future have set up your own execution. When the carpenter from Nazareth said, "If you condemn, you will be condemned. Judge and you will be judged," and then he himself was sentenced to death, he understood perfectly as Gandhi understood that at that some point in some past lifetime, he had condemned a human being to death, even though within that particular lifetime he was innocent of any wrongdoing. This is what he told people, "Love your enemies," while he told people to stop the stoning of the adulteress.

He wouldn't kill in his own self-defense, and he wouldn't allow Peter, his close associate, to kill on his behalf. Using the law of equal return, with what measure you measure it shall be measured to you.

So, if the State decides to execute an individual, all those people involved in support of that action will suffer the same consequences at some point in the future, and this is why Gandhi said, "I will fight for

freedom, but I shall never, never kill for freedom. We don't comprehend that in your society."

Let me say in one point in ending, what I'm saying here, you will not see in the press tomorrow. The public will not know of what I am saying here today because this argument is kept from the people for fear that if the people understand it, they will not kill for the State. And you will not see this argument anywhere explained or expanded upon for that reason.

The question is, do we have religious freedom? Do we really have a free press? Mark my words, look at the papers tomorrow and see if this argument is expanded upon and explained to the people as I give it to you. Thank you.

ASSEMBLYMAN SHUSTED: If I may just make a comment, I suppose that last remark is a challenge to see whether the press takes you up on your offer.

MR. KALAINIKAS: They will not do it.

ASSEMBLYMAN MARTIN: I don't view it like you do, and I've heard a lot of reasons. There are a lot of reasons propounded for capital punishment. I don't think the punishment and the vengeance aspect is really what the benefit, if you want to call it that, of this statute is about.

I view it as a way in which we're talking about whose life is to be spared in certain circumstances. There are situations in life, unfortunately, where choices have to be made as to whose life is to be spared. One of the most classic cases is the most recent one over in New York, the agonizing issue, if it was this situation whereby either a mother or unborn child, a choice may have had to have been made as to whose life should be spared.

In this case I see circumstances where society has a choice as to whether we are going to spare some unnamed future victims whose life will be spared because

someone will not take their life because they are fearful of a death penalty. I would rather see their life spared than those of someone who has already committed a capital offense, and it's on that basis that I support the death penalty, not out of punishment and vengeance. Thank you.

MR. KALAINIKAS: We never have a right to destroy human life for any reason whatsoever and all human life must be, the action must be toward saving all humans, friend and foe. "Love your enemies as well as your friends" is not understood in our society. And turn the other cheek, they read it all the time in Christian churches. They haven't the foggiest idea what it means.

This is why Gandhi of India says, "What you call Christian in the west is a mockery of Christianity. It is not Christianity." And the reason eight out of ten people support the death penalty in this society is because Christianity doesn't exist in this society, sir. Thank you.

ASSEMBLYMAN SHUSTED: Mr. O'Brien.

MR. O'BRIEN: Mr. Chairman, I appreciate the opportunity to come back briefly. One subject I'd like to talk about, you mentioned about a deterrent. I believe it's a very difficult thing to pinpoint whether it's a deterrent or not. But you can take James Koedatich and Mr. Biegenwald, and both gentlemen were convicted of murders, then paroled, and then committed crimes again. Between the two of them, they accounted for six murders, after they got out on parole.

Assemblyman Gallo, when he was here -- now Representative Gallo, during the debate on how to put a person to death and it was decided lethal injection, got up on the floor of the Assembly, and it was right after the murder of Amy Hoffman and Deidre, and he said to the Assemblymen at that time, we've had two murders up in Morris County, and, he said, we have a defendant now

incarcerated. And I point out to you that if Florida had the death penalty law at this time, Deidre O'Brien and Amy Hoffman would be alive today.

To me, that's a deterrent. In any way if you can look at it, that's a deterrent. These men are not put back on the street so they can kill again, that's a deterrent. And you cannot put a value on human life. It is simply impossible to put a value on human life. But those two men alone are responsible for six other human beings being murdered. If they don't deserve the death penalty, then we shouldn't have the death penalty.

The other point I wanted to make was a note was said about racially, it's imbalanced. I speak only for New Jersey. There is an appalling statistic that 1 out of 20 young black men will be murdered, and will not live their full lives, 1 out of 20. For whites, it's 1 out of 135.

On death row in New Jersey the predominant number of people on death row are white, not black. So, I don't think at least in New Jersey we have a racial problem. I certainly hope not. All indications to me, it's not true.

And last, but not least, with all due respect to many of the speakers, especially some of the gubernatorial candidates, I agree with Senator Russo completely, leave the bill alone. It is a good bill in my opinion, an excellent bill. What needs to be done is to change the procedure as I outlined before. And that is, the time frame. And if it takes money for the public defender's office, more public defenders, or more law firms being hired by the public defender, as in our case, they have an outside firm, then so be it.

But, I think that would speed the process up and do it very nicely. Thank you very much.

ASSEMBLYMAN SHUSTED: That concludes our
testimony. I thank everybody for coming.

(HEARING CONCLUDED)

