

PUBLIC HEARING

before

ASSEMBLY JUDICIARY COMMITTEE

on

PROPOSED AMENDMENTS TO  
SENATE BILL #799 (DEATH PENALTY BILL)

Held:  
September 13, 1973  
Assembly Chamber  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman William K. Dickey (Chairman)  
Assemblyman John I. Dawes  
Assemblyman Walter C. Keogh-Dwyer  
Assemblywoman Ann Klein  
Assemblyman John A. Spizziri  
Assemblyman David A. Wallace

\* \* \* \*





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ADVANCE COPY  
[ASSEMBLY REPRINT]  
**SENATE, No. 799**

with proposed Assembly committee amendments

**STATE OF NEW JERSEY**

INTRODUCED MARCH 20, 1972

By Senators AZZOLINA, HAGEDORN, McDERMOTT, WENDEL,  
LAZZARO, EPSTEIN, TURNER, MUSTO, MILLER, BROWN  
and MARAZITI

Referred to Committee on Judiciary

AN ACT concerning crimes, prescribing sentences for murder in the first\***[.]**\* *and*\* second \***[and third]**\* degree, and amending sections \***[2A:3-5, 2A:67-14, 2A:78-4, 2A:104-1, 2A:104-2, 2A:104-4, 2A:104-5]**\* \**2A:113-1*\*, 2A:113-2, 2A:113-3, 2A:113-4, 2A:118-1, 2A:148-1, 2A:148-6\***[.]**, 2A:159-2, 2A:164-28**]**\* and 2A:168-1, supplementing chapter 152 of Title 2A, of the New Jersey Statutes and repealing P. L. 1952, c. 212.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 \***[1. N. J. S. 2A:3-5 is amended to read as follows:**

2 2A:3-5. The County Court shall have and may in its discretion  
3 exercise jurisdiction to try and adjudge, without a jury, except in  
4 capital cases *or cases in which a sentence of life imprisonment,*  
5 *without eligibility for suspension, reduction or remission thereof,*  
6 *or for probation or parole, or cases in which a sentence of life*  
7 *imprisonment, without eligibility for suspension, reduction or re-*  
8 *mission thereof, or for probation or parole, until at least 30 years*  
9 *of said term shall have been served, may be imposed upon the de-*  
10 *fendant, the guilt or innocence of any person charged by indictment*  
11 *with any offense, if and when the person so indicted shall waive*  
12 *trial by jury and request to be tried without a jury.***]\***

1 \***[2. N. J. S. 2A:67-14 is amended to read as follows:**

2 2A:67-14. The persons hereinafter specified shall not be entitled  
3 to prosecute writ of habeas corpus:

4 a. Any person committed or restrained of his liberty by virtue  
5 of any process issued by any court of the United States, or any

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill  
is not enacted and is intended to be omitted in the law.

6 judge thereof, in cases where such court or judge has or shall have  
7 acquired exclusive jurisdiction.

8 b. Any person committed or restrained of his liberty by virtue  
9 of a final judgment of a competent tribunal of civil or criminal  
10 jurisdiction or by virtue of any process issued pursuant thereto,  
11 but no order of commitment for an alleged contempt, or upon con-  
12 tempt proceedings, to enforce the rights or remedies of a party or  
13 any process issued upon such order shall be deemed a final judgment  
14 or a process issued pursuant to a final judgment within the mean-  
15 ing of this section.

16 c. Any person in custody or restrained of his liberty for any  
17 capital crime *or any crime, upon conviction of which a sentence*  
18 *of life imprisonment, without eligibility for suspension, reduction or*  
19 *remission thereof for probation or parole, or any crime, upon con-*  
20 *viction of which a sentence of life imprisonment, without eligibility*  
21 *for suspension, reduction or remission thereof or for probation*  
22 *or parole, until at least 30 years of said term shall have been served,*  
23 *may be imposed upon the defendant,* plainly and specially expressed  
24 in the warrant or commitment, unless the judge to whom the ap-  
25 plication is made, as an act of discretion, shall direct the issuance  
26 of the writ.

27 d. Any person in custody or restrained of his liberty on any civil  
28 process who does not show either that he has, prior to applying for  
29 the writ, exhausted the other remedies available to him in the courts  
30 of this State to secure his release or that such remedies are or will  
31 be ineffective to protect his rights.]\*

1 \* [3. N. J. S. 2A:78-4 is amended to read as follows:

2 2A:78-4. Upon the trial of any cause, civil or criminal, all  
3 parties may, within the discretion of the court, question any person  
4 summoned as a juror, after his name is drawn from the box and  
5 before he is sworn as a juror, and without the interposition of any  
6 challenge, to elicit information for the purpose of determining  
7 whether or not to interpose a peremptory challenge, and of dis-  
8 closing whether or not there is cause for challenge. In all cases in  
9 which a death penalty *or a sentence of life imprisonment, without*  
10 *eligibility for suspension, reduction or remission thereof, or for*  
11 *probation or parole, or a sentence of life imprisonment, without*  
12 *eligibility for suspension, reduction or remission thereof, or for*  
13 *probation or parole, until at least 30 years of said term shall have*  
14 *been served,* may be imposed, the examination as to competency  
15 shall be under oath, but in other cases it shall be made without  
16 putting the juror under oath. Such questions shall be answered by



17 for the purpose of disclosing whether or not the juror is qualified,  
 18 impartial and without interest in the result of the action. The  
 19 questioning shall be concluded under the supervision and control  
 20 of the trial judge and in open court.】\*

1 \*【4. N. J. S. 2A:104-1 is amended to read as follows:

2 2A:104-1. Any person having in his lawful custody a prisoner  
 3 charged with or convicted of any crime punishable by death *or*  
 4 *life imprisonment, without eligibility for suspension, reduction or*  
 5 *remission thereof or for probation or parole, or life imprisonment,*  
 6 *without eligibility for suspension, reduction or remission thereof*  
 7 *or for probation or parole, until at least 30 years of said term shall*  
 8 *have been served,* or any deputy, subordinate, employee or agent  
 9 of any such person, who voluntarily permits or suffers such  
 10 prisoner to escape, or connives at or assists such escape, is guilty  
 11 of a high misdemeanor, and shall be punished by imprisonment  
 12 for not more than 30 years.】\*

1 \*【5. N. J. S. 2A:104-2 is amended to read as follows:

2 2A:104-2. Any person having in his lawful custody a prisoner  
 3 charged with or convicted of any crime other than a crime punish-  
 4 able by death *or life imprisonment, without eligibility for suspen-*  
 5 *sion, reduction or remission thereof or for probation or parole, or*  
 6 *life imprisonment, without eligibility for suspension, reduction or*  
 7 *remission thereof, or for probation or parole, until at least 30 years*  
 8 *of said term shall have been served,* or any deputy, subordinate, em-  
 9 ployee or agent of any such person, who voluntarily permits or  
 10 suffers such prisoner to escape, or connives at or assists such escape,  
 11 or negligently suffers such prisoner to escape, is guilty of a mis-  
 12 demeanor.】\*

1 \*【6. N. J. S. 2A:104-4 is amended to read as follows:

2 2A:104-4. All rescues by force or fraud of a person charged  
 3 with or convicted of any crime punishable by death *or life imprison-*  
 4 *ment, without eligibility for suspension, reduction or remission*  
 5 *thereof or for probation or parole, or life imprisonment, without*  
 6 *eligibility for suspension, reduction or remission thereof or for*  
 7 *probation or parole, until at least 30 years of said term shall have*  
 8 *been served,* are high misdemeanors, and every person so offending  
 9 shall be punished by imprisonment for not more than 30 years.】\*

1 \*【7. N. J. S. 2A:104-5 is amended to read as follows:

2 2A:104-5. Any person who by force or fraud rescues, or at-  
 3 tempts to rescue, a prisoner charged with or convicted of a crime  
 4 other than a crime punishable by death *or life imprisonment, with-*  
 5 *out eligibility for suspension, reduction or remission thereof or for*

6 *probation or parole, or life imprisonment, without eligibility for*  
 7 *suspension, reduction or remission thereof, or for probation or*  
 8 *parole, until at least 30 years of said term shall have been served,*  
 9 *or a prisoner held in custody or confinement upon any writ or*  
 9A *process in any civil case, from lawful custody, or from an officer or*  
 10 *person having the prisoner in lawful custody, is guilty of a misde-*  
 11 *meanor.】\**

1    \*1. N. J. S. 2A:113-1 is amended to read as follows:  
 2       2A:113-1. **【***If any person, in committing or attempting to com-*  
 3 *mit arson, burglary, kidnapping, rape, robbery, sodomy or any un-*  
 4 *lawful act against the peace of this State, of which the probable con-*  
 5 *sequences may be bloodshed, kills another, or if the death of anyone*  
 6 *ensues from the committing or attempting to commit any such crime*  
 7 *or act; or if any person kills a judge, magistrate, sheriff, con-*  
 8 *stable or other officer of justice, either civil or criminal, of this*  
 9 *State, or a marshal or other officer of justice, either civil or crimi-*  
 10 *nal, of the United States, in the execution of his office or duty, or*  
 11 *kills any of his assistants, whether specially called to his aid or not,*  
 12 *endeavoring to preserve the peace or apprehend a criminal, know-*  
 13 *ing the authority of such assistant, or kills a private person en-*  
 14 *deavoring to suppress an affray, or to apprehend a criminal,*  
 15 *knowing the intention with which such private person interposes,*  
 16 *then such person so killing is guilty of murder.】* *If any person*  
 17 *purposely, knowingly, or recklessly under circumstances manifest-*  
 18 *ing extreme indifference to the value of human life, causes the death*  
 19 *of another human being; or if any person, acting alone or with one*  
 20 *or more other persons, is engaged in committing or attempting to*  
 21 *commit or in flight after committing or attempting to commit*  
 22 *robbery, rape, sodomy, arson, burglary, or kidnapping, and in the*  
 23 *course of and in furtherance of such crime or of immediate flight*  
 24 *therefrom, he, or another participant, if there be any, causes the*  
 25 *death of another human being other than one of the participants,*  
 26 *then such person is guilty of murder.\**

1       \***【8.】** \*2.\* N. J. S. 2A:113-2 is amended to read as follows:  
 2       2A:113-2. *Murder which is* **【***perpetrated in the course or for the*  
 3 *purpose of resisting, avoiding or preventing a lawful arrest, or of*  
 4 *effecting or assisting an escape or rescue from legal custody, or*  
 5 *murder of a police or other law enforcement officer acting in the*  
 6 *execution of his duty or of a person assisting any such officer so*  
 7 *acting, or murder by a person who previously has been convicted of*  
 8 *murder in the first or second degree, or murder which is perpetrated*  
 9 *by means of poison, or by lying in wait, or by any other kind of*



10 *willful, deliberate or premeditated killing,]* \**committed pur-*  
 11 *posely* \**is murder in the first degree. [Murder, other than murder*  
 12 *in the first degree, [which is perpetrated by means of poison, or*  
 13 *by lying in wait, or by any other kind of willful, deliberate and*  
 14 *premeditated killing, or]* which is committed in perpetrating or  
 15 attempting to perpetrate arson, burglary, kidnapping, rape,  
 16 robbery or sodomy, [or which is perpetrated in the course or for  
 17 the purpose of resisting, avoiding or preventing a lawful arrest,  
 18 or of effecting or assisting an escape or rescue from legal custody,  
 19 or murder of a police or other law enforcement officer acting in the  
 20 execution of his duty or of a person assisting any such officer so  
 21 acting,] is murder in the [first] *second degree.]* \* Any other kind  
 22 of murder is murder in the [second] \**[third]* \**second* \* degree.  
 23 A jury finding a person guilty of murder shall designate by their  
 24 verdict whether it be murder in the first degree or in the second  
 25 degree \**[or in the third degree]* \*.

1 \***[9.]** \* 3.\* N. J. S. 2A:113-3 is amended to read as follows:

2 2A:113-3. In no case shall the plea of guilty be received upon  
 3 any indictment for murder, and if, upon arraignment, such plea is  
 4 offered, it shall be disregarded, and the plea of not guilty entered,  
 5 and a jury, duly impaneled, shall try the case.

6 \**[Except in the case of an indictment for murder in the first*  
 7 *degree, [Nothing] nothing herein contained shall prevent the*  
 8 *accused from pleading non vult or nolo contendere to the indict-*  
 9 *ment; the sentence to be imposed, if such plea be accepted, shall be*  
 10 *[either] (a) imprisonment for life without eligibility for suspen-*  
 11 *sion, reduction or remission thereof or for probation or parole, or*  
 12 *(b) imprisonment for life without eligibility for suspension, re-*  
 13 *duction or remission thereof or for probation or parole until at*  
 14 *least 30 years of said term shall have been served, or (c) the same*  
 15 *as that imposed upon a conviction of murder in the [second] third*  
 16 *degree.]* \*

1 \***[10.]** \* 4.\* N. J. S. 2A:113-4 is amended to read as follows:

2 2A:113-4. \*a.\* Every person convicted of murder in the first  
 3 degree, his aiders, abettors, counselors and procurers, shall  
 4 \**[suffer death unless the jury shall by its verdict, and as a part*  
 5 *thereof, upon and after the consideration of all the evidence,*  
 6 *(a) recommend life imprisonment, without eligibility for suspen-*  
 7 *sion, reduction or remission thereof, or for probation or parole or*  
 8 *(b) recommends life imprisonment, without eligibility for sus-*  
 9 *pension, reduction or remission thereof, or for probation or parole*  
 10 *until at least 30 years of said term shall have been served in which*  
 11 *case this and no greater punishment shall be imposed and in such*

12 case, until the expiration of said 30 years, said sentence shall not be  
 13 suspended, or be subject to reduction or remission, and the person  
 14 so sentenced shall not be eligible for probation or parole.

15 Every person convicted of murder in the second degree, his aid-  
 16 ers, abettors, counselors and procurers, shall be sentenced to im-  
 17 prisonment for life, without eligibility for suspension, reduction or  
 18 remission thereof or for probation or parole and in such case, said  
 19 sentence shall not be suspended, or be subject to reduction or remis-  
 20 sion and the person so sentenced shall not be eligible for probation  
 21 or parole, unless the jury, by its verdict, and as a part thereof, upon  
 22 and after consideration of all the evidence, recommends mercy, in  
 23 which case life imprisonment, without eligibility for suspension,  
 24 reduction or remission thereof, or for probation or parole until at  
 25 least 30 years of said term shall have been served and no greater  
 26 punishment shall be imposed.

27 Every person convicted of murder in the [second] third degree  
 28 shall suffer imprisonment for not more than 30 years.]\* \*be  
 29 sentenced pursuant to the procedures set forth herein to: death;  
 30 imprisonment for life, without eligibility for suspension, reduction  
 31 or remission thereof, or for probation or parole and in such case,  
 32 said sentence shall not be suspended, or subject to reduction or  
 33 remission and the person so sentenced shall not be eligible for  
 34 probation or parole; or to imprisonment for life, without eligibility  
 35 for suspension, reduction or remission thereof, or for probation  
 36 or parole, until at least 30 years of said term shall have been served.

37 (1) Upon conviction of murder in the first degree the court shall  
 38 conduct a separate sentencing proceeding to determine whether the  
 39 defendant should be sentenced to death; or life imprisonment with-  
 40 out eligibility for suspension, reduction or remission thereof, or  
 41 for probation or parole; or life imprisonment without eligibility  
 42 for suspension, reduction or remission thereof, or for probation or  
 43 parole, until at least 30 years of said term shall have been served.  
 44 The proceeding shall be conducted by the judge who presided at the  
 45 trial and before the trial jury which determined the defendant's  
 46 guilt or before a jury empaneled for the purpose of the hearing if  
 47 the jury which determined the defendant's guilt has been dis-  
 48 charged by the court for good cause.

49 The court may conduct the hearing without a jury upon the  
 50 motion of the defendant and with the approval of the court and of  
 51 the State.

52 (2) In the sentencing hearing the court shall disclose to the de-  
 53 fendant or his counsel all material contained in any presentence



54 *report, if one has been prepared, except such material as the court*  
 55 *determines is required to be withheld for the protection of human*  
 56 *life.*

57 *Any presentence information withheld from the defendant shall*  
 58 *not be considered in determining the existence or the nonexistence*  
 59 *of the factors set forth in subsection a. (5) or a. (6). Any informa-*  
 60 *tion relevant to any of the mitigating factors set forth in subsection*  
 61 *a. (5) may be presented by either the State or the defendant, re-*  
 62 *gardless of its admissibility under the rules governing admission*  
 63 *of evidence at criminal trials; but the admissibility of information*  
 64 *relevant to any of the aggravating factors set forth in subsection*  
 65 *a. (6) shall be governed by the rules governing the admission of*  
 66 *evidence at criminal trials. The State and the defendant shall be*  
 67 *permitted to rebut any information received at the hearing, and*  
 68 *shall be given fair opportunity to present argument as to the ade-*  
 69 *quacy of the information to establish the existence of any of the*  
 70 *factors set forth in subsection a. (5) or a. (6). The burden of*  
 71 *establishing the existence of any of the factors set forth in subsec-*  
 72 *tion a. (6) is on the State. The burden of establishing the existence*  
 73 *of any of the factors set forth in subsection a. (5) is on the de-*  
 74 *fendant.*

75 *(3) The jury or, if there is no jury, the court shall return a*  
 76 *special verdict setting forth its findings as to the existence or non-*  
 77 *existence of each of the factors set forth in subsection a. (5) and*  
 78 *as to the existence or nonexistence of each of the factors set forth*  
 79 *in subsection a. (6).*

80 *(4) If the jury or, if there is no jury, the court finds by a pre-*  
 81 *ponderance of the information that one or more of the factors set*  
 82 *forth in subsection a. (6) exists and that none of the factors set*  
 83 *forth in subsection a. (5) exists, the court shall sentence the de-*  
 84 *fendant to death. If the jury or, if there is no jury, the court finds*  
 85 *that none of the aggravating factors set forth in subsection a. (6)*  
 86 *exists, or finds that one or more of the mitigating factors set forth*  
 87 *in subsection a. (5) exists, the court shall not sentence the de-*  
 88 *fendant to death but shall impose any other sentence provided for*  
 89 *the offense for which the defendant was convicted.*

90 *(5) The court shall not impose the sentence of death on the de-*  
 91 *fendant if the jury or, if there is no jury, the court finds by a*  
 92 *special verdict as provided in subsection a. (3) that at the time of*  
 93 *the offense:*

94 *(a) The defendant had no significant history of prior criminal*  
 95 *activity.*

96       (b) *The defendant was under the influence of extreme mental*  
 97       *or emotional disturbance but not such disturbance as to constitute*  
 98       *a defense to prosecution;*

99       (c) *The victim was a participant in the defendant's conduct or*  
 100       *consented to the act;*

101       (d) *The defendant was an accomplice in the murder committed*  
 102       *by another person and his participation was relatively minor;*

103       (e) *The defendant was under the age of 18;*

104       (f) *The defendant's capacity to appreciate the wrongfulness*  
 105       *of his conduct or to conform his conduct to the requirements of*  
 106       *law was significantly impaired, but not so impaired as to con-*  
 107       *stitute a defense to prosecution; or*

108       (g) *The defendant was under unusual and substantial duress,*  
 109       *although not such duress as to constitute a defense to prose-*  
 110       *cution.*

111       (6) *If no factor set forth in subsection a. (5) is present, the court*  
 112       *shall impose the sentence of death on the defendant if the jury or,*  
 113       *if there is no jury, the court finds by a special verdict as provided*  
 114       *in subsection a. (3) that:*

115       (a) *The defendant has previously been convicted of first or*  
 116       *second degree murder, for which a sentence of life imprisonment*  
 117       *or death was imposable;*

118       (b) *In the commission of the offense, the defendant purposely*  
 119       *or knowingly created a grave risk of death to another person in*  
 120       *addition to the victim of the offense;*

121       (c) *The murder was committed in an especially heinous, cruel*  
 122       *or depraved manner;*

123       (d) *The defendant committed the offense as consideration for*  
 124       *the receipt, or in expectation of the receipt, of anything of pecuni-*  
 125       *ary value;*

126       (e) *The defendant procured the commission of the offense by*  
 127       *payment or promise of payment, of anything of pecuniary value;*  
 128       *or*

129       (f) *The defendant committed the offense against a police or*  
 130       *other law enforcement officer, corrections employee or fireman,*  
 131       *while performing his duties or because of his status as a public*  
 132       *servant.*

133       (7) *If the jury, or if there is no jury, the court does not find by*  
 134       *a special verdict as provided in subsection a. (3) that any of the*  
 135       *factors enumerated in subsection a. (6) is present, the court in its*  
 136       *discretion shall impose sentence of life imprisonment, without*  
 137       *eligibility for suspension, reduction or remission thereof, or for*  
 138       *probation or parole; or sentence of life imprisonment, without*

139 *eligibility for suspension, reduction or remission thereof, or for*  
 140 *probation or parole, until at least 30 years of said term shall have*  
 141 *been served.*

142 (8) *The judgment of conviction and sentence of death shall be*  
 143 *subject to automatic review by the Supreme Court of New Jersey*  
 144 *within 60 days after certification by the sentencing court of the*  
 145 *entire record unless time is extended an additional period not to*  
 146 *exceed 30 days by the Supreme Court for good cause shown. Such*  
 147 *review by the Supreme Court shall have priority over all other*  
 148 *cases, and shall be heard in accordance with the Rules of Court.*

149 *b. Every person convicted of murder in the second degree, his*  
 150 *aiders, abettors, counselors and procurers, shall be sentenced to*  
 151 *imprisonment for life, without eligibility for suspension, reduction*  
 152 *or remission thereof, or for probation or parole, until at least 30*  
 153 *years of said term shall have been served and in such case, until*  
 154 *the expiration of said 30 years, said sentence shall not be suspended,*  
 155 *or subject to reduction or remission and the person so sentenced*  
 156 *shall not be eligible for probation or parole; or imprisonment for*  
 157 *life.\**

1 \***[11.]**\* \*5.\* N. J. S. 2A:118-1 is amended to read as follows:

2 2A:118-1. Any person who kidnaps or steals or forcibly takes  
 3 away a man, woman or child, and sends or carries, or with intent to  
 4 send or carry, such man, woman or child to any other point within  
 5 this State, or into another State, territory or country, or forces,  
 6 persuades or entices a child within the age of 14 years to leave its  
 7 father, mother or guardian, or other person intrusted with its care,  
 8 and secretes or conceals the child, or who procures any such act to  
 9 be done, is guilty of a high misdemeanor, and shall be punished  
 10 by imprisonment for life, or for such other term of not less than 30  
 11 years as the court deems proper.

12 Any person who kidnaps or steals or forcibly takes away a man,  
 13 woman or child, as aforesaid, and demands for the return of such  
 14 man, woman or child, money or any thing of value, is likewise guilty  
 15 of a high misdemeanor, and upon conviction shall **[suffer death]**  
 16 *be sentenced\*, as the court deems proper,\* to imprisonment for*  
 17 *life, without eligibility for suspension, reduction or remission*  
 18 *thereof or for probation or parole and in such case, said sentence*  
 19 *shall not be suspended, or be subject to reduction or remission, and*  
 20 *the person so sentenced shall not be eligible for probation or*  
 21 *parole\***[**, unless the jury by their verdict, and as a part thereof,  
 22 upon and after consideration of all the evidence, recommends **[im-**  
 23 **prisonment for life]** *mercy, in which case [this] life]\* \*; or to\* im-**



24 *prisonment for life, without eligibility for suspension, reduction*  
 25 *or remission thereof or for probation or parole until at least 30*  
 26 *years of said term shall have been served*\* [ and no greater pun-  
 27 ishment shall be imposed]\* \*; *or to imprisonment for life.\**

1 \* [12.] \* 6.\* N. J. S. 2A:148-1 is amended to read as follows:

2 2A:148-1. Any person owing allegiance to this State who levies  
 3 war against it, or adheres to its enemies or to the enemies of the  
 4 United States by giving them or any of them any aid or comfort,  
 5 and is convicted thereof on the testimony of two witnesses to the  
 6 same overt act of the treason whereof he stands indicted, or on  
 7 confession in open court, is guilty of treason and shall [suffer  
 8 death] *be sentenced to imprisonment for life, without eligibility for*  
 9 *suspension, reduction or remission thereof, or for probation or*  
 10 *parole and in such case, said sentence shall not be suspended, or be*  
 11 *subject to reduction or remission, and the person so sentenced shall*  
 12 *not be eligible for probation or parole.* Upon the trial of an in-  
 13 dictment for treason, no evidence shall be received of any overt  
 14 act of treason that is not expressly alleged in the indictment.

1 \* [13.] \* 7.\* N. J. S. 2A:148-6 is amended to read as follows:

2 2A:148-6. Any person who assaults the President or Vice-  
 3 President of the United States, or any official in the line of succes-  
 4 sion to the presidency of the United States, or the Governor of this  
 5 State, or the ruler, governor or other chief executive of any state,  
 6 or heir apparent or heir presumptive to the throne of a foreign  
 7 state, with intent to kill and with intent thereby to show his hostility  
 8 or opposition to any and all government, or any person who incites,  
 9 promotes, encourages or attempts any such assault, such assault not  
 10 resulting in the death of such official, or any person who conspires  
 11 to kill such official, is guilty of a high misdemeanor and shall [suffer  
 12 death] *be sentenced\*, as the court deems proper,\* to imprison-*  
 13 *ment for life, without eligibility for suspension, reduction or re-*  
 14 *mission thereof, or for probation or parole and in such case, said*  
 15 *sentence shall not be suspended, or be subject to reduction or re-*  
 16 *mission, and the person so sentenced shall not be eligible for pro-*  
 17 *bation or parole*\* [ unless the jury trying the case recommends  
 18 the defendant to the mercy of the court, in which case the punish-  
 19 ment shall be]\* \*; *or to\* imprisonment for life without eligibility*  
 20 *for suspension, reduction or remission thereof, or for probation or*  
 21 *parole until at least 30 years of said term shall have been served*  
 22 *\*[and no greater punishment shall be imposed]\* \*; or to imprison-*  
 23 *ment for life\*.*

1 \*§14. N. J. S. 2A:159-2 is amended to read as follows:

2 2A:159-2. Except as otherwise expressly provided by law no  
3 person shall be prosecuted, tried or punished for any offense not  
4 punishable with death *or by imprisonment, without eligibility for*  
5 *suspension, reduction or remission thereof, or for probation or*  
6 *parole, or by life imprisonment, without eligibility for suspension,*  
7 *reduction or remission thereof, or for probation or parole until*  
8 *at least 30 years of said term shall have been served and in such*  
9 *case, until the expiration of said 30 years, said sentence shall not*  
10 *be suspended, or be subject to reduction or remission, and the per-*  
11 *son so sentenced shall not be eligible for probation or parole, unless*  
12 *the indictment therefor shall be found within 5 years from the time*  
13 *of committing the offense or incurring the fine or forfeiture. This*  
14 *section shall not apply to any person fleeing from justice.]\**

1 \*§15. N. J. S. 2A:164-28 is amended to read as follows:

2 2A:164-28. In all cases wherein a criminal conviction has been  
3 entered against any person whereon sentence was suspended, or  
4 a fine imposed of not more than \$1,000.00, and no subsequent con-  
5 viction has been entered against such person, it shall be lawful  
6 after the lapse of 10 years from the date of such conviction for the  
7 person so convicted to present a duly verified petition to the court  
8 wherein such conviction was entered, setting forth all the facts  
9 in the matter and praying for the relief provided for in this section.

10 Upon reading and filing such petition such court may by order  
11 fix a time, not less than 10 nor more than 30 days thereafter, for  
12 the hearing of the matter, a copy of which order shall be served  
13 in the usual manner upon the prosecutor of the county wherein  
14 such court is located, and upon the chief of police or other executive  
15 head of the police department of the municipality wherein said  
16 offense was committed, within 5 days from the date of such order,  
17 and at the time so appointed the court shall hear the matter and  
18 if no material objection is made and no reason appears to the  
19 contrary, an order may be granted directing the clerk of such  
20 court to expunge from the records all evidence of said conviction  
21 and that the person against whom such conviction was entered  
22 shall be forthwith thereafter relieved from such disabilities as  
23 may have heretofore existed by reason thereof, excepting convic-  
24 tions involving the following crimes: treason, misprision of treason,  
25 anarchy, all capital cases *and cases in which a sentence of life*  
26 *imprisonment, without eligibility for suspension, reduction or re-*  
27 *mission thereof, or for probation or parole, or life imprisonment,*  
28 *without eligibility for suspension, reduction or remission thereof,*

29 *or for probation or parole, until at least 30 years of said term shall*  
 30 *have been served, has been imposed, kidnapping, perjury, carrying*  
 31 *concealed weapons or weapons of any deadly nature or type, rape,*  
 32 *seduction, aiding, assisting or concealing persons accused of high*  
 33 *misdemeanors, or aiding the escape of inmates of prisons, em-*  
 34 *bracery, arson, robbery or burglary.】\**

1     \***【16.】**\* \*8.\* N. J. S. 2A:168-1 is amended to read as follows:

2     2A:168-1. When it shall appear that the best interests of the  
 3 public as well as of the defendant will be subserved thereby, the  
 4 courts of this State having jurisdiction over criminal or quasi-  
 5 criminal actions shall have power, after conviction or after a plea  
 6 of guilty or non vult for any crime or offense, except those  
 7 hereinafter described, to suspend the imposition or execution of  
 8 sentence, and also to place the defendant on probation under the  
 9 supervision of the chief probation officer of the county, for a period  
 10 of not less than 1 year nor more than 5 years.

11     The courts having jurisdiction over juvenile or domestic rela-  
 12 tions cases, when it shall appear that the best interests of the public  
 13 as well as of the person adjudged guilty of any offense, except  
 14 those hereinafter described, before such court will be subserved  
 15 thereby, shall have power to place the defendant on probation for  
 16 a period of not less than 1 year nor more than 5 years. Such  
 17 courts shall also have the power to place on probation under the  
 18 same conditions children who shall come within the jurisdiction  
 19 of the court. The provisions of this section shall not permit the  
 20 suspension of the imposition or execution of any sentence and the  
 21 placing of the defendant on probation after conviction or after a  
 22 plea of guilty or non vult for violation of any provision of  
 23 **【chapter 18 of Title 24 of the Revised Statutes】** the "*New*  
 24 *Jersey Controlled Dangerous Substances Act,*" P. L. 1970, c. 226  
 25 (C. 24:21-1 et seq.), except in the case of a first offender \***【or in any**  
 26 *case in which the sentence imposed upon the defendant was life*  
 27 *imprisonment, without eligibility for suspension, reduction or re-*  
 28 *mission thereof or for probation or parole or in any case in which*  
 29 *the sentence imposed upon the defendant was life imprisonment,*  
 30 *without eligibility for suspension, reduction or remission thereof*  
 31 *or for probation or parole until at least 30 years of said term shall*  
 32 *have been served】*.\*

33     If any person placed on probation shall abscond while under  
 34 supervision, the time during which he remains away or hidden  
 35 shall not be counted as part of his term of probation.

1 \***[17.]** Any person heretofore convicted of any offense which im-  
 2 mediately prior to the effective date of this act was punishable  
 3 by death but which, under the terms of this act, is not so punishable,  
 4 shall be sentenced, or, if he has been sentenced to death, shall be  
 5 resented, pursuant to the provisions of this act, it being the  
 6 intent of this act that the imposition and execution of the death  
 7 sentence for any offense, other than murder in the first degree  
 8 shall be abolished upon the effective date of this act.]\*

1 \***[18.]** \*9.\* A defendant in any criminal case punishable by life  
 2 imprisonment, without eligibility for suspension, reduction or re-  
 3 mission thereof or for probation or parole until at least 30 years of  
 4 said term shall have been served, shall be entitled as of right to  
 5 appeal the final judgment of his conviction directly to the Supreme  
 6 Court.

1 \***[19.]** \*10.\* If any person charged with a capital offense or any  
 2 offense punishable by life imprisonment, without eligibility for sus-  
 3 pension, reduction or remission thereof or for probation or parole  
 4 or any offense punishable by life imprisonment, without eligibility  
 5 for suspension, reduction or remission thereof or for probation or  
 6 parole until at least 30 years of said term shall have been served,  
 7 shall make application to the judge before whom he is to be tried,  
 8 showing that a copy of the transcript of the record, testimony and  
 9 proceedings at the trial is necessary for his defense, and that he is  
 10 unable, by reason of poverty, to defray the expense of procuring  
 11 the same, such judge shall, being satisfied of the facts stated and  
 12 of the sufficiency thereof, certify the expense thereof to the county  
 13 treasurer, who shall thereupon pay such necessary expense, the  
 14 amount thereof having been approved by the judge to whom such  
 15 application was made, and which shall not be in excess of the rates  
 16 provided for by the Supreme Court.

1 \***[20.]** \*11.\* If any person convicted of an offense and sentenced  
 2 to death therefor or to life imprisonment, without eligibility for  
 3 suspension, reduction or remission thereof or for probation or  
 4 parole or to life imprisonment, without eligibility for suspension,  
 5 reduction or remission thereof or for probation or parole until at  
 6 least 30 years of said term shall have been served, shall make ap-  
 7 plication to the judge who presided at the trial showing that he is  
 8 about to appeal from such conviction, and is unable, by reason of  
 9 poverty, to defray the expenses of procuring a transcript of the  
 10 record, testimony and proceedings at the trial, and of the printing  
 11 of the same, including briefs on appeal, for presentation to the  
 12 court, such judge shall, being satisfied of the fact stated and of the



13 sufficiency thereof, certify the reasonable expense thereof to the  
14 county treasurer, who shall thereupon pay such necessary expense,  
15 the amount thereof having been approved by the judge to whom  
16 such application was made.

1 \***[21.]** \* **12.** \* “An act to provide for the payment for transcripts  
2 and certain expenses of appeals for impecunious defendants in  
3 capital cases, and supplementing Title 2A of the New Jersey Stat-  
4 utes,” approved May 16, 1952 (P. L. 1952, c. 212), is repealed.

1 \***[22.]** \* **13.** \* This act shall take effect immediately.

WILLIAM K. DICKEY (Chairman): Ladies and gentlemen, we will call the public hearing to order. This is a public hearing by the Assembly Judiciary Committee concerning Assembly Committee amendments to Senate bill #799 which would reinstate the death penalty in certain cases in the criminal law of New Jersey.

We have invited today interested citizens to appear before our Committee to advise the Committee on this important question. In scheduling this public hearing the Committee wishes to obtain a consensus as to what New Jersey's response should be to the question of capital punishment in light of the Supreme Court's decision.

The first witness before the Committee today will be the principal sponsor of Senate bill #799, Senator Joseph Azzolina of Monmouth County. I will ask Senator Azzolina to come forward at this time to make his statement to the Committee.

I would like to introduce the members of the Committee who are here with me today. To my left is Assemblywoman Ann Klein of Morris County. To my right is Assemblyman John Spizziri of Bergen County. My name is Assemblyman Bill Dickey of Camden County.

Senator Azzolina, you may proceed.

S E N A T O R   J O S E P H   A Z Z O L I N A: Mr. Chairman and members of the Committee, I wish to thank you for the courtesy of inviting me to appear before you at this time to speak of my reactions to your proposed Assembly Committee amendments to my Senate bill #799.

As you are well aware, of course, our own State Supreme Court invalidated New Jersey's capital punishment statute in the "Funicello" decision, in January 1972. My sole purpose in introducing Senate bill #799, in March of that year, was to reinstate capital punishment in New Jersey in a constitutional form and manner, to conform with what appeared to be our State Supreme Court's directives in "Funicello."

Subsequently, as, again you are all well aware, the United States Supreme Court, in the "Furman" decision, invalidated virtually every capital punishment statute in force in the United States. That decision did not, contrary to much popular opinion, foreclose capital punishment for all time and in all cases. All it did was to preclude capital punishment as previously practiced.

Unfortunately, "Furman" provided no clear guidelines to direct those of us who saw capital punishment as the most effective and ultimate penalty to deter certain crimes in our efforts to accomplish its restoration. Instead of a single opinion with, perhaps, a single dissent, the Supreme Court gave us nine separate opinions. I was, to be perfectly honest, thoroughly confused - and I admit this - because I had, in my confusion, some excellent company.

I am not an attorney, so I sought the best legal advice I could find - and I received it. But just as the United States Supreme Court was divided, so were the attorneys who advised me. Learned articles in law reviews and bar journals disagreed in their conclusions. Distinguished lawyers and legal scholars simply could not come to any specific conclusion concerning whether or not capital punishment could be constitutionally restored in the United States, and, if it could, what form such a restoration should take. I was confused, attorneys were confused, State Legislatures were confused and, worst of all, the people of this State and Nation were confused.

Mr. Chairman and honorable members of the Judiciary Committee of the General Assembly, it is my earnest belief, my most sincere belief, that the one opinion - the one and only opinion that matters on the issue of whether or not capital punishment should be restored - has already been given. As members of the General Assembly, each of you know that I speak of the opinion of the people of New

Jersey - and by every means we have to measure public sentiment, you know, as I know, that the people of New Jersey want capital punishment restored. They have decided that issue, and what they have left for us is the decision as to how to restore it. The people have set the ends. You have deliberated for 15 months, since May 1972, over amendments to Senate bill #799 and I have deliberated ever since I introduced that bill more than 18 months ago - not on the ends but on the means to achieve those ends. We are, therefore, meeting here today not to consider whether or not capital punishment should be restored in New Jersey - for the people have spoken loudly and clearly, and they speak so today, that it should. We are, rather, here to consider how to restore it, how, in other words, to accomplish the peoples's will.

In January of this year, despite the legal confusion deriving from the "Furman" decision, after a thorough and detailed review of the 9 separate opinions rendered in that case, and after a study of the actions, and proposed action, of sister States, I directed the preparation of a set of proposed amendments to my Senate bill #799. It appeared to me at that time that whatever expert legal consensus existed on this matter tended towards the imposition of a separate sentencing proceeding, to commence immediately following a verdict of guilt on a charge of first degree murder, to determine the penalty. In that separate sentencing, to be conducted by the same trial judge before the same trial jury, evidence was to be heard concerning any aggravating circumstances in the commission of the crime which would lead to the imposition of the death penalty, and any mitigating circumstances which would lead to the imposition of a lesser penalty - either life imprisonment with no provision for reduction or remission of sentence or for probation or parole, or life imprisonment with the possibility of parole after 30 years imprisonment. To reduce the element of "uncertainty," or - as the United States



Supreme Court would have it - of "arbitrariness" or "capriciousness," in making such a determination, I determined to follow the precedent established by the State of Florida in the capital punishment statute enacted by that State in early 1973. That Florida Statute has the jury render an advisory sentence on the basis of its evaluation of aggravating and mitigating circumstances, with the judge making the ultimate decision as to penalty. The amendments I prepared to my Senate bill #799 adopted this Florida procedure.

In the amendments you have proposed to Senate bill #799, I am very pleased to see that you accept the necessity of a separate sentencing proceeding to commence immediately following an adjudication of guilt on a charge of first degree murder. In that acceptance you have followed the Florida precedent and, I believe, the most "probably constitutional" course. However, I am concerned with two aspects of your amendments that differ from my own proposals and, therefore, from the Florida precedent upon which my proposals are based. Whereas my proposals and the Florida law have the court - meaning the judge - deciding the penalty with the jury rendering only an advisory sentence, your proposals have the jury deciding the penalty, and deciding it on the basis of finding or not finding a single mitigating factor. In other words, under your proposal no matter how brutal or cruel a murder, no matter how vicious or evil the murderer, if the jury discovers just one mitigating factor there can be no death penalty.

Gentlemen, I have already disclaimed any argument on the merits of capital punishment. I have already stated my belief that the issue is not whether but how we are to have capital punishment in New Jersey. I do not wish to engage anyone in moral arguments which I believe the vast majority of the people of this State have already argued and resolved. I do not, in other words, plan to

debate with you whether your proposed amendments, permitting as they do a single mitigating factor to overcome a combination of as many as 7 or 8 aggravating factors, really gives the people of this State what they want. I will concede that you have drafted your amendments as aware of the will of the people as was I aware when I drafted mine. I will, therefore, also concede that you are as anxious to draft a constitutionally acceptable capital punishment statute as I am. Our disagreement, then, is only on the means to achieve that end, and in light of the confusion concerning these means, it is certainly understandable that we, as reasonable men, will have reasonable differences.

I realize that your proposed amendments are based upon H.R. 6026, introduced in the United States House of Representatives by the Honorable Gerald R. Ford in March 1973. This bill has the backing of the United States Department of Justice and presumably, therefore, President Nixon.

My proposed amendments, on the other hand, are, as I have said, based upon the Florida Statute enacted into law in December 1972. As you all, doubtless, are aware, the Florida Statute has recently been upheld by the Florida Supreme Court. I know, and you know, that this fact does not guarantee that the United States Supreme Court will accept the Florida decision. What it does mean, however, is that the Florida statute has passed at least one major judicial test. In its "opinion", filed July 26, 1973, the Florida Supreme Court ruled by a 5 to 2 majority that the Florida Statute was in conformity with the United States Supreme Court decision in "Furman." Mr. Justice Adkins, who wrote the majority opinion said that: "Discrimination or capriciousness cannot stand where reason is required and this is an important element added by the Florida statute for the protection of the convicted defendant. By vesting the penalty decision in the judge and allowing

the jury to recommend only, the inflamed emotions of jurors can no longer sentence a man to die," said Mr. Justice Adkins.

Only this would I say to you, I believe - as I feel you believe - that we would be breaking faith with the people of New Jersey if we do not provide for the restoration of capital punishment in this State. I believe that my proposed amendments to Senate bill #799 are stronger and that they will be more acceptable to the citizens of this State than yours, which would permit the existence of a single mitigating factor to preclude capital punishment despite the preponderance of potentially horrific "aggravating factors."

However, if you believe that your proposal, and your proposal alone, will be upheld by the Supreme Court of the United States, if you are absolutely convinced - notwithstanding the upholding of the Florida statute by the Florida Supreme Court - that your proposal and only your proposal, will, ultimately, be adjudged "constitutional", if such are your findings after your months of diligent deliberation, then I, in the best interests of all the people, will defer. I will withdraw my proposed amendments to my Senate bill #799 and I will urge your colleagues in the General Assembly - and mine in the Senate - to ratify your proposals. Much more than "pride of authorship" would I have "pride of membership" in a Legislature that gave to the people of New Jersey that which the people of New Jersey are so overwhelmingly demanding.

I have here a memorandum in which I asked our research people here in the State House to break-down the difference and evaluate my original amendments to you and your amendments that you incorporated into the proposed bill and rather than read them all I will hand you copies for your Committee. I also have, and I am sure your Committee has, a copy of the Florida opinion from the

Supreme Court and some news articles that appeared with the papers we received from Florida.

To those that say, "when a man murders once, let's let him out after a certain number of years, he won't commit murder again," I think we had a perfect example last week. This individual - I think his name is Menninger - was in prison for a number of years and then he worked in the Governor's mansion for several weeks and then he even wrote a letter to the Trentonian newspaper, I believe, telling the public "why should the public be worried about these ex-murderers when the Governor really isn't and even has people like him working in the Governor's mansion." I think just last weekend - or the weekend before - this man was released on a weekend pass and picked up a hatchet and murdered another man. So, to these "bleeding hearts" I say "shame". Let's restore the death penalty in this State.

Every place I go the people want it back. Sure it is not going to stop all the murders but if it stops just one it is worth having the death penalty back in this State. Gentlemen and lady, thank you very much.

ASSEMBLYMAN DICKEY: Thank you very much, Senator. Do any of the members of the Committee wish to ask the Senator any questions? Mrs. Klein?

ASSEMBLYWOMAN KLEIN: Senator, on page 3 of your testimony - I'm sorry, it is on the top of page 5 - you stated that the purpose of the Committee is to "draft a constitutionally acceptable capital punishment statute.... our disagreement is only on the means to achieve that end and in light of the confusion concerning these means it is certainly understandable that we, as reasonable men, will have reasonable differences." I would like to say to you, Senator, that I am not a "reasonable man" and that I do not join with anyone on the Committee who may share your desire to achieve this end.



SENATOR AZZOLINA: I agree. I understand. I am well aware of your feelings.

ASSEMBLYWOMAN KLEIN: Now you have stated in several places that the people of New Jersey demand the return of capital punishment and that it would be derelict of the Legislature not to conform to this demand. Can you tell me the basis on which you make that statement?

SENATOR AZZOLINA: I think the public opinion polls taken have shown that capital punishment is wanted by the people of New Jersey. A great number of people that I have talked to and others have talked to -- People come up and talk to you about it. It is the one issue that people walk up to you and discuss with you. They don't talk about taxes, they don't talk about anything else but they do talk about capital punishment and it seems like every place you go this is the one issue they are interested in. Polls have been taken that so confirm this.

ASSEMBLYWOMAN KLEIN: Do you have any polls to submit as evidence?

SENATOR AZZOLINA: I don't have any polls with me. no.

ASSEMBLYWOMAN KLEIN: I would like to say, Senator, that in campaigning around the State I would have to say that I did not have that experience - that this was the one issue that people were interested in. In fact, I can only remember one occasion when this question was even raised. So I think we would have to have some more substantial evidence that the people of this State are truly demanding the return of capital punishment. I wonder if you could get for us some polls or some background or some evidence that this is, indeed, what the public wants?

SENATOR AZZOLINA: I'll see if I can find any. Maybe some others here today have some such evidence.

ASSEMBLYWOMAN KLEIN: Now you are familiar, I am sure, with Judge Haneman's report - the report of his

Commission which studied capital punishment in New Jersey?

SENATOR AZZOLINA: I sure am.

ASSEMBLYWOMAN KLEIN: You are, of course, aware of the recommendations of that report; that Commission did not take any moral position on capital punishment. It simply took a very realistic approach to the question of what would happen if, indeed, we enacted a law. It pointed out that many cases are presently before the Supreme Court that have not been clarified and that it is going to be a lengthy process. It pointed out that if we do reenact capital punishment in this State we will undertake a very expensive procedure. We will have to have court cases, which are very expensive. We will have to reinstate, I suppose, the electric chair. We will have to revamp the death row and we all know that that is very costly for the people of New Jersey. At the same time we will have to wait a long, long time before we find out whether our law is constitutional. Now in the meantime we will have to go through all these procedures and then we may find out that the law is not constitutional.

Do you see any point in submitting the people of this State to all of this unnecessary expense?

SENATOR AZZOLINA: Yes. New Jersey is one of the more populous states in the United States. Smaller states - I think 13 states - already have passed capital punishment and in the State of Florida it has already been tested. California just passed it and other states have passed it.

We are a corridor state and we should be a responsible state. Since we do have a great population in New Jersey we should be willing to take the expense - or spend the money, if necessary - to find out whether or not what we pass as a capital punishment bill is constitutional or not. We shouldn't be waiting for some little state to find out for us. If we ever wait for Congress we will wait forever.

You talk about wasting money and I hate to go in

this direction but I will for a moment. The Civil Liberties Union - I guess that is what they call themselves - are here today to oppose this bill. They seem to oppose anything that is good for this country. The country was great for the 190 some odd years since it was founded. We had a great country because we had some great laws. Now the Civil Liberties Union and some other organizations throughout the United States are trying to knock down all these laws that made the country great.

You talk about waste of money, I think they are wasting a tremendous amount of our money in the State and a tremendous amount of time and effort, etc., such as in the aid to parochial schools and private schools. They are forcing us to throw away the equipment instead of using it - putting it to good use. That is a real waste, not what we intend to do.

ASSEMBLYWOMAN KLEIN: I imagine you will admit that is on a different subject.

SENATOR AZZOLINA: I admit this but the same group that is opposing this is the group that is wasting all kinds of money in this State and wasting our Attorney General's time. etc.

ASSEMBLYWOMAN KLEIN: Do you plan to submit a bill to ban the American Civil Liberties Union from New Jersey?

SENATOR AZZOLINA: No but I don't want them to ban my rights either and the rights of the citizens of this State.

You know, we tend to, now, fight for the rights of the criminal and we forget the rights of the citizens-at-large, which are 99.9% of the good abiding citizens. Why don't we fight for their rights instead of the rights of the criminal?

ASSEMBLYWOMAN KLEIN: Senator, in your interest in restoring the death penalty as a deterrent would you

favor public executions?

SENATOR AZZOLINA: I would favor public executions - anything necessary to deter those who murder, to stop them from murdering unnecessarily.

ASSEMBLYWOMAN KLEIN: Do you think it would be better if, instead of having an electric chair, we had a gallows and we put it out in the middle of the green so everybody will see it?

SENATOR AZZOLINA: If that will stop it-- You know years ago this did stop a certain amount of it. I will give you a good example. I am in the supermarket business. There is a Two Guys from Harrison store across the street from me. The Mayor of Avon would have been here today, Mayor Crook, who happens to own the Crook Armored Car Service - in fact, he sent a letter to Pat Donath which I think he wants made part of the record here -- His men were there collecting money on a Sunday afternoon in an armored car, parked in front of Two Guys, in front of a crowd, and this individual just walked up to the door, opened the door and shot the man dead. He didn't even say, "stick 'em up." He shot the other man and almost killed him. He grabbed two bags and took off. He dropped the two bags. They had no money at all in them. The man now is somewhere in the United States. They are still trying to track him.

ASSEMBLYWOMAN KLEIN: They never caught him?

SENATOR AZZOLINA: Not yet they haven't caught him, but when they catch that man he should be hanged in public as far as I am concerned, or given the electric chair in public.

ASSEMBLYWOMAN KLEIN: Senator --

SENATOR AZZOLINA: You may think I am crazy but I am a pretty compassionate guy and I feel sorry for a lot of people, but murderers I do not feel sorry for. Hardened criminals I do not feel sorry for. We are not asking this for

those that commit murder in the heat of passion, that is different. we are talking about the hardened criminal, the premeditated murderer. Now if you want to protect those individuals that is your right; I don't want to protect those individuals and neither do 99.9% of the citizens of this State.

ASSEMBLYWOMAN KLEIN: Again, Senator, I would like to have evidence of that last statement.

I would like to say that what you pointed out, the fact that this man has not been apprehended, I think has a bearing on whether the death penalty will, indeed, act as a deterrent to murder.

Are you aware of what the relationship is between the number of serious offenses that are reported and the number that result in incarceration?

SENATOR AZZOLINA: I am not interested in numbers; I am interested in stopping the ones that might think twice before they commit murder.

Now you all know Chippy Coleman; he was a former Assemblyman and an outstanding Assemblyman of this House. I don't think you were here at the time but most of the legislators do know Chippy Coleman. He is a County Prosecutor in Monmouth. He is an outstanding County Prosecutor. I asked him to come here today but because of the new term starting he was unable to come but he is sending you, by mail, something to incorporate into the record. Maybe it will be hand delivered later today, I am not sure. But he told me on the phone yesterday that one of the problems we have today without the death penalty is that at one time you had people holding up stores and other people without guns, maybe with fake sticks or whatever; today the problem is that those who stick people up have a gun and they shoot. He finds this is so. these are the statistics he quoted to me.

I am not a prosecutor. I am not an attorney. I am a practical guy and what has been happening is that more people are using guns today and shooting people than ever



before. That is his statement to me.

ASSEMBLYWOMAN KLEIN: Are you in favor of uniform gun control in the United States?

SENATOR AZZOLINA: That is not a topic for this meeting today.

ASSEMBLYWOMAN KLEIN: But it is since we are interested in crime.

SENATOR AZZOLINA: I haven't gone into that phase so I prefer not to answer at the moment.

ASSEMBLYWOMAN KLEIN: Thank you.

ASSEMBLYMAN DICKEY: Mr. Spizziri?

ASSEMBLYMAN SPIZZIRI: I have no questions.

ASSEMBLYMAN DICKEY: Mr. Keogh-Dwyer?

ASSEMBLYMAN KEOGH-DWYER: No questions.

ASSEMBLYMAN DICKEY: Mr. Dawes?

ASSEMBLYMAN DAWES: No questions.

ASSEMBLYMAN DICKEY: Mr. Wallace?

ASSEMBLYMAN WALLACE: Senator, with reference to the committee amendments, I haven't seen your legal memorandum but I assume you concur on the bifurcated hearing, that is to determine, first, guilt and then to determine penalty?

SENATOR AZZOLINA: Yes.

ASSEMBLYMAN WALLACE: Have you reviewed the list of mitigating factors and aggravating circumstances, as outlined in the committee amendments, in helping the court determine whether a death penalty should be imposed, or, in the alternative, a life sentence without parole or reduction of sentence for a term of 30 years?

SENATOR AZZOLINA: I have gone over it and I am going to submit this memorandum to you.

ASSEMBLYMAN WALLACE: Thank you very much, Senator. Is there anything further?

SENATOR AZZOLINA: No, I will give you this before the next witness goes on.

ASSEMBLYMAN WALLACE: Thank you very much.

ASSEMBLYMAN DICKEY: I will next call Congressman Charles W. Sandman.

C O N G R E S S M A N C H A R L E S W. S A N D M A N:  
Mr. Chairman and members of the Committee, my purpose here today is not to endorse any of the bills that have been submitted, nor to take part in the difference between amendments or recommending one amendment over the other. My purpose in being here is to register with you the findings of a major committee that I served on in the Congress of the United States during the last two terms, namely the Select Committee on Crime, of which there are only 11 members in the whole Congress. It was chaired by former Senator and now Congressman Claude Pepper from Florida.

I firmly believe that the death penalty should be reestablished. I believe that it should be enforced. I believe that it should affect all of those cases which we commonly know as constituting first degree murder, which require premeditation with malice aforethought. With all of those elements we certainly seek out the one individual who should be treated differently from all others, in my judgment. He is entitled to his day in court, with this we have no argument. He is entitled to his many rights of appeal, which in most cases have been exaggerated and have become the laughing stock of not the country but the world. We have just about gone far enough in that direction.

Now during the last couple of years in the hearings that we have had around the country-- And I am not picking the figures out of the sky, you can find figures to prove almost anything you want but if you want to intelligently use information that is another thing. Following the riot at Attica, New York the Committee commenced conducting these hearings around the country. This is what we found, not in one state but in every state. We found that since the death penalty has become a thing of the past the attitudes within the institutions, especially behind the high walls of the

maximum security prisons, is far less than anybody would appreciate. In states where it is possible to have multiple life sentences it even becomes more of a joke because everyone knows the individual can serve but one life and now it makes no difference to him how many people he murders, whether they be prison guards or anyone else.

It is well established by the findings of that Committee that the murderers within the penitentiaries across the country have increased rapidly since the death penalty has been done away with; with this there is no question.

Now many have argued, who take the more liberal point of view, that it is not a deterrent to crime. Well, you can also find another set of figures that says that maybe it is. But it means little in a State if you have a death penalty and never use it.

To give you an idea about what other jurists think of our system of jurisprudence let me tell you about a conversation that I had in Oslo, Norway about two years ago. In the conference were members of the House Judiciary Committee, of which I was one, and members of the Supreme Court of Norway. I can remember one of the greatest jurists there, at least respected in that area and all through Europe as being one of the most knowledgeable, reporting to us. It was in the month of September. He said, "here in this country, which has less population than your State of New Jersey, we have a record that we think is enviable." He said, "in one city here - we only have one city of any size, Oslo - there is a population of about one-half million." He said, "Congressman, when you go back I wish you would tell your people about the record we have here and we are proud of." He said, "from January 1st until today - that is a period of about 8 months - there hasn't been one homicide in the City of Oslo, with a population of one-half million." Now he said, "go back to the United States and see if you have such a city which can boast a

record such as that" - and we haven't. There is no way that we have. In fact let me think of one city in New Jersey that is about the same size as Oslo, namely Newark, New Jersey. When I conducted my own investigation of the State Prison System about a year ago, updating the investigation I had previously made for the bond issues for institutions, in the county jail in the city of Newark, on one floor there were 80 men awaiting trial for murder in one city - 80. Now you compare that with other places.

Now why is there a difference? Of course this is what I asked the Justice of the Supreme Court in Norway. I asked him how he could account for all of this, how he had such an excellent system in his area and we had such a very poor system where I come from. He said, "well we do have a few differences. One, we are interested in all the people in Norway and we think our obligation is to protect all of the people. We don't want to execute somebody who may not be guilty but we don't give him any greater rights than we give to the victims that people like that murder." He said, "in our country there is no such thing as bail, no matter how much money you have or where you come from. You get a trial with dispatch and you are kept under lock and key until we determine how guilty you are." I don't know as I can buy that altogether. In murder cases I can understand why there shouldn't be any bail set but in all cases, such as he is referring to, I can't.

But he said: "The most important thing we have is that from the time of apprehension until the decision of the court of last resort, this must happen in our country in less than one year." He said, "that is one of the things that we feel has made this a great system of jurisprudence. And we don't have anybody writing any best sellers in Norway," he said, "referring to innocent people whose lives we have taken away." This is an unheard of thing also in that great country. I think that can be had here too if we have trials and procedures that are worked

with some dispatch.

He then pointed out the most ridiculous case of them all and he said, "How do the people in your country explain the fact that the man who murdered Senator Kennedy - and everybody saw him murder Senator Kennedy on T.V. - more than 1,000 witnesses can testify to the act-- that happened more than six years ago and that man is still having countless appeals yet to prove that he didn't do it?" He said, "That is really a point on being ridiculous," and so it is.

At any rate, what can we do here? I think we can do a lot of good here and I think it is high time we did it. I am just about fed up to the neck listening to the liberal "do gooders" who think they know how to run this country better than anybody else. And most of them hibernate in the place where I work, the Nation's Capitol. They weren't convinced that we had any kind of fairness down there until they took away all of the procedures affecting bail in the Federal City. Just take a look at what happened there. To start with, only one out of about 10 people who commit a crime is even apprehended there. In fact, it is almost an encouragement to commit crime. You get better treatment in the District of Columbia and you get better opportunities after you commit a crime than if you committed no crime. The law abiding citizen in that great City, to me, has something to complain about - he doesn't have as many rights as somebody who disobeys the law. So what did they have to do there? The old concept that it is not fair if two people commit a crime and one is poor and the other is not, the poor man must go to jail awaiting trial and the rich man can put up his bail and go along and conduct his life as he would - now I have listened to that ever since I first became a lawyer, about 25 years ago, and I was almost convinced that we should do something about that. Only one place has done anything about that, as a matter of Federal law, and it can affect only place and that is the only Federal City we have, which is the

District of Columbia.

Now the true effect of what has happened there is far more desperate than the simple inequities that I just pointed to. What has happened? Here is what has happened. In the District of Columbia for all cases, except murder, you can get out on what is known as your own recognizance. You just sign your name to an affidavit that on the day you are called to be there for a hearing you will be there. You put up no bail. You put up no security. You put up nothing. You sign this thing in the presence of a notary and then you walk out the door a free man.

Do you know what has happened as a result of that great institution? We now know from last years statistics, because the only statistics on crime reporting that seems to have any accuracy are the Federal statistics. Would you believe that four out of every ten of these people who signed their own recognizance and get themselves out pending trial commit a second offense before they are tried for the first offense. That's how ridiculous liberalism of "do gooders" can get.

Now in this particular instance it seems to me that we have just about gone far enough. The number of violent crimes are on the increase; they are not on the decrease. The number of murders within institutions have gone up; they have not gone down since the death penalty has been done away with. There has to be something here that will at least make even the most incorrigible know that he can suffer the supreme penalty, and I think that this can be a step in the right direction.

So, whatever bill that you adopt I sincerely urge you in the interest of seven and one-half million people, not in the primary interest of somebody who has committed cold-blooded murder with malice aforethought, that you adopt and reinstate the death penalty. It is an ugly thing. Everybody knows that but even this morning in Jersey City an innocent man was murdered again by a



sniper.

Let's not kid ourselves. Take a close look at the rate of recidivism we have in this State. By being nice to people have we made the situation any better? We haven't. Almost six out of every ten that gets out of maximum security in this State go back again. This is no record we can be proud of. And no matter what you do in those areas you are not going to have any improvement.

I do believe in prison reform. I have filed a report with the State and the Governor on how you can attempt it and how it should be attempted. So I am not one of those people that believes there isn't a lot that we can do and a lot that we should do. But in the interim I believe that it is high time this State became a leader in prosecuting people who are doing so much damage and so much violence around the State. Thank you.

ASSEMBLYMAN DICKY: Thank you, Congressman.  
Do any members of the Committee have any questions? Mr. Wallace?

ASSEMBLYMAN WALLACE: No questions.

ASSEMBLYMAN DICKY: Mr. Dawes?

ASSEMBLYMAN DAWES: No questions.

ASSEMBLYMAN DICKY: Mrs. Klein?

ASSEMBLYWOMAN KLEIN: Congressman, your testimony has been so wide ranged that it is hard to know where to start but I think I will start with Oslo, since I have been to Oslo also.

As you were speaking about the much lower crime rate in Oslo than in the United States, it occurred to me to ask you does Norway have a death penalty?

CONGRESSMAN SANDMAN: I really don't know. I wasn't there covering the death penalty when I was taking it up with the Justices at the time. We were there mainly on a procedural basis.

ASSEMBLYWOMAN KLEIN: Well, for the record, I believe that Norway does not have the death penalty but I think that I would ask the Committee to get this information.

CONGRESSMAN SANDMAN: It's easily obtainable.

ASSEMBLYWOMAN KLEIN: I'm sure it is.

Secondly, did you have the opportunity to visit any of the penal institutions in Norway when you were there --

CONGRESSMAN SANDMAN: No.

ASSEMBLYWOMAN KLEIN:--to see the way in which they treat those few criminals whom they do have?

CONGRESSMAN SANDMAN: No.

ASSEMBLYWOMAN KLEIN: Did you observe, when you were in the City of Oslo, any significant differences between that city and the City of Newark, in terms of, let us say for instance, housing, cleanliness, degree of poverty, health services, care for the elderly, any kind of day care? Did you notice any significant differences between the City of Oslo and the City of Newark that you think might have something to do with the difference in the crime rate?

CONGRESSMAN SANDMAN: I certainly did. The one thing that I saw there was a very clean city as compared to some of the cities that you refer to that are not so clean. I saw a population there that had respect for the law, which I don't see in the City of Newark. I saw the operation of a government that spends less per capita than we do here; where the individual is expected to do something for himself and not to be totally subsidized by his state or his government. This, I think, makes a big difference.

ASSEMBLYWOMAN KLEIN: Congressman, certainly you are aware that Norway is far more of a socialist country than the United States is and whereas you talk about the people who are ready to do more for themselves rather than rely upon the state, I am sure you must be aware that in Norway people are guaranteed security from cradle to grave, that they are guaranteed care in their old age, that they are guaranteed health services--

CONGRESSMAN SANDMAN: They don't have one-half of the programs that we have in Washington to take care of people.

ASSEMBLYWOMAN KLEIN: In relation to their population, Congressman?

CONGRESSMAN SANDMAN: In relation to their population.

ASSEMBLYWOMAN KLEIN: Did you have an opportunity to use their public transportation, Congressman?

CONGRESSMAN SANDMAN: I did.

ASSEMBLYWOMAN KLEIN: Oh you did. Well I believe that we must put into this record, since you have brought up the subject, the fact that there are many contributing factors to the crime rate and that certainly many of those that I have mentioned would far more account for the low crime rate in Norway than would a death penalty which they do not even have and therefore I think the testimony --

CONGRESSMAN SANDMAN: A death penalty which they do not have, is not altogether governing in their great success. The system that they have is governing in their great success, which is a system that we do not have in this country - to wit, the Senator Kennedy murder.

ASSEMBLYWOMAN KLEIN: In other words, what you are now saying is what is important in deterrence of crime is swift apprehension and swift justice, not necessarily the degree of the penalty because in Norway, you have testified, they have swift apprehension and swift justice and we know that they do not have the death penalty. Now I would agree with you very much that swift apprehension and equal and swift justice are very important in the deterrence of crime.

I would like to ask you if you have any idea of what the relationship between the number of serious offenses in this State and the percentage that are incarcerated is?

CONGRESSMAN SANDMAN: The percentages that are incarcerated?

ASSEMBLYWOMAN KLEIN: Yes.

CONGRESSMAN SANDMAN: The percentage is tiny.

ASSEMBLYWOMAN KLEIN: Right.

CONGRESSMAN SANDMAN: To start with one out of ten are apprehended in the first place. Only about one out of that ten get any kind of penalty, whether it is a fine or incarceration. The true amount is about one out of fifty ever going to jail after they commit the offense. This, I say, is a bad system.

ASSEMBLYWOMAN KLEIN: 2.6% correct.

Do you believe that having a death penalty in a situation where if you commit a crime your chances of being apprehended, caught and punished are 2.6% out of 100 - do you think that the degree of the penalty in those few rare cases in which the jury might be able to determine that there were no extenuating circumstances and providing that the law in the next 5 to 6 to 10 years is, in fact, upheld as constitutional, do you think this is worth spending the Legislatures time on?

CONGRESSMAN SANDMAN: I definitely do. I don't care what you spend. I would like to see that man in Jersey City alive this afternoon, which he isn't.

ASSEMBLYWOMAN KLEIN: I would too.

CONGRESSMAN SANDMAN: All right. But under my proposal we have a chance that he might be. Under yours you haven't. You just sweep it under the rug.

Now, secondly, let's go through the statistics. The 2.6% that you refer to is all crimes.

ASSEMBLYWOMAN KLEIN: All serious crimes.

CONGRESSMAN SANDMAN: When you are talking about homicide you are talking about a much higher percentage, it goes up to about 80%; 8 out of 10 of those go to the clink where they should go.

ASSEMBLYWOMAN KLEIN: 8 out of 10 homicides?

CONGRESSMAN SANDMAN: 8 out of 10.

ASSEMBLYWOMAN KLEIN: Do you have any idea how many murderers are in the State Prison system today?

CONGRESSMAN SANDMAN: I don't have the figures

before me but I do know that it is a sizable amount. One misconception that a lot of people have about murderers in prisons is that they are the real vicious types. In most cases they are not because in most cases murder is a one-offense proposition where the individual commits murder only one time except in the highly organized cases, and I've seen lots of those in New Jersey as well as in the Federal Penitentiary. In fact our Committee brought a man before them who was so dangerous - they brought him in from San Quentin - that they had to have four guards. When he testified in the Capitol two sat in front of him and two sat in back of him to make sure nothing would happen. That man admitted, right there in the Congressional Chamber, that he had murdered 21 people for hire and under this great law that you advocate he can still stay alive and one day get out and maybe murder 21 more. This, I think, is wrong.

ASSEMBLYWOMAN KLEIN: I think it would have been nice if he had been apprehended after the -- Well, I think it would be nice if he hadn't committed the first murder but having done that, if he had been apprehended, sentenced and sent to prison instead of let out - instead of being free, unapprehended and unsentenced - I agree with that.

CONGRESSMAN SANDMAN: Under California law that man can be released next year - in one year.

ASSEMBLYWOMAN KLEIN: When was his crime committed?

CONGRESSMAN SANDMAN: When was his crime committed?

ASSEMBLYWOMAN KLEIN: When were his crimes committed?

CONGRESSMAN SANDMAN: His crimes were committed over approximately a 20 year period. They have proof and confessions and convictions on about one-half of the murders; the rest he voluntarily, knowing he can't serve any more time, admitted he did. But the reason he is going to get out in one year is because he has been giving some very important evidence against other crime figures and because he did that - they are well-known figures - he is going

to be released in about a year.

ASSEMBLYWOMAN KLEIN: In other words, while he was committing these crimes California had a death penalty?

CONGRESSMAN SANDMAN: They had a death sentence but California did not, in his case, execute the death sentence. Again, you can go back to my statement: it is foolhardy to have it as a window dressing, if you have it I think it should be exercised. In this man's case I think it should have been exercised.

ASSEMBLYWOMAN KLEIN: Over a period of 20 years while California had a death sentence and was executing people on occasion, this man was committing these crimes.

CONGRESSMAN SANDMAN: That's right. If I were the governing factor in California that man would have gone to the gallows after the first murder.

ASSEMBLYWOMAN KLEIN: Was he caught - apprehended?

CONGRESSMAN SANDMAN: He was caught. He was convicted and under the California law he didn't serve too many years; he was out. He then committed 20 more murders.

ASSEMBLYWOMAN KLEIN: But the death penalty did not operate as a deterrent.

CONGRESSMAN SANDMAN: Because it wasn't enforced as it should have been enforced. If you are going to have it I think you ought to use it.

ASSEMBLYWOMAN KLEIN: Let me ask you, Congressman, do you think that if New Jersey enacts the death penalty with the amount of question that still exists in front of the Supreme Court, do you think that New Jersey will use that death penalty until those questions are settled?

CONGRESSMAN SANDMAN: Well, if I become Governor they will use it.

ASSEMBLYWOMAN KLEIN: Oh, does the Governor decide the cases for the judges?

CONGRESSMAN SANDMAN: No, the Governor doesn't do that but the Governor makes a review of what's happening in the courts of the State, and he should.



ASSEMBLYWOMAN KLEIN: Then even though there was some question about the constitutionality of the death penalty you would be in favor of using it?

CONGRESSMAN SANDMAN: Be in favor of what?

ASSEMBLYWOMAN KLEIN: Of using it.

CONGRESSMAN SANDMAN: I would be in favor of using it, yes.

ASSEMBLYWOMAN KLEIN: Even though it were pending on its constitutionality?

CONGRESSMAN SANDMAN: I would have a right to use it. A law is constitutional until it is declared unconstitutional.

ASSEMBLYWOMAN KLEIN: Would you - I will ask you the same question I asked Senator Azzolina - like to see these executions conducted in public where they would really be a lesson to the public?

CONGRESSMAN SANDMAN: It would make little difference to me.

ASSEMBLYWOMAN KLEIN: Well what do you think would be better?

CONGRESSMAN SANDMAN: I have no idea since we have never been exposed to that in New Jersey.

ASSEMBLYWOMAN KLEIN: Exposed to what?

CONGRESSMAN SANDMAN: To public execution - not in my lifetime.

ASSEMBLYWOMAN KLEIN: We did have it.

CONGRESSMAN SANDMAN: That was ahead of my time, maybe in your time.

(laughter)

ASSEMBLYWOMAN KLEIN: I don't know, Congressman, we are not that far apart.

Congressman, I will just ask you one more question. You, I am sure, like I, have attended many funerals in our day and we have often heard the minister say, or the priest say, or the rabbi say, "the Lord giveth and the Lord taketh

away." Now I want to ask you, have you met a judge, a jurist, a Governor, a lawyer, any person that you would be willing to place in the role of the Lord?

CONGRESSMAN SANDMAN: I have never met the Lord and I have never met anybody else who is comparable to the Lord and therefore I can't say any of them should be a substitute.

ASSEMBLYWOMAN KLEIN: But you would be willing to give to other people that role which the Lord reserves to himself.

CONGRESSMAN SANDMAN: Well, that is a well established principle in the government of this state and the government of many states and the government of many countries and in order to keep the peace this is something that must be done from time to time.

ASSEMBLYWOMAN KLEIN: I think that is subject to interpretation and if you go back in history, Congressman, you will find that not too many years ago--

CONGRESSMAN SANDMAN: How do you feel about abortion? That is a taking of life. I think you favor abortion don't you?

ASSEMBLYWOMAN KLEIN: Congressman, that is not the subject of this hearing.

CONGRESSMAN SANDMAN: It's related. I would think since you think so highly about taking life, that is taking a life.

ASSEMBLYWOMAN KLEIN: You apparently do not think too highly about taking a life. Thank you very much.

ASSEMBLYMAN DICKEY: Mr. Spizziri, any questions?

ASSEMBLYMAN SPIZZIRI: No, I have no questions, Mr. Chairman.

ASSEMBLYMAN DICKEY: Mr. Keogh-Dwyer?

ASSEMBLYMAN KEOGH-DWYER: No questions.

ASSEMBLYMAN DICKEY: Congressman, we thank you very much for appearing before our Committee today.

CONGRESSMAN SANDMAN: Thank you.

ASSEMBLYMAN DICKEY: The next witness is Assemblyman Anthony Imperiale of Essex County.

A S S E M B L Y M A N   A N T H O N Y   I M P E R I A L E:  
Mr. Chairman, members of this Committee, I first would like to thank you for permitting me to come here today. You know, as I look at the State Seal up above there it says, "Liberty and Prosperity" and I wonder how Assemblyman Failla, who was a member of this Assembly, feels about the words "liberty and prosperity" since he has been denied the liberty and the prosperity given to him by God and by our constitutional rights of America and of our State. He has no more liberty and prosperity because his life was taken in an attempted robbery.

Several years ago when I was a Councilman in the City of Newark I disarmed two gunmen who shot a 15 year old boy for no reason at all. Had it not been the gun jammed, I probably would not be here speaking to you today - to some people that is wishful thinking.

Nevertheless, we seem to put greater emphasis on whether we should execute people publicly or whether we should execute them privately. I think whether we execute them privately or publicly is not the thing we are here for today. But I think what we are trying to do is grasp at the roots of whether we can deal justice and in dealing justice do we protect the criminal as well as his victims?

I have heard talk here today of the expense. What is more expensive than human life? And we are talking about the expense of putting back the electric chair ; what about the expense the families of victims go through? What about the expenses of the families of the policemen that are murdered? What about the real victims, the people who work every day and walk that street and try just to take advantage of our great Constitution of the United States which they are deprived of? Do they not have a right to be protected?

You know some very good points were brought up

here this morning. We will hear many presentations, the pros and the cons against murder, and people from many walks of life, from politicians to clergymen, will come before us and they will talk about leniency for murderers. You know you can't help but wonder when you do talk abortion, when you talk about a man who goes out on the street and willfully kills, either to rob or deny a man his rights because of his color or deny him because he a victim of organized crime, is there any difference? Does it not mean that we are becoming hypocritical in our State when on one hand we can come before this Committee - like many will do today - and say I am against capital punishment and then the next week, maybe, in a church or somewhere get up and say abortion is not criminal. Murder is murder, whether it takes place on the street, on the abortion table or in the prison, whether it be with guards or whether it be with inmates. Murder is murder and it cannot be condoned.

While we try to live as human beings and while we try to adopt some type of sanity which will deal with equal justice to all, the important thing here is what guidelines do we have? Who is to make the guidelines to protect the decent people? We hear the questions asked, "do you have any polls?" - "do you have any statistics?" There is only one way that any political figure can draw good legislation to protect the people of our nation and that is to put it on the public referendum. Let the people themselves speak out. Let the people themselves come forth and say what they want. And even then I think we would have to worry about whether the will of the people will be carried out because I can recall not long ago in this very State, by referendum, our people spoke out about something and in spite of the fact that the government is for the people, by the people, one of the Governors of this State saw fit not to listen to the people. Now where do we divorce hypocrisy from the Constitution? Where do we divorce the hypocrisy of liberty and prosperity by worrying about a man who willfully murders?

I don't like to see human life destroyed but it is something that has been incorporated in our life since the day of Adam and Eve and since the day they instituted the Star Chambers in 1666 in this country which led to the revolution and the things that we have today, the S.C.I., etc. Also, we must make sure that the citizens are not only protected from organized crime but murderers of organized plotting, murderers who just decide to take and snuff out a life, must be curtailed.

Look at a Judge - I won't name the person involved but a Judge and a police officer, right in a court, are murdered and the person involved has a color television set in the cell and then that person goes before millions of people in America and says, "my Communist comrades." Is this what we are going to yield justice to? Are we going to reward the murderers with color televisions, special meals? Who rewarded the victim - the Judge who was murdered? Who rewarded the court attendant who was murdered? Who rewards the eight people in New York that were murdered? They belonged to a different sect. Regardless of who they were or what they were, it was murder and it was brutal murder, by throwing children into a bathtub and slaughtering them. Who are we really interested in protecting, a political career, the liberal element, the communist element, or the decent element who really stands for liberty and prosperity, who really stands for the Constitution of the United States? Or must we wait until some really important man in the United States has a member of his family murdered and then all of the "bleeding hearts" will then want to reinstitute the death penalty? No.

I think, when we talk of justice and equality of justice, we must discuss it on equal terms, whether you are rich or poor, black or white, or whatever you may be; that is true equality of justice. You know we talk - and I heard here also conversation made regarding Newark, where I come from; I proudly say I come from Newark.

I heard remarks made about matching up areas where murder takes place with the poor and the sick, etc. Well, let's talk about the City of Newark. We have the poor and the sick. We have the underprivileged. Throughout our Nation and every city in our Nation we have the violence of discrimination. But in the City of Newark over \$500 million came into the City of Newark to aid the poor and the underprivileged and the victims of discrimination and to this date there are 130 murders, and the year is not completed yet. Who is going to tell the victims and the families of the victims about this poverty? Do we now make excuses not to bring back the death penalty because of a man's poverty? Look through history. They didn't look into whether a man was poor or not. If he committed a crime and he was justly tried and he received justice, he received the death penalty if convicted.

Do you want to hear something that is really sickening? I went to the Attorney General's office to talk about this \$500 million for these poor people in a city where 130 murders have been committed, and do you know what we are getting - because this is probably what we are getting from Washington on down - I was told by a Federal law enforcement official that it was bad business. Are we now going to start adopting the philosophy that the death penalty is bad business?

You know, we could all sit here all day long and play cute with words. We may dislike one another and try to fence a little bit, but while we are fencing and playing games and while we are trying to do different things for ourselves first, maybe, rather than for the public, throughout this country people are being slaughtered and murdered.

One final thing, there was a man that was in prison for four murders. He escaped - no death penalty. By the time he got to Pennsylvania he murdered four more and, when he was shot while he was being apprehended, I did not hear the hue and cry for justice for the victims, some



of whom were policemen. Right away somebody started a quick rally to make some money for the poor man that was shot. Well if justice is to prevail and equality of justice is to prevail I say that we certainly need the death penalty to curtail this insane manslaughter and murder that the country is witnessing. And I think that we should start to deal, very realistically, with the decent citizens who will make our country and our cities prevail. And if we have to put them both on pedestals, the criminal element and the decent people - those who abide by the law and those who do what they are supposed to do and those who want to destroy - then you are morally and civically obligated to help bring back the death penalty and see that those who tend to destroy must not destroy again.

You talk about expense. Let's say you do put a lifer in jail for a murder. Two things: what expense will you have to go to to segregate murderers from a man who serves one or two years for a smaller crime; how do you protect those in prison who are in there for two years against a man who murders, is there for life, and has nothing to lose if he murders again? You know, we talk about protecting people outside; people in prison have rights too in spite of the fact that they are paying their debt to society.

Incidentally I heard the Assemblywoman and Mr. Sandman going back and forth about the statistics in Norway. While you were doing that, I knew you needed this information and I had my man call the United Nations. There has been no death penalty in Norway since World War II and the prison term they have for murder is from 10 to 12 years, if you want that information for your Committee.

In conclusion I say to you, my colleagues and fellow citizens, regardless of what our differences and our views may be - and we are not all right - if we can pool our intelligence together and if we can pool the concern of the public together, I see no reason why we cannot bring adequate laws into being in spite of some people feeling

squeamish about the death penalty being brought back. Until somebody comes along with a better idea of how to curtail crime - and I don't think there is anybody right now who does know how to curtail killings - I urge you, regardless of whose bill it is - ironically I introduced a bill in May on the death penalty and the Senator introduced one in March - whether it is bipartisan or what it is, we should enact it and bring back the death penalty because if we are to preserve the liberty and the prosperity of decent people, this law will be needed. Thank you.

ASSEMBLYMAN DICKEY: Thank you, Mr. Imperiale. Are there any questions?

ASSEMBLYWOMAN KLEIN: I have no questions, Mr. Chairman, but I do want to thank Mr. Imperiale for getting that information for us and I would hope, perhaps, Mr. Imperiale, on second reflection it might be persuasive to you that a country that has the lowest crime rate, perhaps, in the entire world also has not had the death penalty since World War II and that seems to say something to this question of whether the death penalty has any relationship whatsoever to the crime rate or the rate of violence in this country. Perhaps we could do a lot more to eliminate murder if we did something about guns.

ASSEMBLYMAN IMPERIALE: I did a little bit of a survey on Norway, not too much, but I do know that while you bring out an excellent point there is certainly a difference in the way the law enforcement operates. The law enforcement here in the State of New Jersey and throughout our country has been hampered and had their hands tied for many years, making it almost impossible for them to enforce the law. If you look at the laws in Norway and Italy and all other countries, they are lesser inclined to crime because their law enforcement is respected, number one, and they are supported in their laws.

Maybe we can come back to the middle of the road somewhere and do something for our country. Thank you.

ASSEMBLYMAN SPIZZIRI: Mr. Chairman, I'd like to make one comment. Mrs. Klein has spoken several times this morning about uniform gun control and I am sure she is probably aware of the statistics and is probably not intentionally ignoring them, but the State of New York and the City of New York probably has one of the most restrictive gun control laws in the world, not just this country, and has probably one of the highest rates of homicide in the world. So I say to you, Mr. Imperiale, and to members of this Committee, gun control, which is a very easy subject to blame for the crime rate, is not really the crime problem in this country and in the State, at least in my opinion. I have done some investigation in that respect also.

ASSEMBLYWOMAN KLEIN: Mr. Chairman, I'd just like to reply to that. Of course we have boundary lines which people can cross to get guns if there are strict laws within the city, and there are strict laws in New Jersey to some extent. That obviously will not solve the problem. I think it is generally accepted that people from abroad are actually scandalized by the amount of hand guns that are carried in this country. What we need, I believe, and it's not the subject of this hearing, but I don't think anyone has proven that if the United States passed a decent hand gun control bill for the entire country that we would probably see a very sharp drop-off in the number of murders. We are really concerned about reducing murders. It seems to me this is one of the most prominent approaches that we might take on it.

Certainly we can dig up absolutely no evidence in comparison with other countries or in comparison with the past or anything that we know that gives us any evidence whatsoever that the death penalty will do anything at all to protect the people of this country or this State from murder and that, I think, is what we are all interested in.

ASSEMBLYMAN SPIZZIRI: Just one comment, Mr.

Chairman. Mrs. Klein again conveniently ignores the Federal Gun Control Act which prohibits crossing State lines to obtain fire arms of any type.

ASSEMBLYWOMAN KLEIN: You can get them through the mail order.

ASSEMBLYMAN SPIZZIRI: The criminal does not respect state lines, does not respect the law. The criminal will always have fire arms of any type, not just hand guns. The criminal will be the one who will disrespect the law, not the law abiding citizen. It is the criminal that needs to be punished, not the law abiding citizen. I think that Mr. Imperiale's point was very well taken, that we must respect the rights of the public, the rights of the citizens of this State, and it is about time we stopped looking at the rights of the criminal. How about that man who shot those four people? How about the policeman who got killed in Jersey City today? Where are his rights? What of the rights of his family? The liberal seems to ignore those things very conveniently by saying the death penalty is not going to solve the problem.

If we had the death penalty in this State, I am not going to sit here and say that that man would be alive but the probability is that he would be alive because the criminal would know that if he were caught he would be punished and the penalty would be his life, which is as it should be.

ASSEMBLYMAN DICKEY: Thank you, Mr. Spizziri. Anything further, Mr. Imperiale?

ASSEMBLYMAN IMPERIALE: I'd just like to make one comment. While you are talking about the death penalty and the way of killing, I have been a karate man for 18 years and I am a man of the street. In the city of Newark it has not only been guns that have been killing, meat chucks have been killing, which are karate sticks, stars that they use, even now they have gone into bow and arrow - you can go into many fields, murder is murder.

ASSEMBLYMAN DICKEY: Thank you.

ASSEMBLYMAN IMPERIALE: You're welcome.

ASSEMBLYMAN DICKEY: The next witness is Assemblyman Kenneth Gewertz, Gloucester County.

A S S E M B L Y M A N K E N N E T H G E W E R T Z:

Thank you Mr. Chairman, members of the Committee. I have to preface my remarks by telling you that I am not a candidate for Governor nor have I been to Oslo, Norway. However, I feel that I might have something to add to your proceedings today based on the fact that I was almost the victim of a murder. I am sure that many of you are aware of the situation that I have gone through personally with a former member of the Senate and some co-conspirators who sat together one day and brought forth the idea that the easiest way to get rid of Mr. Gewertz was to kill him. Fortunately that didn't come to pass for on that evening that they had planned to do it, it wasn't going to be the "Avon lady" that went ding dong on my front door bell.

Which brings up the subject - I think the enactment of a mandatory death penalty is essential in the deterrence of first degree murder. I think Mrs. Klein's thinking, that additional gun controls are necessary, is equally valid and I think possibly I may have a combination of both that might be workable and could conceivably be incorporated in a Committee amendment to the existing Senate death penalty bill, that being Assembly 2328, which several members of the Judiciary Committee have co-sponsored.

It would appear that as we sit here today murder in the first degree, the most terrible of crimes, the most severe and unique against the person, is today treated as a common crime. The punishment is no longer sufficient to act as a deterrent.

The deterrent effect of capital punishment has long been attacked by those who would abolish it as ineffective, but they have not considered the alternate

hypothesis of their statistics. Does the lack of a capital punishment provision "encourage" those felons who might not commit murder to make the alternate deadly decision? I think the answer is yes. I think criminals in such a position do make the decision to play it safe, for dead men tell no tales.

What position does this place a citizen faced with such an assailant in? A man who might just hand over his cash in a robbery must now fear the "encouraged to murder" felon. Indeed, to survive, he must shoot to kill first before the felon makes his decision. Similarly, the policeman must now face a felon with nothing to lose and, again, he must shoot to kill.

A ten-year-old is shot in New York. A Puerto Rican man is shot in Camden. The newspapers reveal too many cases of "I had to shoot first" because our State will not act. Our citizens become murderers. Our cities become a part of tombstone territory. For the murderer, his plight is a long prison sentence with the hope of an early parole because society forgives or forgets and would rather be done with this tax burden. The only one who suffers is the victim.

The Supreme Court will no longer allow arbitrary capital punishment. They now consider the safeguards built into our criminal trial procedure so great that they have given the State no other choice than mandatory death penalties for specific abhorrent crimes.

In recent years guns have been attacked as the primary murder weapon. It is obvious that gun control legislation has been a colossal failure. But the gun does not pull its own trigger.

Assembly bill 2328 makes the punishment for first degree murder with a firearm - that is only premeditated, deliberated intentional murder and felony murder with a firearm, and no lesser crime - punishable by death and no lesser sentence.

First degree murder, with this ultimate weapon, can be resolved only with the ultimate punishment. Only with this weapon can the murderer kill so effectively with so little risk to himself and with so great a chance of success. Only the future holds a more efficient personal source of death. This bill makes the easy way, the only wrong way. Every other method gives the intended victim some means of escape or the killer more time to change his mind as well as increasing the likelihood of creating evidence for the police. Only with a firearm can a murderer strike from such a remote position and with such confidence. The New Jersey Crime Commission has advocated a "wait and see" posture for New Jersey to save the cost of litigation. But what is the cost compared to incarceration?

With violent crime increased 4.1 percent in 1969, 19.6 percent in 1970 and 28.4 percent in 1971, what is the cost in human lives? From 1968 through 1971, 1,548 men, women and children were murdered in New Jersey. The murder rate increased 18 percent. New Jersey cannot afford to take a wait and see posture but needs to act on capital punishment now.

Now in A-2328, on the second page, it would provide that every person convicted of murder in the first degree in which the murder victim has been slain with a firearm and his aiders, abettors, counselors and procurers shall suffer death and no lesser punishment. Now if you think about that for a moment it would seem rather severe but you have to understand the premise that the bulk of the murders that are committed are committed with a firearm. You have to take into consideration that the man that aids the murderer is no less guilty than the one that commits the act. For in many cases had a gentleman not gone out on a Saturday night to procure some beer money from the local grocer, along with six accomplices whom he really needed to give him a little backbone to do the job-- if they thought to themselves that this guy has a gun and may murder somebody



and if he murders, then we are going to face the death penalty too, if they have any sense, they are not going to go with him. The abettors, the individuals that may very well hide the person that commits a murder, can they be any less guilty than the one that commits it, assuming that they had knowledge that this is what was done? The one who counsels him, the individual that may sit and say, "yes" - as in my case - "you go and kill that man," is he any less guilty? Or the procurer, maybe the worst of the lot, the guy who is willing to steal a gun and sell it to somebody for \$100, certainly if he realizes that if he gives someone a gun and they murder somebody with it and he is going to face the death penalty, he is not going to go around stealing guns and certainly he is not going to go around selling them.

We have a situation-- I think that background will bear out the fact that in England for many, many years, until they recently had considerable problems with terrorists, the English police were never armed because their theory was "if the policeman doesn't carry a gun, the criminal has no need to carry one either." You will find that the rate of policemen murdered in England was relatively nil. I think that what has to be taken into consideration is the question that in many, many instances - and you are talking now only about first degree murder by firearm - the more gun control bills you pass, who do they punish? They punish the citizen who may feel that he has to have a gun in his house to keep someone from breaking in. They punish the sportsman who goes out to buy a gun for legitimate purposes. The guy who is going to murder somebody is not going to go down to the corner sporting goods store and buy a gun and then take it out and kill somebody, not unless he is somewhat deranged, and if that is the case, he is not going to be convicted of first degree murder because he is going to claim temporary insanity, emotional distress, or whatever the case may be and the jury is not going to find him guilty

of first degree murder.

Take the guy who uses the knife. Is he a match for an armed, trained police officer? He is not. Is that guy with a knife going to go into a grocery store and say, "give me your money" and then stab the grocer from 10 feet away? He is not - no way, no shape, no form.

I think the emphasis has got to be directed to the problem and to the guy that illegally uses the fire arm and I would certainly appreciate it if you would take these views into your consideration. Thank you, Mr. Chairman.

ASSEMBLYMAN DICKEY: Thank you, Mr. Gewertz.  
Are there any questions?

ASSEMBLYMAN SPIZZIRI: Yes. Assemblyman Gewertz, what is the percentage of use of firearms in the statistics which you quoted on the last page of your--

ASSEMBLYMAN GEWERTZ: It is approximately 92%.

ASSEMBLYMAN SPIZZIRI: In the use of firearms?

ASSEMBLYMAN GEWERTZ: Yes, sir.

ASSEMBLYMAN SPIZZIRI: And where do these statistics come from - that you quoted?

ASSEMBLYMAN GEWERTZ: They came from research that was done by several of my aides on the Uniform Crime Reporting Act, and we only went up to 1971 because of the time needed for preparation for the hearing.

ASSEMBLYMAN SPIZZIRI: Would you make that research available to this Committee?

ASSEMBLYMAN GEWERTZ: Yes.

ASSEMBLYMAN SPIZZIRI: Mr. Gewertz, on the Furman decision, did the Supreme Court rule the death penalty unconstitutional because firearms were used or because they felt the death penalty itself was unconstitutional?

ASSEMBLYMAN GEWERTZ: Assemblyman, I really am not qualified to answer that. I tried to approach this thing from a logical point of view. Obviously a blanket death penalty, as such, how effective that would be I don't know

but statistically, realistically, combining the views of many, many of the people, not only on the Committee but in the State of New Jersey, it would appear that you can possibly accomplish both, stronger gun controls by a stiffer penalty for those who illegally use them and reinstating the death penalty in cases of first degree murder.

ASSEMBLYMAN SPIZZIRI: I must confess I am sympathetic towards the statement you made regarding stiffer penalties and more effective enforcement for those who use any type of weapon, whether it be a firearm, a knife, hand grenade, or what have you, but the problem that I have with your bill is, what difference does it make whether I am killed with a razor, a stiletto, a bomb or other explosive device, or a firearm. I am still dead.

ASSEMBLYMAN GEWERTZ: Very true.

ASSEMBLYMAN SPIZZIRI: And the person who perpetrated the crime will get preferential treatment, whether he uses those other items as against the firearm, so isn't the object really to institute the death penalty for any type of murder as specified in Senator Azzolina's bill, rather than differentiating between the use of firearms?

ASSEMBLYMAN GEWERTZ: I support the mandatory death penalty in principle throughout; however, it would appear to me from a layman's point of view that today's society cannot readily recognize and convict an individual of first degree murder, which basically is premeditated - normally with the use of a knife - because the average citizen that sits on a jury cannot comprehend one human being taking a knife and cutting another one's throat, like you would a hog or a steer brought to the slaughter, and the individual that commits the crime being in a sane frame of mind. That is why it was primarily directed toward the use of firearms, which cannot be construed as anything other than premeditated. You have to pick up the gun, it has to contain a cartridge, you have to point it at somebody and you have to pull the trigger. There are four distinct

steps in committing an act of murder with a firearm, each one of those steps adjudging the person to be sane; you would have to conclude that he had to have done this thing intentionally and therefore the deterrent factor, I feel, in this bill would be more effective overall in reducing the number of murders and effectively discouraging the criminal from carrying a firearm.

Then you get into the opposite spectrum of the police officer, who is a human being, who has a wife, who has children, who has been abused, beaten, killed in many instances. Now how much time is he going to take to stop and think, "does this guy have a gun or doesn't he" because the normal reaction is, "I am going to shoot first and then we will figure out whether or not he had a gun."

Why put the police officer at a disadvantage? The law says you shall use a force greater than that which is employed against you to subdue a criminal. A police officer, trained and armed, is no match for a criminal that is armed, based on the fact that the police officer does not know that that man has a gun and therefore is really not normally prepared to act. But a man with a knife, a man with a club, is no match for an armed police officer.

ASSEMBLYMAN SPIZZIRI: Thank you.

ASSEMBLYMAN DICKEY: Thank you, Mr. Gewertz.

ASSEMBLYMAN GEWERTZ: Thank you, sir.

ASSEMBLYMAN DICKEY: Our next witness is Dr. Samuel Jeanes from Merchantville.

R E V E R E N D   S A M U E L   A .   J E A N E S: Mr. Chairman and members of the Assembly Judiciary Committee, I am Samuel A. Jeanes, the Pastor of the First Baptist Church of Merchantville, New Jersey. I am not speaking today in behalf of an organization but rather as a citizen and a pastor who has served as an active pastor of two churches for 38 years, 31 of these years in the State of New Jersey. Since most of my comments will be based on scriptures and theology I would say that I pursued graduate studies at the Eastern Baptist Theological Seminary and Temple

University School of Theology, majoring in New Testament, Greek, Philosophy and Theology.

A profound respect for life as a gift from God would almost instinctively cause one to oppose any legislation that would provide for the taking of a human life. The Bible assigns special value to the life of a man because he was created in the image of God. He is like God in the essential elements of his nature and he is God's representative on earth. Any indignity or injury inflicted upon man is an act of irreverence to the Almighty.

Thus, we would view life with profound respect, but we also view the taking of human life by an act of malicious murder as the highest crime man can commit against his fellow man.

The death penalty has fallen into disuse and there have been no executions in the United States since June 2, 1967. Great Britain eliminated the death penalty three years ago. West Germany, undoubtedly, reacting to the wholesale killings of the war, eliminated it in 1949. Spain, France, Canada and most of Latin America have either abolished capital punishment or have failed to enforce it.

Since orderly government is a part of God's provision for the nations, and since all of our rights are rooted in the Natural Law which might well be termed the will of our Creator, it is important to search out His will. The Almighty has enabled human reason to discover His laws as far as they are necessary for human conduct that we might live honorably, that we should hurt no one and that we should render to everyone his due.

In the early dawn of humanity Cain, the son of Adam, in a fit of rage, murdered his brother Abel. The Bible tells us that Cain was not put to death for his crime. Rather he was exiled into a wilderness where he suffered banishment from society.

You do not need to turn too many pages in the Book of Beginnings before you meet a second murderer.

Lamech was a descendant of Cain who confesses that he "had slain a man to my wounding and a young man to my hurt." This may have been an act of self-defense but again there is no report that he was put to death.

But two chapters later we are told that the population began to grow and the earth was filled with increasing violence. It might be concluded that the earth was suffering a spiraling crime epidemic because criminals were not dealt with appropriately and speedily.

Such was the condition when the judgment of the flood came upon the earth. Soon after the flood, however, God established the institution of human government and to this government of human beings He granted the authority to execute those guilty of murder. One of the modern translations of the Bible reads, "I will avenge the shedding of your own life blood: I will avenge it on any beast, I will avenge man's life on man, upon his brother man; whoever sheds human blood, by human hands shall his own blood be shed for God made man in His own likeness."

The commandment which says "Thou shalt not kill" forbids malicious homicide but the infliction of capital punishment which the Almighty has authorized to be administered by human society is not included in the prohibition of this commandment. Actually the commandment should be translated "Thou shalt not commit murder." The Hebrew language employs several words to express the thought "to kill". The Hebrew verb used in the text here in Exodus 20 is a special word. It can only mean "murder" and it always indicates intentional slaying. The record of the exposition of this commandment by Christ is found in the Sermon on the Mount. He forbids malice in all of its degrees and manifestations. Both Old and New Testaments recognize the difference between anger and malice. Anger is allowable on occasion but malice in its very nature is always evil. Anger is a natural emotion that arises sometimes out of a perception of wrong. It is indignation. Often it is a desire to make redress or to punish. But malice includes hatred and the desire to inflict evil to gratify an evil passion. When the Bible forbids murder it forbids all degrees and manifestations of malicious feelings.

Our Creator, in granting authority to human government to mete out the death penalty labeled it as part of the law enforcement procedure of society. The decree of God after the flood was written eight centuries later into the system of laws given to Moses. So Exodus 21:12, "He that smiteth a man so that he die, shall surely be put to death." And two verses later to further define the act of murder it says, "Only if one man wilfully attacks another, to murder him craftily, you must take that man from my very altar and put him to death." Now such punishment was not to be inflicted to gratify revenge, but to satisfy justice and for the preservation of humanity. We might add that such punishment is not only lawful, but it is obligatory. It was given first to Noah, the second head of the human race and was not intended for any particular age or nation. It is a general principle of justice. It is a revelation of the will of God. Over and over again it is repeated in the Mosaic law.

And there are clear indications in the New Testament of the continued obligation of divine law that malicious murder should be punished with death. St. Paul in that 13th chapter of Romans in which he calls for respect for instituted government because it is ordained of God, says that the magistrate is the minister of God for good and that he "beareth not the sword in vain." The ancient world viewed it as the emblem of the power over life and death. And the same apostle Paul standing in judgment before Governor Festus in pleading his own case said, "If I be an offender, or have committed anything worthy of death, I refuse not to die."

Undoubtedly, the death penalty for capital offenses in both Old and New Testaments was not considered to be "cruel or unusual punishment." And a further study of the sacred writings indicate that as long as the laws of God were enforced, the people had peace and safety. But when enforcement lagged and sentences were not speedily executed crime began to increase until the nation reached its lowest moral state...the Book of Judges describes it this way....."In those days there was no king in Israel, but every man did that which was right in his own eyes." And

the inspired writer of the book of Ecclesiastes...a book which has as its theme "human reasoning" says, "Because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil." It is not enough for the laws to be on our statute books. They must be enforced. And our system of jurisprudence is not harsh. Every criminal is given protection in the courts. Justice is tempered with mercy. And those teachings in both Testaments about mercy and pardon constantly impress upon us that authority must be exercised equitably and fairly because those who administer it will also be held accountable to God.

We have come through an era, and we are not out of it yet, where fear is in the hearts of many people. Experience tells us that when human life is undervalued, it is always insecure. When the murderer escapes with impunity or is inadequately punished for the heinous crime he has committed, homicides do multiply. One theologian writing on this subject asks a very practical question that you will want to ask, "Who is the die? the innocent man or the murderer?"

We must quit excusing criminals for their deeds. We must discard that philosophical nonsense that says we are all guilty because one weak individual breaks the laws. The New York Times in a lead editorial on March 13, 1970 said, "The actual and threatened bombings of the past few days must not be glossed over as the actions of idealistic if misguided revolutionaries; they are the criminal acts of potential murderers...the mad criminals who threaten and bomb must be recognized for what they are and prosecuted with the full force not only of the law but of the community they would rule and ruin."

Senate 799 is a step in the right direction. And the enactment of the principles it sets forth are long overdue.



Thank you, Mr. Chairman.

ASSEMBLYMAN DICKY: Thank you, Dr. Jeanes. Are there any questions? Assemblyman Wallace?

ASSEMBLYMAN WALLACE: No questions.

ASSEMBLYMAN DICKY: Assemblyman Dawes?

ASSEMBLYMAN DAWES: No questions.

ASSEMBLYMAN DICKY: Assemblywoman Klein?

ASSEMBLYWOMAN KLEIN: No questions.

ASSEMBLYMAN DICKY: Assemblyman Keogh-Dwyer?

ASSEMBLYMAN KEOGH-DWYER: No questions.

ASSEMBLYMAN DICKY: Assemblyman Spizziri?

ASSEMBLYMAN SPIZZIRI: No, Mr. Chairman.

ASSEMBLYMAN DICKY: O.K., thank you very much Dr. Jeanes for being with us today.

DR. JEANES: I thank you very much, Mr. Chairman.

ASSEMBLYMAN DICKY: Our next witness is Mr. Stanley VanNess, Public Defender of New Jersey.

S T A N L E Y V a n N E S S: Thank you, Assemblyman Dickey and members of the Committee. I am the first witness to appear in opposition to Senate 799 and any other measure like it. I suppose that makes me one of all of those kinds of people I heard described today, pointed headed liberals, communists, people who are sympathetic to murderers and not sympathetic to the victims of crime. I categorically deny I fall into any of those categories with, perhaps, the exception of the first but, of course, the Committee is free to draw its own conclusions.

I think it is fitting and proper that I be here this morning because, perhaps more than any other person - at least in the State of New Jersey - I am responsible for the state of confusion that we find ourselves in on the question of capital punishment. It was the Office of the Public Defender in conjunction with the legal defense fund of the NAACP that pursued the issue of the constitutionality of the New Jersey statute to the highest court of the land, and eventually to and through the New Jersey Supreme

Court after a remand from the United States Supreme Court, which resulted in the declaration that our statutory scheme was unconstitutional.

Now I have a lot of official duties to perform and sometimes official duties do not coincide with my personal beliefs necessarily. In this case they happen to. I strongly believe that the execution of the death penalty is the ultimate act society can exact from an individual and an act that should not be perpetrated. I draw that conclusion, I guess, from some observations I made sometime ago. I guess the first influence was, perhaps, a book called "Reflections on Hanging," in which the author quite graphically describes a scene in medieval England at a time when the death penalty was available and applied freely for all types of crimes, including the crime of pickpocketing.

This particular author describes the scene when a pickpocket was being hung in the City of London, and quite graphically describes the hanging but quite pointedly makes the observation that at the last moment when the whole crowd - and they used to do it in public in those days - looked up to see the man make his last kick, this was when the pickpockets went to work most freely, snipping the purses of those people whose eyes were diverted to the victim. It occurred to me that there must be something wrong then with a penalty that did not deter the other people from plying the same trade.

As I became more knowledgeable about the situation in the United States, I had to conclude that the statistics, the effect of the death penalty on a rate of homicide, did not seem to suggest a very strong correlation between the presence of the penalty and the activities, or the instances of murder.

I uncovered the situation in the State of Delaware, which some years ago abolished the death penalty and then reimposed it - this is before we got into the

constitutional snarls - after a particularly heinous crime had been committed in that State. You look back and you find that the incidence of murder in the State of Delaware was lower during the period of time in which they did not have the death penalty than it was either before or after that period.

We have heard a lot about homicides, murders of policemen. Let's just look across the river. Some years ago the State of New York abolished the death penalty except for murder of a policeman in the performance of his duty, and correction officials. The incidence of homicide committed upon police officers has gone up alarmingly, so it would not suggest to me that anyone could, in common sense, conclude that the presence of the death penalty has protected that class of person. Even here in the State of New Jersey, after Funicello was decided in December of 1972, I believe, we kept count of the incidence of homicide over a period of time and found that in the first three months of the year 1973 there had been fewer homicides committed than in a comparable period the prior year when the death penalty was available. Now I don't think that these statistics prove that there is no correlation. I think, as Congressman Sandman pointed out, there might be instances in which the reverse statistical setup would appear. But I think, considering them all in combination, the only rational conclusion you could come to is that there is really no relationship and that the incidence of murder is erratic.

When you consider the kinds of situations which result in a death penalty or capital charge you might understand why they are erratic. Take the case of Sirhan Sirhan that was pointed out here this morning. There was a death penalty in the State of California at that time. The man had absolutely no chance of escape; he walked up behind Senator Kennedy and blew his brains out in the presence of hundreds of people and certainly was not deterred by the death penalty.

The last man who was executed in the State of New Jersey in 1963 was having trouble with his wife, believed that she was cheating on him, spent the morning in taverns, walked into the place where she was employed as a waitress, pulled out a pistol and shot her several times and killed her. Well now, we had a death penalty at that time and he wasn't deterred. His chances of escape were obviously next to nil but he wasn't deterred.

The man who walks into his home and finds his wife in the arms of another man is not going to run to the statute books to find out whether there is a death penalty in effect or not; he is either going to commit the ultimate act on that person or he is not.

But considering that in those situations in which the death penalty was sometimes imposed, before the Supreme Court started to speak in this area, if we can at least question whether there was a substantial deterrent, or any deterrent against homicides, during that period, what is the case now? As Congressman Sandman and Senator Azzolina pointed out here this morning, the state of the law is in a thoroughly confused situation. There certainly is no possibility of swift and sure punishment in this area. I believe the Congressman stated it would be foolhardy to have the death penalty as a window dressing. Well, gentlemen and lady, that is absolutely what this bill would be, it would be window dressing in the State of New Jersey because no one is going to be executed under this law, if at all, until the passage of several years. In the meantime we will have filled up death row again; in the meantime we will have incurred great expense; we will have deeply burdened the efficient administration of justice in this State, all for window dressing, I suggest.

Now I have a responsibility of administering an agency that handles about 80% of the criminal business in this State. And you all know that I have consistently come to the Legislature for additional assistance, for

additional budget, in order to keep up with the overwhelming number of crimes that have been committed and people apprehended and the matters referred to our office.

For the very first time in the life of the Office of the Public Defender we are turning the corner; we are now disposing of cases - more cases - than are assigned to us in a year's period of time. If this law is enacted we will be back into a situation in which every murder trial - and we had some 400 cases assigned to us last year, charging homicide -- we will have a situation in which every one of those cases will go to trial - will have to go to trial as I understand S-799, as it is amended - and in every one of those cases there will be weeks spent polling a qualified jury, under the Whitherspoon Decision. I might add, parenthetically, that when the United States Supreme Court struck down our death statute under a United States v. Jackson rationale they also reversed the murder conviction of a gentleman by the name of Mathis on the grounds that we were improperly selecting persons to serve on a panel in a capital case. So our procedure is out of kilter there and certainly this approach doesn't address itself to that procedure at all; it doesn't even attempt to correct it.

But in any event, we will spend weeks polling a jury and, as I said before, every one of these cases will go to trial. If you want to see your courts further clogged, if you want to see backlog, if you are concerned about people who are out on bail committing other offenses, or if you are concerned about people sitting in jail waiting for their day in court then the enactment of this law is the surest way to exacerbate every one of those problems.

Finally I'd like to say something about the application of the death penalty. Who has it fallen on? Well, it is clearly demonstrable that a disproportionate share of the persons who are sentenced to death are members of minority groups, black, Puerto Rican, Chicano, etc.

Now in years gone by it used to be that the greatest proportion were Italian and in years before that it used to be that they were Irish. I think you can trace the history of the death penalty in this country and find that those groups who are, at that moment in time, least esteemed by the general population are the groups upon which the death penalty falls disproportionately. Now since the Furman decision, a number of states, including Florida, attempted to reinstitute the death penalty with a constitutional statute, and people have been sentenced to death since Furman. I believe that you will find that 77% of the people who have been sentenced to death are black. I don't know how many are Puerto Rican or Chicano but the fact remains that once again this history of a discriminatory application of the death penalty seems to be continuing.

Finally, I'd like to make some observations that just occurred to me as I was listening to the discussion here this morning. This business about making the streets safe, about reducing crime, about eliminating the number of homicides, or reducing the number of homicides, about respect for law, well, I have been in my business now for almost five years and I am convinced, rightly or wrongly, but I hold the view quite strongly that you will never have enough police, you will never have enough courts, you will never have enough jails, you will never have enough draconian penalties to force people to respect the law. In a free society, and I'd like to think that we are going to continue to be a free society, respect for law depends on a person's perspective of the law; do they see it as fair? Are they treated as first class citizens or are they relegated to the backwash? Is the law an instrument of justice or is it an instrument of repression? Do they have a fair chance in a society? Do they live in decent housing? Do they have a job? This whole business about Norway I thought was frankly ridiculous. The one thing that we did not mention, or was not mentioned

in that connection is Norway has a homogenous population. They don't have a group or groups among that population that have been disadvantaged - we do. That is where the problem is. If you want to engender respect for law, then I respectfully submit to you that the business at hand is doing something about the basic inequities in this society and not by enacting some statute that is, in all probability, unconstitutional. I am sure that some people would think that it meets the test of Jackson, that it meets the test of Furman; I am equally sure that there are other people, just as respected, just as knowledgeable, who would conclude that your statute, or the bill that you have under consideration, does not. We will certainly be in the courts if I am the public defender, and I am sure whoever succeeds me will feel the same way; we will be testing this law and we will be testing it to the highest court of the land and it will be two, three, four years before there is any final disposition.

I think to pass such a bill at this time is really a fraud and a hoax and I don't mean that disrespectfully. I know that you are interested, seriously, in getting on with the people's business - that seems to be a very current phrase now. You are seriously interested but I submit to you, respectfully, that it would be a fraud and a hoax on the people of the State of New Jersey because there would not, in fact, be a death penalty, regardless of what was contained between the covers of 2A.

One final observation, and I am sure I have already exceeded my time, I have heard it suggested that the bill should be passed because the people of the State of New Jersey overwhelmingly desire its passage. Well, I have seen some polls that suggest that more people than not may be interested in the restoration of the death penalty but it certainly hasn't been on any referendum and I vote in every election and I haven't seen it on any voting machine. And even if that were the case, even if

we were to assume that the majority of people wanted the return of the death penalty, I again respectfully submit that your responsibility may go beyond that. If you will pardon a personal reference, I recall being in the service, stationed in the South during the 1950's when it was the law that I should ride in the back of the bus and the majority of people in that community felt that that's exactly what should happen. Well, I submit that it did not make it right and I also submit that the Supreme Court has since held that it wasn't legal. So, I think this question of popular opinion is something, of course, to be weighed but in the final analysis your responsibility, I think, to the taxpayers of the State of New Jersey is not to put a statute on the books that does not in any way protect them and at the same time raises the coffers of the treasury. I thank you very much for your time.

ASSEMBLYMAN DICKEY: Thank you, Mr. VanNess. May I ask you a question or two concerning Senate bill #799 with reference to the committee amendments? You have suggested that since every case has to be tried under a provision of Section 3, would you suggest, sir, that we can legally permit a plea of guilty?

MR. VANNESS: No, I don't, frankly. I don't wish to be uncooperative in this regard, Assemblyman, but I think I would be in extreme conflict of interest if I were, assuming it were within my ability to do so - if I were to help the Committee draft a Constitutional death penalty statute. I certainly am going to be representing the people, should it become law, that are going to be charged under it. I would say no more than this in that regard, that the statute still maintains room for some discretion and I think that the Supreme Court in Furman - at least a majority of the court - took the view that this discretion would make the application of a statute unconstitutional and I think at least two members of the court were very much concerned about the fact that that discretion had been



exercised to come down unequally on certain groups of people.

I think there is discretion still in the statute -- in your bill for whether the penalty is going to be imposed or not. I think more than that I couldn't say; I frankly did not study the bill for the purpose of drafting around either Jackson, Funicello or Furman and I hope you don't find that presumptuous of me.

ASSEMBLYMAN DICKEY: No, I understand your role. As I remember one of the criticisms of our present law was that there could be plea bargaining by entering a plea of non vult or nolo contendere in certain cases, is that right?

MR. VanNESS: Yes, sir, that was the defect that the United States Supreme Court found in our statute and it is the defect that the New Jersey Supreme Court recognized that the United States Supreme Court had found when they decided Funicello. It was possible for a person to enter a plea of guilty and thereby end any risk of losing his life but the person who insisted on maintaining his innocence and putting the State to the burden of proving his guilt was open to the extreme penalty and that was found to be unconstitutional.

There may still be some problem in that regard and I don't know quite how you would handle it legislatively. The discretion does seem to move from the jury now to the prosecutor in making his charging decision. I could foresee a situation in which you might run into the same impediment if the prosecutor were to adopt a pattern of charging certain people for manslaughter, for example, in return for their guilty pleas and charging other people who insisted on going to trial under the statute. I don't think I am telling tales out of school; I think that is probably obvious to all of you.

ASSEMBLYMAN DICKEY: I suppose you don't want to discuss the possible defects that you may find in the bill

so it might be inappropriate for me to pursue that further with you.

MR. VanNESS: I do feel that it would be inappropriate for me to comment further on the defects. I am sure that there are many other lawyers who may even be appearing before the Committee who will offer you pro and con regarding the efficacy of your statutory scheme. I think it would be inappropriate for me to do so.

ASSEMBLYMAN DICKY: Thank you very much.

Mr. Wallace, do you have any questions?

ASSEMBLYMAN WALLACE: Yes, I have a question. This is perhaps not in the form of a question so much as an observation. I listened to your arguments and your presentation and they seemed very persuasive against the implementation of the death penalty. It does seem to me though that if we don't have some other deterrent, as we might call it - I might call it a deterrent, you may not - how are we going to stop this trend of increased crime? I just want to finish what I am trying to say to you: You indicate that the death penalty would not help and others have said the same thing; however, there is no reduction in the statistics that show that the methods we are following today are doing anything to stop crime in the United States, so I would ask you if you feel yourself in a comfortable position, to move in this direction away from further enforcement and also in the direction of more liberalized laws for criminals? Are we going to finally come to a point in time where this is going to swing the balance back to where our society will be safe again?

MR. VanNESS: Well, there are a number of statements implicit in your question. I am not sure where to start.

I am not suggesting a more lenient treatment of persons convicted of the crime of murder. I am suggesting that the imposition of a death penalty that cannot, in all probability, be legally carried out, at least within

the next three, four, five years does not increase the deterrent.

In terms of what we do about crime generally, it might be surprising to some, it certainly was surprising to me, to note that there is, in fact, a tailing off of the incidence of crime in the United States. There are still far too many crimes, certainly one crime is too much, but we have, in keeping the statistics of cases that have come in to the office of the public defender - and I repeat, we handle 80% of the criminal business in the State of New Jersey - been astonished and very pleased to find that in the fiscal year just completed the number of cases assigned to us has gone up only 4% over the prior year. Two and three years ago the rate of increase was as high as 32% one year and it averaged out about 30% a year, so something is taking hold. We think that maybe there is a reduction in the experimentation or the use of hard drugs. I know people in the City of New York who were speaking in opposition to the new statutory scheme in that State said, "well, at long last, we are starting to see some return for our efforts over all these years in trying to deal with this thing on a rehabilitative treatment, with some penal-aspects basis, then, lo and behold, when it starts to look like we might be turning the corner, in comes the draconian law."

The problem of crime is, as I tried to say before, I think, very much related to the problems of poverty and ignorance and maybe we are making some inroads there at long last; maybe we are educating more people. I don't know, I just feel very deeply that if this bill were on the statute books tomorrow and we were to look back a year from now, we would not be able to point to the bill as having made any substantial or, perhaps, even any noticeable impact on the criminal scene in the State of New Jersey.

I hope that is responsive to your question.

ASSEMBLYMAN WALLACE: Yes. The only thing that

I find to object to is the fact that we hear so much about the fact that crime is predominant because of poverty. Of course, we, as government officials, and people throughout the United States are trying to do all we can to alleviate the depressed and the impoverished, but do you think that is any excuse for a crime?

MR. VanNESS: No. I hasten to say no. If we were to look at the record, we would find the vast percentage of victims of criminal activity are the poor and the disadvantaged, so if I were to look only to that group as my guidestar, I'd have to conclude that it isn't justifiable. But by any measure, I can't justify the commission of a criminal act, and do not; but I do think if we are talking about reducing the incidence of those events, then we ought to do something realistically and not something that seems to be a simple approach to a very complex problem.

ASSEMBLYMAN WALLACE: Thank you.

ASSEMBLYMAN DICKEY: Mr. Dawes?

ASSEMBLYMAN DAWES: Mr. VanNess, at the beginning you stated that your, I think you said, "official position" and your personal position in this matter coincided. I don't understand. What is your official position?

MR. VanNESS: What is my official position? I am charged with representing indigent persons accused of committing indictable offenses in the State of New Jersey.

ASSEMBLYMAN DAWES: Who made the decision as to what your official position would be on this issue?

MR. VanNESS: I made the decision as to what the official position would be.

ASSEMBLYMAN DAWES: So you made the decision and you and your personal position are one and the same. This is one man's opinion in other words?

MR. VanNESS: No. I probably answered the question too quickly, Assemblyman. My constitutional obligation requires me to raise every legitimate issue that can be

raised on behalf of a person who is charged with a crime, and on behalf of persons in terms of mitigating the punishment that is to attach to a conviction.

ASSEMBLYMAN DAWES: Whose interpretation of the Constitution is that, yours?

MR. VanNESS: I think it is the Legislators' interpretation in the preamble to the statute which created the office. I believe, if you will permit a rather rough paraphrasal at this point, I was charged with the responsibility of seeing that the innocent were not convicted and that the guilty were convicted and punished only after due process of law. The "due process" clause of the United States Constitution, I think, is the guide here.

ASSEMBLYMAN DAWES: You seem to indicate that the number of cases that are coming in at the present time are not as great as those that you have been disposing of in your department, is that correct?

MR. VanNESS: Yes, that's correct.

ASSEMBLYMAN DAWES: So that would lead us to believe that if the law stays the way it is at the present time we can look forward to a recommendation next year of cutting back on your budget, is that correct?

MR. VanNESS: I doubt that that will be the case. Philosophically I took the job with the hope that I could work myself out of business and I still have that hope. I strongly suspect it will not be realized in your lifetime or in mine.

ASSEMBLYMAN DAWES: Well, if the cases are -- if this is the trend, why wouldn't we have a cutback in the staff?

MR. VanNESS: Well, we will present the budget request on the first of October, or shortly thereafter, and if you do not feel that the request justifies maintenance of the present budget then I think you would be obliged to vote to cut it, at least I would feel that I would be in

that situation if I were an Assemblyman.

ASSEMBLYMAN DAWES: Thank you.

ASSEMBLYMAN DICKEY: Mrs. Klein?

ASSEMBLYWOMAN KLEIN: Thank you. I'd just like to ask one question. Mr. VanNess, you stated quite categorically that this bill would be inoperable until it had been tested in the courts and found to be Constitutional. A former witness, Congressman Sandman, stated the opposite, that he would foresee, under certain circumstances, that the bill would be acted upon and stated that the bill would be legal until such time as it was adjudged to be unconstitutional. Could you explain the difference in opinion?

MR. VanNESS: Well, I can't explain the Congressman's position any better than he did himself. It is my understanding of the law that if someone sought to impose a penalty that other people were arguing was unconstitutional, that the court, assuming that those arguments had some validity, would stay the execution of that judgment and that the Governor, whoever that person might be, would be powerless to see that the penalty were carried out unless he were going to do it in defiance of a court order and with the support of the National Guard or something. I can't conceive of -- well, there was a time when I couldn't conceive of an executive disregarding an order of a court which happens to come from a co-equal branch of government, as far as I understand the Constitution.

I would think there would be very little difficulty - and this is what, in fact, happened over the years - when a viable Constitutional issue was raised about the death penalty, executions were stayed. In many instances they were stayed by the action of the executive and in other instances they were stayed by the order of the court. I would think it highly unlikely that anyone could be executed under the statute - if it were to become a statute - before the United States Supreme Court has spoken definitively on the issue of capital punishment.

ASSEMBLYWOMAN KLEIN: Thank you. That was also the opinion of Judge Haneman.

ASSEMBLYMAN DICKEY: Mr. Keogh-Dwyer, any questions?

ASSEMBLYMAN KEOGH-DWYER: Yes, Mr. Chairman, just one question. I gather, Mr. VanNess, that you are against the death penalty in any instance?

MR. VanNESS: Yes, I am against it personally, but I believe that the laws are to be executed. If it were to be constitutional then I would have to comply with the constitutionality of that law as I would with any other, as all of us would.

My personal opinion is that it does not serve any useful purpose, that it is degrading of a civilized society and that it is discriminatory in its application.

ASSEMBLYMAN KEOGH-DWYER: Allowing, Mr. VanNess, that the death penalty is reinstated in New Jersey, suppose a man had committed a murder and was apprehended, tried and convicted, and then felt great remorse and was judged sane and he asked to be put to death under the law, what would your position be?

MR. VanNESS: My position would not change. In fact I think there is evidence that the last three or four people who were executed in the United States were in just such a state of mind - that they wanted to be executed. They had been on death row so long that they wished to have an end to it. I think the last execution was in Colorado and I think it's fairly well documented that that was the individual's state of mind. Whether that is sanity or not, I couldn't make any observation on that, but assuming on your hypothesis that he were sane in all respects and still wanted to be put to death, my position would not change. We have criminal statutes against suicide in this State and I think quite properly so.

ASSEMBLYMAN KEOGH-DWYER: Well, that wouldn't be classed as suicide, would it?

MR. VanNESS: If I follow your hypothetical example it would seem to be the same thing as suicide - a man surrendering all desire to live and letting the State work its will on him is akin to a man climbing on top of the Empire State building and launching himself out into open space.

ASSEMBLYMAN KEOGH-DWYER: But you would definitely deny him the request that --

MR. VanNESS: I would deny his request that he be put to death, just as I would try to save the man who was about to take a plunge from the top of the Empire State building, assuming I had the nerve at that time to do so. I would feel an obligation to do so in any event.

ASSEMBLYMAN KEOGH-DWYER: Thank you.

ASSEMBLYMAN DICKEY: Mr. Spizziri?

ASSEMBLYMAN SPIZZIRI: Mr. Chairman, I have a number of questions I would like to ask Mr. VanNess. Putting aside the question of deterrence of the capital punishment issue, what is your position as to punishment of a person, such as Edgar Smith or Carroll Chessman who has taken the life of another person? Don't you feel that there should be some punishment - justifiable punishment - meted out to that person for the taking of a victim's life?

MR. VanNESS: I certainly think that he should not be turned loose with the congratulations of the community, no sir. I think he should be punished. I think incarceration in the State Prison, particularly as it functions - as it exists down on 2nd Street here in Trenton-is punishment of the highest order and if he were to spend a long period of his life behind those bars, I think he would have been punished. I do not subscribe to the idea that the only viable punishment is to do to him what he has done to someone else.

ASSEMBLYMAN SPIZZIRI: How about the situations which were alluded to by some other witnesses this morning,



notably Congressman Sandman and Assemblyman Imperiale, of the individual in California who committed 21 murders, was convicted in, I believe, all of those instances, served jail sentences and went out and committed murders again; or the instance of the individual who murdered four people, got out of jail and murdered four more people on his way to Pennsylvania? Don't you think that these people have suffered "punishment" by their incarceration and that should have taught them a lesson and thereby deterred them from committing another murder?

MR. VanNESS: Certainly the execution of a death penalty on the individual will deter him from any further acts, good or bad, that's understood.

ASSEMBLYMAN SPIZZIRI: That's finality.

MR. VanNESS: That's finality. He is not going to be able to do anything else. But I think the purpose of the criminal law - at least as I understand it - is to maintain order in a society by informing all the members of that society that if you do certain things you will be punished for it, it violates the rules. The thrust of my argument was that executing the man that Congressman Sandman had described in California would, in all probability, not have deterred some other man, as it did not deter him when he was released.

ASSEMBLYMAN SPIZZIRI: We are talking about punishment. We have put aside the question of deterrence so I think we are talking about punishment for that individual who commits the offense. I believe my preamble was, let's put aside the question of the effective deterrence of capital punishment and talk about punishment of the person who does commit the crime.

MR. VanNESS: Well, I will repeat that I think that a long time in prison is punishment and I think it is sufficient punishment and is the greatest punishment that a civilized society should exact from a human being.

ASSEMBLYMAN SPIZZIRI: Mr. VanNess, do you have any specifics, based on your experience in the past five years, as to the cost of keeping someone incarcerated in State Prison?

MR. VanNESS: I am told that it costs about \$8 thousand a year.

ASSEMBLYMAN SPIZZIRI: Isn't that very expensive to do, to keep someone incarcerated at the cost to the public - the taxpayer - of \$8 thousand a year in comparison to what you term the very expensive lengthy trial for the conviction or acquittal of a person accused of murder?

MR. VanNESS: I recall seeing a study that was done on behalf of Governor Winthrop Rockefeller in Arkansas at the time he was considering his position on the death penalty. I can't vouch for the accuracy of the figure but I do vouch for the figure - having seen it - and the estimate was that it cost the taxpayer \$150 thousand in a capital case as opposed to a non-capital case. When we consider that we are going to be spending \$8 thousand each year that the man is sitting on death row - and I believe Mr. Smith was there about 13 years and Mr. Chessman was there just a brief period less than that - the \$8 thousand meter seems to be running at the same time we are spending the other money, so I don't know that we can really add this up and do it by simple arithmetic.

ASSEMBLYMAN SPIZZIRI: We are talking about New Jersey and your experience in the past five years. You said your office handles 80% of the criminal business of this State so surely you must have some idea of the cost of a criminal trial in which your office has participated in the past five years. Could you tell us what that would be?

MR. VanNESS: I could tell you on an average; I couldn't tell you --

ASSEMBLYMAN SPIZZIRI: That would be fine. I don't want for you to be pinned down to a precise figure. I am

not holding you to that.

MR. VanNESS: I am talking about an average across the spectrum I could not at this moment - although the information is available - offer you the cost of a capital case as opposed to a non-capital case. I can tell you as I did earlier that in drawing a jury you are going to spend a minimum of three weeks and maybe as much as six to seven weeks drawing a jury when there is a death penalty. Without that death penalty you would draw a jury within two or three days. That's about the best I can do on that score.

ASSEMBLYMAN SPIZZIRI: Do you take into account the cost to the victims family, the loss of income to that victim's family and the loss of services to that victim's family by virtue of the fact that he has been murdered by some criminal?

MR. VanNESS: Do I in figuring my statistics--?

ASSEMBLYMAN SPIZZIRI: Doesn't that account for anything in the overall economic outlook which you projected by virtue of the fact that selection of a jury and the trial of a criminal case is an expensive proposition to the public and to the taxpayer? How about the situation where that family now becomes a public charge? That is also an expense and a burden on the taxpayer to be considered, is it not?

MR. VanNESS: Assemblyman, it would seem that that would be the case whether you executed the offender or not, assuming the act had been committed and the family is left in a situation where it must become a public charge. What you do with the offender does not reduce that cost by any way that I could see.

ASSEMBLYMAN SPIZZIRI: Do you attribute the reduction of homicides to the lack of the death penalty in the areas which you have testified to - you were talking about Delaware?

MR. VanNESS: No, sir, I don't attribute it to that.

ASSEMBLYMAN SPIZZIRI: You can't find any real correlation then between lack of or presence of and enforcement of the death penalty?

MR. VanNESS: I think that is the conclusion I would draw from the statistics, that there is no correlation; if there is one, it escapes me.

ASSEMBLYMAN SPIZZIRI: Now you also indicated that your experience has been that the minority groups suffer the most from the death penalty; what is the percentage of the cases your office has handled of crimes committed by whites as against non-whites?

MR. VanNESS: I think we would estimate that about 60% of our clients - again across the spectrum, I couldn't give you an estimate in terms of homicide - are non-whites.

ASSEMBLYMAN SPIZZIRI: Your allusion then to, in years gone by, the people committing the crimes were the Italians and before that the Irish and before that, whoever, would have to have the same analysis to determine what the percentage of commission of crime would be by that particular minority group.

MR. VanNESS: I think, really, what the analysis should involve is the percentage of homicides committed by whites, by blacks, and the percentage of the death penalties imposed on whites and on blacks.

ASSEMBLYMAN SPIZZIRI: Do you have those figures?

MR. VanNESS: No, I do not have those figures.

ASSEMBLYMAN SPIZZIRI: Could you, with your staff and experience, obtain those figures for this Committee?

MR. VanNESS: I probably could.

ASSEMBLYMAN SPIZZIRI: I would appreciate it because I think that is something I would like to look at.

MR. VanNESS: We will make every effort to see that you get that information.

ASSEMBLYMAN SPIZZIRI: Now you indicated also, in that same vein - unless I am drawing the wrong inference from it - that one of the reasons for the amount of crime being committed by the minority groups would be because

they are disadvantaged economically, socially and otherwise.

MR. VanNESS: Yes, I would hold to that proposition.

ASSEMBLYMAN SPIZZIRI: Assemblyman Imperiale testified that in Newark the city had received for the people of that category, if you will, approximately \$500 million. Wouldn't this have an impact in correcting the disadvantage, both economically and socially, and to alleviate the crime record in the City of Newark, in which we have had 130 murders committed this year so far?

MR. VanNESS: Well, first I would point to the fact that the crime rate in Newark has fallen by some 12%, if my memory serves me from the last F.B.I. statistics. But that may or may not have any real relationship to the \$500 million assuming that were an accurate number - and I do not know any different - and assuming that it were put to a useful purpose - and I don't know whether it has been or not. Certainly I think it would elevate some people out of that situation and as people are elevated out it is my premise that they commit less crime. But I can't vouch for the fact that \$500 million came to the City of Newark; I can't vouch for the way in which it was used. I do point to what seems to be an accurate statistic from the F.B.I. that there has been a reduction in crime.

ASSEMBLYMAN SPIZZIRI: Mr. VanNess, has there been any change in the methods or types of crime being reported by the F.B.I. in their information gathering process from the various Chiefs of Police?

MR. VanNESS: I've heard that allegation made.

ASSEMBLYMAN SPIZZIRI: I'm not making an allegation; I am asking a question.

MR. VanNESS: Well, it has been made in the form of an allegation that there has been some modification in the way in which the records are kept and that is what is accounting for the seeming reduction. I can't answer that question. I note on your sheet that you have people from

the State Police appearing, perhaps they could answer that.

ASSEMBLYMAN SPIZZIRI: Now you have indicated also that the number of cases assigned to your department had decreased in the past -- was it fiscal or calendar year?

MR. VanNESS: The rate of increase has decreased from a 30% average some 2 years ago to a point where, in the last fiscal year - the year ending June 30th past - the rate of increase over the prior year was only 4%.

ASSEMBLYMAN SPIZZIRI: Would that fact be attributable to the fact that less people are seeking the services of the public defender and less people are entitled to the services of the public defender by virtue of their economic status?

MR. VanNESS: Our percentage of the criminal calendar does not seem to have changed. We are still, in Essex County handling upwards of 90% of the calendar. We are still fairly confident that the overall average is about 80% of the calendar, which would suggest there isn't a reduction in the number of people applying for services.

I think there has been an increase in the number of people that have been turned away for services but I don't know that that would bear any relationship.

ASSEMBLYMAN SPIZZIRI: I believe you made a statement in your testimony that the criminal law -- because the criminal law, in this case, might be declared unconstitutional this Legislature should not enact this criminal law; is that an accurate paraphrase of what you said?

MR. VanNESS: I think that is accurate, yes, sir.

ASSEMBLYMAN SPIZZIRI: That would seem to follow to its logical conclusion in other areas where the Supreme Court of this State and the United States has spoken as to unconstitutionality of criminal laws, that the Legislature should refrain from attempting to correct the deficiency of that criminal statute as pointed out by the Supreme Court and therefore refrain from enacting any criminal law.

MR. VanNESS: Well. I can't go down that path with you. sir.

ASSEMBLYMAN SPIZZIRI: Well, that seems to be what you are saying.

MR. VanNESS: Well, if it seemed to be I have to apologize for seeming to lay that route.

What I am saying is that the capital punishment bill that you have under consideration, because of things that the United States Supreme Court has already said, would not seem to pass muster. Now that does not mean that every criminal law that is found unconstitutional, for whatever reason, should be allowed to molder on the books; certainly there are things that you could and should do to correct statutes that the Supreme Court has struck out, if possible.

ASSEMBLYMAN SPIZZIRI: Isn't this what we are trying to do with this statute?

MR. VanNESS: I strongly feel, and I am sure you will get legal advice to the contrary, that at the very least you will not have an answer to that question for some time to come and that, in my judgment, when you do get the answer it will not be what you think it is going to be.

ASSEMBLYMAN SPIZZIRI: But should we try?

MR. VanNESS: If I may finish -- at the same time it would seem to be good sense to allow the statutes that have been enacted in other states, and which are on their way to the Supreme Court, serve as the vehicle for the definitive decision, which we hope will come out of the United States Supreme Court, rather than have the taxpayers of New Jersey incur that expense. It seems to be, certainly, more economical to allow somebody else to get the decision which will affect New Jersey, as it will affect every other state.

ASSEMBLYMAN SPIZZIRI: Is that answer, then, based solely on economics?

MR. VanNESS: It is certainly a consideration that enters into my observations and I would think would enter

into yours also, and is, in fact, as I understand the study commission report, really the position that the study commission took on this matter - that it is still a very murky constitutional area; that if we are to enact the statute and to begin trying capital cases all over again, to begin filling up death row, that we will have incurred a very sizable outlay of money when, in fact, we would not be getting any answer to the question sooner than we would get if we were to wait for another statute to go to the United States Supreme Court.

ASSEMBLYMAN SPIZZIRI: Mr. VanNess, based on your past five years of experience, and I am sure that you have had experience prior to coming into the office of public defender in trying capital cases and criminal cases, what would your solution be to the problem of the murderer, such as Edgar Smith who beat some girl's brains out with a rock, or the man who killed that policeman in Jersey City last night, or people of this type; what should we do with these people? What do you say we should do with these people and what type of laws should we enact to prevent this type of conduct?

MR. VanNESS: You have, on the statute books now, laws that will imprison people for an extended period of time. I think that that is adequate. You might wish to consider the question of parole. I happen to find in my experience, and I think Congressman Sandman inferred as much, that many of the people who are doing life in prison are the least likely candidates to commit another crime that you could imagine. They spend a minimum of 15 years in prison. The normal procedure is for the parole board to give them an additional two years before they are considered and then they are given another two years before they are considered again, and that makes a total of 17 years; that is a long time to be in prison. I think it happens to be adequate. You might think that it should be longer or that the parole consideration



should be different but that doesn't mean that we should make the leap to say the only thing we can do with these people is to kill them.

ASSEMBLYMAN SPIZZIRI: Thank you very much, sir. I appreciate your testimony.

ASSEMBLYMAN DICKEY: Thank you very much, Mr. VanNess.

ASSEMBLYWOMAN KLEIN: Could I ask one more question, please?

ASSEMBLYMAN DICKEY: Yes, Mrs. Klein.

ASSEMBLYWOMAN KLEIN: It was brought out by the testimony that was in response to Mr. Spizziri -- You testified that approximately 60% of your case load is of minority groups.

MR. VanNESS: Yes.

ASSEMBLYWOMAN KLEIN: And you testified that you are defending approximately 80% of those charged with serious crimes in the State.

MR. VanNESS: That's correct.

ASSEMBLYWOMAN KLEIN: Do you agree with the estimate given by Mr. Sandman that approximately one in ten such crimes is apprehended?

MR. VanNESS: I have seen that statistic but I cannot vouch for its accuracy; it seems to be reported from reliable sources that the clearance rate, and I think that's the terminology the police agencies use, is in that neighborhood. I would have thought it a bit higher but --

ASSEMBLYWOMAN KLEIN: We do have some figures from 1970 which show that in New Jersey the number of people confined in relation to the number of serious crimes reported is 2.6%. The reason I am asking is that there was an inference in that testimony and in your responses that the reason that most of the people who suffered the death penalty were minority groups and the reason that most of your caseload is of minority groups

is because most of the crimes were being committed by minority groups. Do you concur with that?

MR. VanNESS: In absolute numbers, no, I don't concur. A disproportionate share is being committed by minority groups and perhaps if I look at the records that the Assemblyman suggested I look at, I would find that a disproportionate share of the homicides have been committed by members of minority groups. My strong feeling is that if I looked further I would find that of those people who have been sentenced to death that a greater disproportion exists than would suggest on the feed-in side. Is that responsive?

ASSEMBLYWOMAN KLEIN: Well, if only 10% of those that are reported are apprehended, how can you tell what the situation really is?

MR. VanNESS: Well, I can't. I certainly can't deal with any set of figures that don't come to our attention and if 90% is the correct number, they would never have come to our attention or to anyone else's attention in terms of figuring it into the statistical base. It might well be that the crimes are being committed and they are going undetected and if they were, in fact, considered, that it would not be a disproportionate number as it related to minority groups but I can't deal with that because it is a very speculative number.

ASSEMBLYWOMAN KLEIN: Thank you.

ASSEMBLYMAN DICKEY: Thank you very much, Mr. VanNess.

MR. VanNESS: Thank you.

ASSEMBLYMAN DICKEY: Our next witness is Major Eugene Olaff, Deputy Superintendent of the New Jersey State Police.

MAJOR EUGENE OLAFF: Mr. Chairman and members of the Committee, I have been asked by Colonel Kelly to represent him here today to present his statement concerning capital punishment and Senate bill #799. I believe

he has been in touch with your secretary and indicated that he, today, is in Kansas City serving on a national committee on law enforcement.

I favor and advocate the retention of the death penalty in cases of a finding of guilty of murder in the first degree with the standards as proposed in the Assembly reprint of Senate bill #799.

Since the United States Supreme Court handed down its controversial decision regarding capital punishment last year, ruling it violated the 8th amendment, it was apparent this highly emotional issue would be the subject of many studies, hearings and legislative reviews throughout the nation. As a matter of fact the Supreme Court conditioned this. A cursory review of the opinions, especially the dissenting Mr. Chief Justice Burger, suggested that a state or the United States Congress could enact laws restoring the death penalty as long as there were standards in its application. I feel the standards in the proposed legislation under review, with the burdens of proof on both the defendant and the state with the immediate review by the State Supreme Court are adequate.

Since the central issue in the three cases heard by the United States Supreme Court was whether capital punishment was cruel and unusual and in violation of the 8th and 14th amendments, I, again, follow the opinion of Burger that the Constitutional prohibition cannot be construed to bar the imposition of the punishment of death.

Although not a panacea in preventing crimes of violence, I believe the existence of a death penalty is definitely a deterrent in instances, especially in cases covered by the enumerated acts of the proposed legislation.

The question of it being a deterrent could be argued forever, but even if capital punishment cannot be established by statistics to be a deterrent, it is my opinion the absence of a death penalty in New Jersey may be an invitation to commit murder. Whether or not the

death penalty is or is not carried out, it is the fear that death might be the punishment that deters. This fear, joined with speedy trials and expeditious review procedures, would make the deterrent effect very meaningful.

Colonel Kelly also asked me to elaborate on a recent event that occurred in the State and this does not reflect deterrence as much as it does recidivism. Last year we had several people escape from our state correctional system, one of which, I believe, reference was made to by a previous speaker. This individual upon escaping from the correctional institution, became a fugitive and he was free for about five months and in that five months he became a suspect in over eight robberies. We have tied him in with the murder of a citizen in the City of Newark, the serious wounding of a Newark detective - narrowly missing one of our detectives - later traced to the State of Pennsylvania where, in the apprehension of this man, he took the life of a Pennsylvania State Trooper, seriously wounded another Pennsylvania State Trooper and, of course, eventually he was killed himself.

In this case, the individual we are speaking about had been convicted of murder on multiple counts back in the early 1960's and consequently was sentenced to death. Of course, as this becomes an issue throughout the years, his sentence was later commuted to a life sentence, to run consecutively. Now I realize that, probably, if the individual was confined in such a manner that he could not escape, this could not have happened, but it is an indication that he was an individual that, given the opportunity, was later responsible for taking the lives of additional people subsequent to his conviction.

We recently had one of our troopers murdered on the Turnpike, another one seriously wounded. The case has not reached the courts at this time. People belonging to an organization believe we have indication that there is a specific design on directing criminal efforts towards

law enforcement in general. Now I am not at liberty to discuss this case openly, inasmuch as it hasn't come to trial, but it is a matter of record that our man was murdered on the Turnpike and our other trooper was seriously wounded.

I am speaking for Colonel Kelly in behalf of the members of our organization and also for the members of law enforcement in general. It is our humble opinion that the death penalty should be reinstated. We also realize that there are cases where you have crimes of passion. I think the standards and the guidelines that are provided by this legislation really indicate that consideration would be given to those individual instances.

We are primarily concerned about the individuals that go out and commit these heinous crimes, such as robberies, armed robberies, rape and the other crimes enumerated in this particular bill. We are concerned about people that premeditate murder people that understand what the consequences of their acts could be and many times are not concerned about the consequences, people that are hired to commit crimes - I guess it is a matter of record throughout the years that these cases can be pinpointed - so we are concerned about this type of individual that is not only a professional but an individual with a complete disregard for the lives of citizens and the members of the law enforcement system. Thank you.

ASSEMBLYMAN DICKEY: Thank you, Major.  
Are there any questions?

(no questions)

The Committee will recess for lunch for a period of one hour. We will return at 2:00.

(recess)

## AFTERNOON SESSION

ASSEMBLYMAN DICKEY: Ladies and gentlemen, I will reconvene the public hearing of the Assembly Judiciary Committee on the proposed amendments to Senate Bill No. 799.

For the purposes of the record, we have received a letter from James M. Coleman, Jr., Prosecutor of Monmouth County, which with the approval of the other members of the Committee will be entered into the record of this hearing. Are there any objections from members of the Committee? (No objections.)

(Mr. Coleman's letter can be found  
on page 107 A.)

We have a letter from the Division of Criminal Justice, Department of Law and Public Safety, State of New Jersey, signed by Evan William Jahos, who is the Director of that Division, in which he says:

"I submit herewith three copies of a report on Senate 799 prepared by the Division of Criminal Justice.

"It is my view that it would be inappropriate for the Division of Criminal Justice to take a position with respect to the reinstitution of the death penalty in this State. Rather, I believe that we can best assist your Committee by providing the type of study which is embodied in the enclosed report. We have attempted to consider three aspects of the problem. First, we have reviewed the current status of the law with respect to the death penalty. Second, we have analyzed Senate 799 in light of the existing law and considered the technical sufficiency of the bill in that light. Third, we have reviewed the various legislative attempts throughout the country to reinstitute the death penalty subsequent to the United States Supreme Court's recent consideration of the problem.

"I hope that our work will be of some value to the Committee."

That is signed by Evan William Jahos.

With the approval of the Committee, we will make the statement by the Division of Criminal Justice a part of the record of this proceeding. Any objection from any member of the Committee? (No objection.)

I have also a written statement submitted on behalf of Brendan T. Byrne, Democratic candidate for Governor of the State of New Jersey, submitted to the Assembly Judiciary Committee, concerning the subject of the death penalty. With the permission of the Committee, we will enter the statement of Judge Brendan T. Byrne in the record of the proceedings. Any objections? (No objections.)

(Statement of Brendan T. Byrne can be found beginning on page 112 A.)

Mrs. Klein has asked me to enter in the record the fact that the death penalty was abolished in the nation of Norway in 1905 and was reinstated briefly after World War II for war crimes.

I would like to call as our next witness Mr. T. Girard Wharton, Acting Chairman, Criminal Law Revision Commission.

Mr. Wharton, I see you have submitted a written statement to the Committee. Can you comment upon the statement without necessarily reading it in order to conserve some time.

MR. WHARTON: That would be all right unless there are some questions. In order to prompt questions, I suppose the only thing to do is read it into the record. It is not very long.

ASSEMBLYMAN DICKEY: All right. You go ahead and proceed.

T. G I R A R D W H A R T O N: I think I had better.

Mr. Chairman and members of the Committee: I am appearing here for the Criminal Law Revision Commission, of which I was appointed Vice Chairman and am now the Acting Chairman because of the illness and inability

to appear of our Chairman, Professor Robert Knowlton of the Rutgers Law School. He is still a member of the Commission and still is consulted as to all aspects of our work. I am appearing for him.

As I indicate in the statement, I am appearing here today at the request of your Chairman to comment on the proposed Death Penalty Bill, S 799, a copy of which has been made available to me for study. I propose to present to you the views of the Criminal Law Revision Commission on the issues raised by S 799 to the extent that those views are embodied in the Commission's two-volume report issued to the Governor and the Legislature in October of 1971. This statement has been prepared by Richard B. McGlynn, former Deputy Attorney General, who is a member of the Commission and who accompanies me here today, and by John G. Graham, the Commission's Secretary, and it has been reviewed and approved by me for the Commission.

The Criminal Law Revision Commission was organized in 1969 "to study and review the New Jersey Statutory Law pertaining to crimes. . . and prepare a revision . . . thereof for enactment by the Legislature." In our 1971 report we proposed a comprehensive new Penal Code for the State which, we believe, represents the best thinking currently available on the subject.

Shortly after passing the legislation creating our Commission, the Legislature moved to create a separate Commission to study capital punishment. Thus, our Commission considered the question of whether or not the death penalty should be retained as beyond the scope of its mandate. However, we drafted the proposed penal code on the assumption that the death penalty would be retained. Working on this assumption, we did and do propose some changes in the scope of the death penalty and in the procedures surrounding the decision whether it should be imposed. Thus, the Commission did undertake to deal with the



specific issues raised by S 799 and has proposed procedures which are in many respects similar and identical with those contained in S 799. The balance of my testimony will be devoted to an evaluation of the Commission's recommendations regarding capital punishment and related matters and a comparison of those recommendations with the provisions of S 799.

Let me make clear, however, that neither the fact that the Commission made recommendations regarding capital punishment nor the substance of the recommendations should be construed as a decision by the Commission in favor of capital punishment. We did not consider it appropriate for us to consider that issue, although there was considerable sentiment within the Commission itself for abolition. As we stated in our final report:

"The second area which we considered as being beyond the scope of our mandate is capital punishment. Again, the Legislature has moved to create a separate Commission to study this problem. In order not to conflict with the work of that group, we have drafted the code on the assumption that the death penalty is to be retained. We have, however, made some changes in the scope of the death penalty and in the procedures surrounding the decision whether it should be imposed. The overall effect of these recommendations will, in our view, be to reduce the number of instances in which the death penalty will be imposed. These recommendations should not, however, be construed as a decision by the Commission in favor of capital punishment. We did not consider it appropriate for us to consider that issue. If, however, capital punishment is to be retained, we then consider our recommendations as appropriately establishing the procedures under which the decision is to be made."

The Commission's recommendations regarding the scope and procedures for capital punishment are found in Chapter 11 of proposed Title 2C of the New Jersey Statutes, the proposed penal code which deals with criminal homicide. For the convenience of the Committee, I am attaching a copy of our proposals and commentary on these subjects. These, it should be noted, were written prior to the U. S. Supreme Court's decision in Furman against Georgia.

Its overall effect is to make the death penalty available only for certain types of homicides. Thus, like S 799, the Commission proposals would eliminate the death penalty's availability for kidnapping, treason and assault upon a high government official.

The Commission's recommendations would make capital punishment available for only two types of homicides, a criminal homicide committed "purposely" and a "felony murder". The Commission rejected the use of such terms as first degree murder, second degree murder and the like, unlike the approach of S 799 which would retain these terms. We did this because more than a hundred years of experience with those terms has shown it to be impossible to give them a predictable meaning. The Commission's recommendations as to the types of crimes for which the death penalty would be available are broader than S 799, which would make only murder committed purposely subject to capital punishment.

The Commission's recommendation that felony murder be retained as a capital offense was carefully reached. There was a strong belief expressed in the deterrent effect of at least a limited felony murder rule. We considered it significant that juries, in exercising their discretion in imposing the death penalty, constantly singled out felony murder - that is, particularly armed robbery - for imposing that penalty. While the felony murder rule, in some ways, imposes a form of liability without fault, we conceived our proposals to limit that rule to be adequate in that regard. And, we view armed robbery to be peculiarly heinous and subject to at least some marginal deterrence by retaining the death penalty in that instance.

Another point of difference between the Commission's recommendations and S 799 is that the proposed code contains a definition of the word "purposely", while S 799 does not. In fact, all of the other operative terms used in Section 1 of S 799, such as "knowingly" and "recklessly",

are explicitly defined in the proposed code and lack further definition in S 799. "Purposely", under the code, means that the defendant had a "conscious object" to engage in the proscribed conduct or to cause the proscribed result.

The Commission's approach and that of S 799 to the procedure for imposition of the death penalty are quite similar. Both provide for a bifurcated trial and sentence hearing. Both provide lists of aggravating and mitigating factors to be considered in assessing whether or not the sentence should be death. There are, however, some significant differences. The code would permit the Court to sentence an offender for whom capital punishment is an available alternative to life or a specific term of years between 10 and 20 in the absence of aggravating factors or the presence of mitigating factors (referring to Section 2C:11-7a). Moreover, under the code no Judge could sentence death without a jury verdict recommending same. S 799 would allow the Judge to sentence to life or death, following a hearing, on the defendant's motion and with the State's approval.

A major difference in the approach of the code and that of S 799 is in the area of guilty pleas and plea bargaining. S 799 would not permit any guilty plea to be entered to any indictment for murder and would require a trial by jury in every murder case (referring to Section 3). The proposed code completely rejects this approach and would permit and encourage plea bargaining in homicide as in all other cases. The Commissioners found that one of the benefits of a comprehensive penal code would be its encouragement to plea negotiations and agreements. The code's approach to criminal homicide would specifically permit a plea of guilty, with the State's and Court's concurrence to murder as a non capital crime or as a crime of the first degree (Section 2C:11-7). Moreover, to avoid constitutional problems, it would be further possible under the code for an offender to plead guilty to murder as a capital crime,

with the sentence to be determined by a jury on the sentence hearing or, as noted above, by the Judge if he decides that life imprisonment is appropriate. In our view, any statute requiring a trial by jury in every murder case is unworkable and impractical. This alone requires rejection of the bill under consideration in its present form. In all of our urban counties the trial of cases would break down completely if a trial of every murder indictment were required. That was pointed out by Mr. Van Ness this morning. It might well require increasing Judges and supporting staffs and facilities by 50 per cent or more. The marginal deterrence of a death penalty - the result of perhaps 1 per cent of all murder trials - simply is not worth this expenditure and disruption. A way of bargaining out most cases is essential to any statute re-enacting capital punishment.

Certain other differences in approach between the code and S 799 should be noted. The code would require a higher standard of proof, i.e., beyond a reasonable doubt as opposed to a "preponderance of the information", at the sentencing hearing. In other words, the sentencing jury under the code would be charged that it could not recommend a sentence of death unless it found one of the aggravating circumstances beyond a reasonable doubt, and that there were no mitigating circumstances sufficiently substantial to call for leniency. The Commission felt that the reasonable doubt standard was more appropriate in an area of such great sensitivity as capital punishment.

The last major difference in approach between S 799 and the proposed code is in the area of parole eligibility and probation. S 799 would create three types of life sentences for those found guilty of first or second degree murder: life imprisonment without eligibility for suspension, parole or reduction; life imprisonment with a fixed minimum imprisonment for 30 years; and life imprisonment with the existing parole eligibility. The first type, which we

might call "true life", is proposed by S 799 for treason, and "true life" or "life for 30 years", the second type, would be available for assault on a high government official.

The proposed code rejects the concept of a "true life" sentence. It provides for a mandatory sentence of imprisonment only for those convicted of capital offenses, that is, purposeful murder and felony murder, but provides that the sentence be life or a fixed term from 10 to 20 years. An offender sentenced to life under the code would not be eligible for parole until 15 years were served.

The code does not leave unfilled, however, the potential gap between a life sentence and a fixed term between 10 and 20 years. It provides for the potential imposition of an extended term for crimes of the first degree for a term to be fixed by the Court between 20 years and life imprisonment. That is in Section 2C:42-7. Extended terms may be based upon a set of factors, such as previous offenses, multiple offenses, a severe and dangerous psychiatric condition, or professional criminality.

Imprisonment would not be mandatory under the code for those convicted of any non-capital homicide. Moreover, under the code, only those offenders sentenced to life imprisonment would not be eligible for parole before 15 years were served in confinement. In fact, the code proposes immediate parole eligibility for all offenders not sentenced to life imprisonment. In this connection, it should be noted that the Commission stated in its commentary that the provision as to immediate eligibility was absolutely essential to the code. The discretion of a full-time Parole Board should, in the view of the Commission, be as absolutely unfettered as possible in determining whether to parole or to continue imprisonment.

While the Commission recommended 15 years as a minimum before parole eligibility for lifers, it actually believed 15 years to be too long and would have preferred

to replace it with a period not in excess of 10 years. We realized, however, that this decision is intimately bound up with the abolition or limitation of the death penalty. If the decision is not to abolish, our recommendation of 15 years minimum sentences for lifers should stand.

In conclusion, then, it is submitted that all of the issues dealt with in S 799, with the exception of abolition, were fully considered by the Criminal Law Revision Commission and its proposals thereon have been integrated into the proposed code. The basic approach set forth in S 799 is that which was reached by the Commission. Yet the differences in specifics, particularly regarding the availability of plea negotiation and in life sentences, are considerable. Our recommendations in these areas were carefully considered and we believe them to be correct, proper, and just from the point of view of the individual and society in general.

I thank you, Mr. Chairman and members of the Committee, for the opportunity of presenting the Commission's views at this hearing. (See page 113A for attachments to Mr. Wharton's statement.)

ASSEMBLYMAN DICKEY: Thank you, Mr. Wharton.

MR. WHARTON: I will be glad to answer any questions if there are any.

ASSEMBLYMAN DICKEY: I am very interested in the plea bargaining aspect that you point up. Wasn't that the subject of a Supreme Court decision which held that the plea bargaining made the defendant make a hard choice between either life imprisonment or gambling with his life?

MR. WHARTON: I will ask Mr. McGlynn to answer that.

RICHARD B. MC GLYNN: The answer is yes, Assemblyman. We believe that we have solved that in the Commission,

as we tried to say in the report, by making it possible for a plea of guilty to be entered to a capital crime, one where the death penalty is available. That was the problem that was inherent in the previous statute. The defendant could only avoid the possible imposition of the death penalty by entering a plea of guilty. And that would finally avoid it under the existing statute, which, of course, is bad.

Our way of solving that problem is to say that capital punishment, assuming it is decided to continue it, might be available for one who pleads guilty to a capital offense. He could enter a guilty plea to a capital offense. Thereafter, the judge would have to decide whether or not to sentence to life or to impanel a jury and determine whether or not a death sentence might be recommended by the jury.

ASSEMBLYMAN DICKEY: Mr. McGlynn, the argument seems to be advanced in the statement by Mr. Wharton that this plea bargaining aspect would cut down the amount of time for trials, etc.

If a defendant is given the choice of entering a plea of guilty but not knowing what the court might do, wherein is there plea bargaining then?

MR. MC GLYNN: Well, any plea that is entered now has to be done with the approval of the court. And the court could very well say on a plea to less than a capital offense proposed by a defendant, "I'm sorry. I won't accept it. I want a plea to a capital offense because in my judgment this is an appropriate case for me to impanel a jury to determine whether or not you should be sentenced to death." The defendant might very well choose to plead guilty at that point, believing that there were sufficient other mitigating factors so that he could convince the judge or the jury that the death penalty should not be imposed.

ASSEMBLYMAN DICKY: I see. In other words, because we have built in the bifurcated type hearing and the opportunity to consider aggravating and mitigating circumstances, the defendant is not put in as much jeopardy as heretofore.

MR. MC GLYNN: That is our judgment.

ASSEMBLYMAN DICKY: Do any other members of the Committee wish to ask questions? Mr. Wallace?

ASSEMBLYMAN WALLACE: No questions.

ASSEMBLYMAN DICKY: Mr. Dawes?

ASSEMBLYMAN DAWES: No.

ASSEMBLYMAN DICKY: Mrs. Klein?

ASSEMBLYWOMAN KLEIN: No.

ASSEMBLYMAN DICKY: Mr. Keogh-Dwyer?

ASSEMBLYMAN KEOGH-DWYER: No.

ASSEMBLYMAN DICKY: Will you just bear with me a moment. I think I may have another one.

Mr. Wharton, I am interested in your suggestion that we put definitions into the bill, such as the definition of the word "purposely" and some of the other technical words here. Would you suggest we use the definition that is suggested in the proposed Penal Code?

MR. WHARTON: Yes, sir.

ASSEMBLYMAN DICKY: Any other questions?

MR. WHARTON: I might say that during the summer the Commission has been meeting at regular intervals to consider commentaries from the Attorney General's Office, the Public Defender's Office, etc., and the code as we submitted it to the Governor and the Legislature, the two volumes, will be rewritten in sections and made available, of course, to the Governor and the Legislature. We heard representatives. We not only considered written comments, but we have had before the Commission these people.

ASSEMBLYMAN DICKY: That is fine because our Committee has been assigned the duty of studying the



proposed penal code with the thought that once we can resolve the matter, we will introduce it in the form of bill legislation.

MR. WHARTON: As I say, it would seem to us once the basic decision has been reached as to whether to retain the death penalty for any purpose that whatever is done should be embraced within the framework of the Uniform Penal Code and not in separate legislation such as this. And I say we hope to have the amendments and changes in the Code as we submitted it to you originally available very soon.

ASSEMBLYMAN DICKEY: Mrs. Klein has called my attention to your recommendation about a 15-year minimum sentence rather than the 30-year that is set forth in the Committee amendments. Would you care to comment as to why you think 15 years or even 10 might be more appropriate?

MR. WHARTON: Well, as I point out, we covered the possibility of extended terms. You have the question of 15 years. As I said, in the report, there were a number of the members of the Commission who felt that 15 years was too long and that a mandatory 10 was sufficient, and if you have a full-time Parole Board which is really dedicated to doing an effective job, that the matter of relief of a lifer, if you will, should be left largely in the hands of the Parole Board. You shouldn't require a man or a woman who may well be on the way to rehabilitation to spend more than 15 years or 10 years with no chance of release at all.

I think that was the feeling, was it not, Mr. McGlynn?

MR. MC GLYNN: Exactly.

ASSEMBLYWOMAN KLEIN: My question about that has to do with the wording of this.

MR. WHARTON: What page?

MR. MC GLYNN: It would be the last page, page 8, I gather.

ASSEMBLYWOMAN KLEIN: It says here, "We realized however that this decision is intimately bound up with the abolition or limitation of the death penalty. If the decision is not to abolish," - that means to keep the death penalty - "our recommendation of 15 years minimum sentences for lifers should stand." But if you abolish the death penalty, then you are saying you should have shorter sentences. I don't quite understand that.

MR. WHARTON: As I say, they felt that if the death penalty is abolished and persons can only be sentenced to life imprisonment as a maximum, you should not require a longer period than 10 or 15 years, as the case might be, where no parole or eligibility for parole is possible. Of course, if you are going to have the death penalty, a person goes out as soon as his appeal is finished. If it is decided life imprisonment is the most severe, then his eligibility will be determined at the 15th year or thereafter. If a person is obviously a hardened criminal or he is a bad actor or he does all sorts of things while he is in prison, he will probably never get out. But I don't think he should be required to stay more than 15 years in any event.

ASSEMBLYWOMAN KLEIN: But you say if the decision is not to abolish, I mean if we keep the death penalty, "our recommendation of 15 years minimum sentences for lifers should stand."

I don't understand why you want the 15-year minimum sentence if you have the death penalty, but you don't want it if you don't have the death penalty.

MR. MC GLYNN: If the decision is not to abolish, our recommendation of 15-year minimum sentence for lifers should stand.

We felt, at least as I understand what the Commission said, that if we are going to have the death

penalty, it probably represents an expression by the Legislature of the people's will that we have either this final disposition of death or that people sentenced to life imprisonment, which is about as close as you can get, should not be eligible to come out on the street for some substantial period of time.

In the view of the Commission, the longest period of time anybody should be asked to spend in jail without being eligible for parole was 15 years.

The statement thus is an attempt, I think, to build into the theory of life imprisonment with death as an availability a system of gradations that makes more sense than having a 10-year minimum eligibility and then the big gap all the way up to death.

Do I explain it?

ASSEMBLYWOMAN KLEIN: I think I do understand what you mean. Then the Commission feels in the absence of a death penalty, you do not want to leave an alternative of a very long term of imprisonment beyond the 10 years.

MR. WHARTON: The majority of the Commission felt we could leave it at 15, but there was quite a bit of sentiment for making it as low as 10. But that would be a legislative prerogative as to where you want to draw the line if you do not have the death penalty.

MR. MC GLYNN: I think, to further respond, the Commission's position was vehemently opposed to the idea, as Mr. Wharton said, of a true life sentence.

ASSEMBLYMAN DICKEY: I have a question concerning your statement on page 6, Mr. Wharton. This deals with the subject of standard of proof with reference to the consideration of penalty.

MR. MC GLYNN: Yes.

ASSEMBLYMAN DICKEY: You point up that the bill as amended would call for a preponderance of the information at the sentencing hearing and call our attention to the

fact that the code calls for a standard of "beyond a reasonable doubt."

As I look at the bill, it occurs to me, sir, that what we are trying to do there is to give the defendant a standard ---

MR. WHARTON: Could you give me the page.

ASSEMBLYMAN DICKY: Page 7. (Continuing) -- a standard of proof by which it is easy for him to present mitigating circumstances.

In other words, the thrust of the bill is that where there are mitigating circumstances a defendant should not be bound by the strict rules of evidence but should be permitted to submit, even informally, those mitigating circumstances which the court or the jury should consider to obviate the death penalty. It would seem in fairness to the defendant that we should not impose a strict standard of proof in that area.

I would like to have your comments on that.

MR. WHARTON: Mr. McGlynn, do you want to take that while I look up a section here?

MR. MC GLYNN: I think we are talking about two different things. The first is the admissibility of evidence at the sentence hearing. Under the code, as under your bill, there would be no requirement that any evidence sought to be admitted be admissible solely under the rules of evidence. Although I think your bill does say the prosecutor has got to get things in under the rules of evidence, the defendant can get them in even though they don't satisfy the rules if the judge thinks they are relevant. The effect of the code would be the same.

The question then arises as to what is the jury told after they have heard all of this evidence. You refer to it as information in your bill. What is the jury told as to what the standard is before they can recommend a sentence of death?

Under your bill, at least as I read it, the judge would have to say that all the prosecution would have to show would be that there is the existence of one of the aggravating circumstances by a preponderance of the evidence and that the defendant has failed to satisfy you by the preponderance of the evidence of the non-existence of one of the mitigating circumstances.

The effect of the code would be at least to say this: The jury is told in the sentence hearing, "You must find that the State has proven to your satisfaction beyond a reasonable doubt the presence of one of the aggravating circumstances." The code at least goes that far. I think that is a safer burden and a more appropriate burden in this kind of an area.

MR. WHARTON: As I said in the statement, not only must they find at least one of the aggravating circumstances beyond a reasonable doubt, but that there were no mitigating circumstances officially substantial that call for leniency.

If you are going to give a jury an opportunity to sentence a person to death, it seemed to us there should be proof beyond a reasonable doubt just as if he were being tried and the jury were finding as part of a trial, a nonbifurcated trial.

ASSEMBLYMAN DICKEY: Mr. Spizziri, any questions?

ASSEMBLYMAN SPIZZIRI: Yes. Mr. Wharton or Mr. McGlynn, in the determination of the period of time of incarceration before eligibility for parole, did the Commission review such cases as the Edgar Smith case, as far as rehabilitation of a person of this type is concerned in arriving at that 15-year maximum?

MR. WHARTON: Yes, sir.

ASSEMBLYMAN SPIZZIRI: It did. Was it the Commission's feeling that he was a good example of a rehabilitated, convicted murderer?

MR. MC GLYNN: I can't say that the Commission

specifically considered whether or not Edgar Smith was sufficiently rehabilitated. What I can say, I think, is that the Commission considered whether or not the system ought to provide the possibility that someone would be sentenced to life imprisonment without any eligibility ever for rehabilitating himself. That was a decision that we did approach and we almost unanimously, as I recall it, agreed that that was not an appropriate response for the system to make to individual misconduct.

ASSEMBLYMAN SPIZZIRI: You answered my question. Thank you.

ASSEMBLYMAN DICKEY: Mr. Keogh-Dwyer?

ASSEMBLYMAN KEOGH-DWYER: Mr. Wharton, did the Commission during its deliberation and review consider the age of the criminal? Perhaps you thought if a man was 50, 30 years was too long. Did you consider a sliding scale by which older prisoners who might not be dangerous after 15 years might be released and the younger ones would serve, say, a full 30 years?

MR. WHARTON: I don't recall that we ever considered age as the basis for a sliding scale of eligibility for parole. I don't recall any such approach as that.

ASSEMBLYMAN KEOGH-DWYER: All right. Thank you.

ASSEMBLYMAN DICKEY: Does any other Committee member wish to ask any questions? (No response.)

Thank you, Mr. Wharton and Mr. McGlynn.

ASSEMBLYMAN DAWES: Mr. Chairman, before we go on, I have a motion.

ASSEMBLYMAN DICKEY: Go ahead.

ASSEMBLYMAN DAWES: Mr. Chairman, I make a motion that the Judiciary Committee release favorably Senate Bill 799 with the proposed Assembly Committee amendments which are attached in the advance copy Assembly reprint.

ASSEMBLYMAN SPIZZIRI: I second the motion, Mr. Chairman.

ASSEMBLYMAN DICKY: This is a meeting of the Assembly Judiciary Committee. We are in the middle of a public hearing, but if the Committee wishes to suspend the hearing at this moment to consider the bill, I will first of all take a vote on whether we shall suspend the public hearing at this time. Does somebody make that motion?

ASSEMBLYMAN WALLACE: I so move.

ASSEMBLYMAN DAWES: I second it.

ASSEMBLYMAN DICKY: I assume that you are withdrawing your prior motion.

ASSEMBLYMAN DAWES: I will, Mr. Chairman, if that is your ruling.

ASSEMBLYMAN DICKY: You consent to withdraw the prior motion.

ASSEMBLYMAN DAWES: Yes.

ASSEMBLYMAN SPIZZIRI: Yes.

ASSEMBLYMAN DICKY: The question before the Committee is whether the Committee shall suspend the public hearing and proceed to a consideration of the bill itself and its release to the General Assembly.

ASSEMBLYWOMAN KLEIN: May I speak on that motion?

ASSEMBLYMAN DICKY: I will hear you, Mrs. Klein.

ASSEMBLYWOMAN KLEIN: Mr. Chairman, this Committee hearing was advertised well in advance and I see by the list that numerous people have prepared testimony for the Committee's consideration.

I don't think for a moment that this hearing was called in order to provide a platform for the ones who were heard earlier this morning to the exclusion of those who prepared for the afternoon.

I would suggest that it is rather unfair to the public who took us at our word that we wanted to hear from them and made preparation to appear for us to discontinue the hearing and proceed to act on the bill without

having given them an opportunity to present their testimony.

I also would remind the Chairman that at a previous hearing on a bill at the termination of all the testimony, I made a similar motion for a bill to be released from Committee and at that time I was told it was inappropriate to do it at that time, but that the Committee should retire first for consideration of the testimony.

I would suggest to you, Mr. Chairman, what was proper at that time, and that was your ruling at that time, would also be proper at this time. Knowing how fairminded you are about such things, I feel sure that you will consider this motion to be out of order.

ASSEMBLYMAN DICKEY: Anyone else care to speak on the motion?

I join with Mrs. Klein in urging that we defeat the motion. I feel that we owe a responsibility to the public to continue this public hearing. I think there have been some recommendations submitted by the Criminal Law Revision Commission which ought to be taken into account by the Committee, also the recommendations of our own counsel, Mrs. Donath. But I only have one vote.

ASSEMBLYWOMAN KLEIN: You do not intend to assert your prerogatives as Chairman and declare this motion to be out of order as you did previously, Mr. Chairman?

ASSEMBLYMAN DICKEY: I think we allowed your motion to go to a vote and retired ---

ASSEMBLYWOMAN KLEIN: No, Mr. Chairman, we did not.

ASSEMBLYMAN DICKEY: Yes, we did. It was a three to three vote.

ASSEMBLYWOMAN KLEIN: We didn't vote on it.

ASSEMBLYMAN DICKEY: Yes, we did.

ASSEMBLYMAN DAWES: We certainly did vote on it because I was the one missing and was criticized in the paper for leaving early.

ASSEMBLYWOMAN KLEIN: That was upstairs. You did



not vote on it at the time that I made the motion.

ASSEMBLYMAN DAWES: Maybe it was upstairs, but you made it public a number of times.

I call the question.

ASSEMBLYMAN DICKY: The motion before the Committee is to suspend the public hearing and proceed to a consideration of Senate Bill No. 799 with the Assembly Committee amendments.

Call for vote: Mr. Wallace?

MR. WALLACE: I vote, "aye."

ASSEMBLYMAN DICKY: Mr. Dawes?

ASSEMBLYMAN DAWES: Aye.

ASSEMBLYMAN DICKY: Mrs. Klein?

ASSEMBLYWOMAN KLEIN: No.

ASSEMBLYMAN DICKY: Mr. Keogh-Dwyer?

ASSEMBLYMAN KEOGH-DWYER: No.

ASSEMBLYMAN DICKY: Mr. Spizziri?

ASSEMBLYMAN SPIZZIRI: Yes.

ASSEMBLYMAN DICKY: I vote, "no."

It is a tie vote. The motion is lost. We will continue the public hearing.

The next witness is Mr. Richard Clement, Chief, Dover Township Police Department, representing the New Jersey State Police Chiefs Association.

R I C H A R D C. C L E M E N T: Mr. Chairman and members of the Committee: Thank you very much for the invitation to appear here today.

My name is Richard C. Clement, Chief of Police of the Dover Township Police Department, Toms River, New Jersey. I have been a Police Officer for 27 years and I am here today, before this Committee, representing the New Jersey State Association of Chiefs of Police. I have been asked to come before your Committee with the unanimous backing of the State Association in favor of Senate Bill No. 799, introduced on March 20, 1972.

I do not intend to belabor this Committee with facts and figures which you are already aware of. But I am here to bring up some points that I feel are extremely important to not only every law enforcement officer in the State of New Jersey, but also to the general public.

We feel very firmly that the death penalty has never been abolished—that the power to impose it has merely been transferred to the now immune criminal.

The normal mind is sensitive to the death of another human being. The callous mind will tolerate the slaughter of eight nurses in one hour, mass snipings, child butchery, bombings, stranglings, and other bizarre acts.

The deliberate criminal, equally callous, but less bizarre, engages in murder for hire, felony murders, arson, kidnapping, ect. They, too, can act as they choose without fear of the death penalty or fear of even having to serve longer than is required for automatic parole. There is no reason not to kill the apprehending policeman, the State's witness, the trial judge, or anyone else standing between confinement and freedom.

Further, the callous criminal has no moral compunction to preclude killing to effect an escape.

Law does not attempt to delve into the unique mentality of each individual. The reasonable man is an objective standard. Nor is the law asked to accept sociological apologies for cases in tort, contract, real property, negotiable instruments, or the like. The individual is held to the maximum that "ignorance of the law is no excuse".

The elimination of the death penalty in conjunction with other lenient sentencing policies, e.g., concurrent sentences and automatic parole, has exposed the American public and its Officers to serious jeopardy. When the Government relinquished this power over the criminal, it gave the criminal the power to impose it upon the victim: society.

The punishment for being an arresting Police Officer: death. The punishment for being a State's witness: death. The punishment for being a juror finding guilt: death. The punishment for discovering a burglar, auto thief, pusher, arsonist, or kidnapper at work: death.

It is inconceivable, in our great society today, that the average taxpayer—citizen is fearful to exercise his right of freedom; being able to not only walk the streets, but while sitting within his own home, fear of being robbed and killed. Fear of riding in his car through certain areas without locking his doors and praying to God his car does not break down, from the thought of death constantly on his mind. This fear is not fear of a foreign country, but fear of the criminals that roam our streets. I might add, day or night.

We have fear. The criminal does not have the fear of what will happen to him if he takes a life.

No, gentlemen, the death penalty has not been abolished. It has merely been relegated to other powers. What we, the State Chiefs, are asking is that the power be given back to the proper authority. That one may stand trial before a judge and jury. A person will know that if he takes a life, he will stand trial and have every due process of law

afforded to him, and if found guilty, he will receive the same penalty that he so freely gave out to an innocent victim who did not have the opportunity of a judge and jury.

It is for the above reasons that we, the New Jersey State Association of Chiefs of Police, endorse Senate Bill No. 799.

ASSEMBLYMAN DICKEY: Thank you very much, Mr. Clement.

Any questions from the members of the Committee?  
(No questions.)

Thank you for coming.

Rev. Paul Stagg, Coalition for Penal Reform.

P A U L S T A G G : Thank you, Mr. Chairman and members of the Committee.

May I thank you for honoring democratic process and having invited us to appear, giving us the chance to do so.

My name is Paul L. Stagg and I am Chairman of the Coalition for Penal Reform in New Jersey, in whose behalf I am offering testimony opposing S 799 with its proposed Assembly Committee Amendments.

The Coalition for Penal Reform is a broad-based, state-wide organization comprised of more than sixty community, social, and religious institutions. Its primary objective is to bring constructive change in the penal system which in informed circles is regarded as counter-productive. It seeks alternatives to the present system of incarceration of offenders in massive prisons which have been described as factories of crime maintained at the taxpayer's expense.

There are indications in New Jersey of a more enlightened policy in regard to the treatment of offenders. This is evident in tentative steps toward meaningful job training, work-release, small scale community-based centers, and other rehabilitative measures that hold out more hope of curtailing recidivism, protecting the public, and restoring the offender to productive citizenship. Such

steps are in keeping with a rational approach to a serious social problem, and it is encouraging that this enlightened posture is supported by a broad spectrum of citizens from every walk of life.

In view of these positive approaches of an enlightened correctional system, it is most disturbing that we should now be confronted with a backward step in the form of a reintroduction of the death penalty, in the proposed legislative bill, Senate No. 799, with proposed Assembly Committee Amendments. It is concerning the death penalty, declared unconstitutional by the United States Supreme Court as it has usually been practiced in the country and by the State Supreme Court as exacted in New Jersey, that the focus of this testimony is directed.

Murder, rape, and other felonies are horrendous and in no sense to be condoned. Considering their shocking gravity, one can understand why some should advocate the death penalty. But there are equally serious constitutional, moral, humane, and pragmatic grounds for strong dissent to a practice which is a disgrace to civilized society. The struggle of civilized society has been to curb the unlimited blood revenge of tribal society and to develop measures which, while protecting society, would be more rational and humane than the death penalty which neither deters the murderer nor gives any opportunity of justice to a person executed for a crime he did not commit.

While the five United States Supreme Court judges gave different reasons for opposing the death penalty in the country; they were all agreed on the following counts:

"That the death penalty imposed as it is, with infrequency and by juries which operate with no discernible standards, whatever, is unconstitutionally 'cruel and unusual.'

"That the purpose of the death penalty, whether it be retribution

or deterrence, cannot be achieved when it is so rarely used.

"That one purpose of the Eighth Amendment, which forbids 'cruel and unusual punishment', is to prohibit legislatures from imposing punishments like the death penalty which, because of the way they actually function, serve no valid purpose."

- quoted from an article on "Capital Punishment and the Supreme Court", by Professor Hugo A. Bedau, in the Jewish Advocate, August 10, 1972.

One of the many organizations of the Coalition is the American Civil Liberties Union, and in a very cogent statement in a pamphlet entitled "The Case Against the Death Penalty", it sums up compelling reasons against the barbarous practice of execution, as follows:

I quote here at length from this pamphlet which was written by, I think, one of the persons who will be speaking at the hearing this afternoon, Professor Bedau.

1. "Capital punishment is cruel and unusual, in violation of the Eighth Amendment of the United States Constitution. It is a relic of the earliest days of penology, when slavery, branding, and other corporal punishments were commonplace; like those other barbaric practices, it has no place in civilized society.
2. "Executions in prison gave the unmistakable message to all society that life ceases to be sacred when it is thought useful to take it and that violence is legitimate so long as it is thought justified by pragmatic concerns that appeal to those having power to kill.
3. "Capital punishment denies due process of law. Its imposition is arbitrary, and it forever deprives an individual of the benefits of new law or new evidence that might affect his conviction.

4. "The worst and most dangerous criminals are rarely those executed.

The death penalty is applied randomly at best and discriminatorily at worst. It violates the constitutional guarantee of the equal protection of the law because it is imposed almost exclusively against racial minorities, the poor, the uneducated - persons who are victims of overt discrimination in the sentencing process or who are unable to afford expert and dedicated counsel.

5. "Reliance on the death penalty obscures the true causes of crime and distracts attention from the effective resources of society to control it.

6. "Capital punishment is wasteful of resources, demanding a disproportionate expenditure of time and energy by courts, prosecuting attorneys, defense attorneys, juries, courtroom and correctional personnel; it burdens the system of criminal justice, and it is

counter-productive as an instrument for society's control of violent crime.

It uniquely epitomizes the tragic inefficiency and brutality of a resort to violence rather than reason for the solution of difficult social problems."

There are those that argue that the death penalty is a deterrent to crime and that to abolish it is to license murder, rape and the like. However, there is experience to show that the death penalty as practiced is no more a deterrent to crime than imprisonment. In fact, there is some evidence to show that the exaction of the death penalty may encourage criminal violence. The experience of a number of states gives no basis for alarm at the prospect of ending the death penalty. For examples: Delaware abolished the death penalty in 1958, and no upsurge in murder or rape resulted. In 1964, Oregon abolished capital punishment, and there was no

increase in violent crime. The case of Wisconsin is even more impressive. In 1853, Wisconsin pioneered in banishing capital punishment, and the record shows that at no time since has there been an increase of murder and other felonies traceable to the end of the death penalty.

The argument that capital punishment is a deterrent to crime has been thoroughly discredited in major studies on the death penalty. Documentation may be found in such studies as the following:

Bedau, ed., The Death Penalty in America, 1967.

Dann, The Deterrent Effects of Capital Punishment, 1935.

Reckless, in Crime and Delinquency, 1969.

Sellin, The Death Penalty, 1969.

Sellin, ed., Capital Punishment, 1967.

From such studies, Hugo A. Bedau in a pamphlet bearing the title, The Case Against the Death Penalty (published by the American Civil Liberties Union, January, 1973), summarizes the limitations of the death penalty as a deterrent as follows:

And these, members of the Committee and Mr. Chairman, are very weighty considerations.

- "A. Use of the death penalty in a given state does not decrease the subsequent rate of criminal homicide in that state
- B. Use of the death penalty in a given state may increase the subsequent rate of criminal homicide in that state
- C. Death penalty states as a group do not have lower rates of criminal homicide than non-death penalty states
- D. States that abolish the death penalty do not show an increased rate of criminal suicide after abolition
- E. States that have reinstituted the death penalty after abolishing it



have not shown a dedreased rate of criminal homicide

F. In two neighboring states, one with the death penalty and the other without it - the one with the death penalty does not show any consistently lower rate of criminal homicide

G. Police officers on duty do not suffer a higher rate of criminal assault and homicide in states that have abolished the death penalty than they do in death penalty states.

H. Prisoners and prison personnel do not suffer a higher rate of criminal assault and homicide from life-term prisoners in abolition states than they do in death penalty states."

Not only does the death penalty not deter crime, but its imposition is unfair and unjust. There is substantial evidence to show that courts have often been arbitrary, racially biased, and discriminatory against the poor in the way they have tried and sentenced some persons to death and others to prison. This, may I add, is man playing God. This fact throws light on why Blacks and other minorities predominately object to the death penalty while many Whites as members of an affluent dominant class favor the death penalty.

In another way, the death penalty is grossly unjust. When a person is executed, his life cannot be restored if he should later be found innocent.

Beyond this, the death penalty is fundamentally immoral. Primitive tribes early learned to limit revenge, and as a civilized society developed, the moral conscience rejected killing as a form of punishment. No society can countenance it without itself being degraded and brutalized. The death penalty, whatever the intention, in effect panders to the lust for revenge, and it is a "cop-out" for a rational, human effort to get at the roots of crime and develop therapeutic ways of treating offenders while protecting society from felony. There is no way by which provision for the death penalty can be amended that will relieve it of odium, its failure to be a deterrent, its

basic unfairness, its affront to a civilized society, its inhumanity, and its fundamental immorality.

The answer to crime, I submit, lies in another approach, not in one that has been tried and found wanting. It lies in alternatives that protect society against felony by eradicating the causes of crime and by finding ways to rehabilitate and save life rather than destroying persons and robbing them of life it cannot restore. To this kind of challenge, both legislators and citizens are called.

Thank you, Mr. Chairman.

ASSEMBLYMAN DICKEY: Thank you very much, Rev. Stagg.

Any questions by members of the Committee?

(No questions.) Thank you very much, sir.

The next witness is Mr. Hugo Adam Bedau. Is Mr. Bedau here? He is not responding.

We will proceed to the next witness, Mr. Phillip Showell, New Jersey Association on Corrections.

P H I L L I P      S H O W E L L: Mr. Chairman and members of the Committee: My name is Phillip Showell. I am the Executive Director of the New Jersey Association on Correction.

I feel constrained at this point to say that until a few moments ago, I had been disposed to drop the first three paragraphs of a brief statement that was prepared. I am now disposed not to do so. So I will read what we have written.

At the outset, I must state on behalf of the New Jersey Association on Correction that we are not happy to be offering testimony on a death penalty bill in the midst of a gubernatorial election campaign.

Under these circumstances, we strongly believe that no legislation designed to reinstate capital punishment in New Jersey can possibly receive the thorough and dispassionate consideration any proposal of such moment and

consequence requires.

The Association, it should be clearly understood, believes that public hearings do have a valid and constructive purpose in the shaping of truly responsible and responsive legislation. We think, however, that it would have been far more appropriate to have scheduled public hearings on Senate Bill 799 at the time, last Spring, when the Assembly Judiciary Committee was making its rather extensive amendments to the bill. For this reason, our testimony now on the measure at issue will be brief.

We respectfully invite the committee's consideration of several questions that, to our mind, have so far received insufficient attention:

First, a review of published data and literature on capital punishment, as has already been testified to here today, reveals no new evidence that it has yet achieved the capability to deter violent crimes resulting in death. In this respect, nothing has changed since the last person was executed under a capital punishment statute in this state ten years ago. Other things have changed. There has been an increase in the incidence of violent crimes, in response to a new complex of psycho-social factors that are not likely to melt away with the first surge of current through the electric chair. And there has been an at least proportionate increase in the fear and frustration registered by both the general public, and the legislators who represent them, in the face of rising crime indices. There is nothing fanciful about the increase in violent crime and nothing fanciful about the fear it produces. What is fanciful, in our view, is the simplistic reliance on the unproven ability of capital punishment to either deter violent crime or to ease the anxiety of those who consider themselves potential victims.

Secondly, in its present form Senate 799, with its

requirement for two separate trials would markedly increase the time, manpower and costs involved in preparation of cases, jury selection and mandatory appellate reviews, thus creating additional pressure on the already critically-overburdened court and public defender resources.

In addition to these costs, this bill, if passed, would require capital construction into millions of dollars to provide the necessary death house and life-term cells that are not presently available in our overcrowded prison system.

Lastly, the Association has reason to believe that Senate 799, even with its increased specificity as to crimes punishable under its provisions and its less-than-precise guidelines for imposition of sentence, remains of questionable constitutionality when read against the most recent U.S. and State Supreme Court rulings on capital punishment.

In view of these practical considerations the Association is at a loss to understand why the Assembly Judiciary Committee has rejected the advice of two state commissions in advancing consideration of this bill. The conclusion of the Haneman Commission that the Legislature should await further clarification of the U. S. Supreme Court's ruling on capital punishment before considering reinstatement of the death penalty seems even more persuasive now than when first reported last March.

We would underscore the Commission's argument that "passage of a capital punishment statute before clarification by the Supreme Court would place a great and expensive burden upon New Jersey's taxpayers, prosecutors and courts. The prosecutors would be faced with the awkward task of asking the death penalty on the basis of a statute of doubtful validity. A death penalty case is more time-consuming and expensive to try than a non-capital case. If the defendant is convicted, appeal through state and federal courts is inevitable, and the state itself would not wish to execute a defendant until the Supreme Court said the

statute was constitutional. Such appeals are not only expensive, with the state usually paying for the defendant's appeal, but it would take years from indictment to execution. Hence, nothing will be lost by waiting for the statutes of other states to produce the clarification."

It seems to this Association unreasonable to ask the taxpayers of New Jersey to make a very substantial investment in a probably unconstitutional experiment in social control, one that offers no real promise of attaining its objective, one that, in fact, has already been tried and found wanting.

We do not believe that further consideration of Senate 799, in this season of political cut and thrust, will do anything to encourage the mature, patient, dedicated and imaginative effort that will be necessary to root out the complex and fundamental causes of violent crime in our society.

ASSEMBLYMAN DICKEY: Does that conclude your statement, sir?

MR. SHOWELL: Yes.

ASSEMBLYMAN DICKEY: Any questions by members of the Committee? (No questions.)

Mr. Showell I am compelled to respond to your first three paragraphs. Frankly, I think they are rather a cheap shot at this Committee. You saw what happened in the vote just a few minutes ago, which I think is a demonstration of the desire of this Committee to hold a fair and impartial hearing. You will observe that two of the three members who supported the motion to suspend the public hearing are not candidates for reelection and it would be very unfair to say that they were politically motivated since they have nothing to gain for themselves, and those who voted against the motion, two of them are candidates for reelection. So obviously the decision was certainly not made on a political basis.

MR. SHOWELL: Mr. Chairman, my remarks were not

designed to impute any motive on behalf of the members of the Committee itself to gain any political advantage in the context of their own campaign for reelection. I am aware that two of the members are not standing for reelection.

ASSEMBLYMAN DICKEY: Actually three are not standing.

MR. SHOWELL: However many, this was certainly not a matter of moment or concern with the Association in making those comments.

I will not fall away from the observation, however, that there was a far more appropriate time for consideration of the views that have been expressed today and those yet to be expressed.

ASSEMBLYMAN DICKEY: When was that, sir?

MR. SHOWELL: Last Spring when the bill was in the process of rather extensive amendment. The form of the bill which we now have, Assembly Reprint, is a form of printing which literally on the face of it is what is referred to as a marked-up bill. Commonly that would indicate that the Committee had concluded its deliberations. It is generally recognized, again on the face of it, as a bill that is prepared to be voted out and acted upon by the Assembly.

I think I have some question in my own mind -- and I must commend you, as the previous testifier acknowledged, and I will too -- but I think it was up to the Chairman, and he did, to act properly to continue the hearing. We will not know, I suppose, today what the vote would have been in terms of releasing the bill. Clearly, there were at least half of those present who were prepared to do so.

ASSEMBLYMAN DICKEY: I just want to clarify one thing. The amendments were not prepared until very recently. They were prepared by our staff, printed this summer and distributed. So they were not available

last spring for consideration.

MR. SHOWELL: And the Committee was not considering those amendments that have been made last spring --

ASSEMBLYMAN DICKEY: They were not.

MR. SHOWELL: (Continuing) -- or at any time since, up to publication?

ASSEMBLYMAN DICKEY: No, they were not.

MR. SHOWELL: In other words, the amendments were made without consideration of the Committee?

ASSEMBLYMAN DICKEY: Oh, yes, the Committee directed our Committee counsel to prepare these. We have had them. We have not had any public hearing on them until today. I say, sir, that the comments by your Association and the others that made it are cheap shots against this Committee.

MR. SHOWELL: Well, I do not subside in the face of your objection, Mr. Chairman. I am sorry to say.

ASSEMBLYMAN DICKEY: O.K. Thank you very much.

Mr. A. Howard Freund, American Party candidate for Governor.

A. H O W A R D F R E U N D: I would like to thank the Committee for having the wisdom to allow all of the speakers to be heard since I am sure there are many different viewpoints than you might have heard this morning. One of my regrets is that enough of the media did not stay to hear the other viewpoints, which leads one to believe that maybe certain people use the various hearings as a forum.

I am the American Party candidate for Governor of the State of New Jersey. Last year, I was the spokesman of the American Party for Governor Wallace for the Presidency. I was also the party candidate for the United States Senate and I polled 41,000 votes. So there are some people here in the State of New Jersey who do agree with many of the views that I propound.

On behalf of the American Party and myself, I

would like to thank the Assembly Judiciary Committee for allowing me to express our views on capital punishment.

The discussion of capital punishment cannot just take into account punishment since the makeup and structure of the court system is of equal importance. It matters little if we have capital punishment, which we favor, if the courts do not impose the penalty. I suggest as a first step that our courts be responsive to the wishes of the people and not the psychiatrists, psychologists and sociologists who excuse murder, rape and looting as something we should accept as a penance in a free society.

The Court House in Elizabeth has a sign above it which says, "VOX POPOLI. . . VOX DEI". I believe that the term, "the voice of the people is the voice of God," is more true today than ever before, and that we must listen to the people. Accordingly I believe that all judges should be elected, and stand for re-election after a reasonable period of time. The only exception I could envision would be the State Supreme Court where judges would have to stand for reconfirmation after a reasonable period of time. Gentlemen, the people are fed up with a court system that puts criminals back on the street before the victim has recovered.

I believe prisons should not be country clubs and I suggest they all be on islands and no rehabilitation in local communities like the Newark House in Newark where 50 prisoners are housed in a local community with an expensive staff of 14. Regarding prisons, I would put rapers with rapers, muggers with muggers and some kid who took a number with others like him or with other non-violent criminals. I left out the murderers since there won't be many around if you listen to the people.

I believe pre-meditated murderers should receive capital punishment regardless of who they murder. I also believe that capital punishment should be given for



those who commit any crime in which the victim dies, whether it be an accident or not. Capital punishment should be given to any pusher of 1 ounce or more of heroin, cocaine or morphine. Anybody of legal age who sells narcotics to a minor whether he or she be an addict or not would be subject to the death penalty at the discretion of the court.

Since justice delayed is justice denied, I believe all cases should be resolved and punishment meted out within 12 months.

The Congressman mentioned something this morning about Senator Kennedy having been murdered. He was probably referring to Sirhan Sirhan. But I wonder if the courts would really check into the background of some of the people who do the murdering. A man like Sirhan Sirhan was trained in a communist assassination school in Syria, just like Oswald, one of the team who was part of the assassination of President Kennedy. He was also trained in an assassination school.

The candidate I ran with last year, Governor George C. Wallace, was shot down in Maryland by a man who was identified at four SDS meetings, which is a communist-front group. The information was verified by the Milwaukee Police Department. Tim Heinan gave this information out. Congressman John Schmitz gave it out to the media. Yet most of the media in the United States did not cover it.

There is much truth that doesn't get to the people. Right now we read about U.S. Attorney Beall, the man who is trying to make up his mind what he wants to do with Mr. Agnew, saying that if the appeal on Mr. Bremer from the State court holds, that the Federal government would consider dropping the case completely against the man who attempted to murder Governor Wallace.

This is the kind of justice we have in America today and I think the American people are completely fed

up with it.

You have Huey Newton and Bobby Seale. Huey Newton killed a police officer, Officer Frye, who is six feet under now. He is one of the founders of the Black Panther Party. You turn on your radio right now and you will find the other partner of the Black Panther founder, Bobby Seale, on WMCA. He is hosting the program all this week.

You have Angela Davis. Why doesn't anyone check the background of an Angela Davis? She is a communist - shot a judge down.

We have a funny saying in the conservative movement, and I am part of it, that the best definition you will find of a conservative is a liberal who has just been mugged.

Those are our views. I am sure you probably get this from the people too. I know I do in going around the State. And I would welcome being questioned on any of the things that I have said.

ASSEMBLYMAN DICKEY: Any questions?

ASSEMBLYMAN DAWES: Where do you live?

MR. FREUND: Roselle Park in Union County.

ASSEMBLYMAN DICKEY: Mrs. Klein?

ASSEMBLYWOMAN KLEIN: No, Mr. Chairman. But I think just to set the record straight we ought to make it clear that Angela Davis did not shoot anybody and she was found innocent of conspiracy.

MR. FREUND: She provided the gun.

ASSEMBLYWOMAN KLEIN: But her trial was held, sir. I think in the United States, no matter how we feel about crime, we still abide by the idea of innocence unless proven guilty. Once a trial has been held and a person has been acquitted, there is no further use in using that as a demonstration of guilt in public testimony.

MR. FREUND: I think this is what this hearing is all about. If you took that question, Mrs. Klein, to the American people and asked the American people if they

believed that Angela Davis was implicated and was in part responsible for that judge losing his life, I think you would find that the American people would feel that she was just as guilty.

ASSEMBLYWOMAN KLEIN: I would have to suggest to you, sir, that if the American people are not interested in trial by jury and in giving some credence to a case that was tried over an extended period of time by a jury in California, at great cost, then we could abolish the entire system of justice and just have somebody, perhaps you, making a decision as to who is guilty and who isn't guilty.

MR. FREUND: Well, I am suggesting corrections in here to make the court system more responsive to what the people want and not what the technicalities and what possibly the people who are the "social do-gooders" who are trying to excuse mahem, murder, rape and what have you, in a free society, want.

ASSEMBLYMAN DAWES: I just have to comment on that part. Mrs. Klein and I have been going at it, but I have to say this time I agree.

You are trying to say here, from that point, that after a trial is completed, the American public is still judging. They are judging what they read in newspapers. This is what I object to as a public official. You are a public official - maybe you have never been elected, but you have assumed a position in your own party. Trial by the newspaper, what people read, that is what is forming public opinion today. I still say that the courts are the best place and the only place where a trial should be held and when a person is found not guilty by his peers, he is found not guilty.

You now say, well, does the public still believe it? They may believe it, but it is only because it is the way the newspapers have slanted the news they reported, whether they slanted it to you or to me or anyone else. It

is not proper responsive reporting and that's why we have the problem of people not believing the courts and not believing what is being done in government today because of what reporters are saying we are really doing.

I'm sorry, but I had to comment.

MR. FREUND: It will be interesting to see what is in the newspapers tomorrow about these hearings.

ASSEMBLYMAN DAWES: Yes.

ASSEMBLYMAN DICKEY: Any questions, Mr. Keogh-Dwyer?

ASSEMBLYMAN KEOGH-DWYER: Just one comment, Mr.

Freund: You talk about judges being elected or re-elected. That really brings the judicial system back into politics and it is going to be a matter of how much money a fellow can spend or how popular he is whether he is re-elected, even though he may not be a very good judge. Wouldn't that pose just as much danger to your movement?

MR. FREUND: I would say that a judge today would probably be as dependent upon elected politicians for his appointment. I would rather have a young man or any man or woman, excuse me, be elected to the position and they would be judged by the people by their decisions and not by anybody else. The people would be supreme in the judgment.

ASSEMBLYMAN KEOGH-DWYER: But is the electorate qualified to determine the qualifications of a man to be a judge?

MR. FREUND: This is a government by, of and for the people in my view. I have more faith in the American people than I do have in their elected representatives today, I am sorry to say, at all levels of government.

ASSEMBLYMAN KEOGH-DWYER: Thank you.

ASSEMBLYMAN DICKEY: Thank you very much, sir.

Mr. Philip Yacovino, President of the State Patrolmen's Benevolent Association.

P H I L I P     P.     Y A C O V I N O:     My name is Philip P. Yacovino. I am President of the New Jersey Policemen's Benevolent Association.

Thank you very much for your kind invitation to speak on S-799, a proposed death penalty measure prescribing sentences for murder in the first, second and third degrees. As president of the 17,000-member New Jersey State Policemen's Benevolent Association, I have endorsed several capital punishment proposals on the state and Federal level. After careful consideration of S-799, it is the opinion of the membership that this legislation should be approved and made into law as soon as possible.

Crime in New Jersey is on the rise, and violent crime in the Garden State --- in both the big city and less urbanized areas --- has reached startling proportions in recent years. Law enforcement authorities last year investigated 27,577 incidents of violent crime, 481 murders and non-negligent manslaughters, 1,243 forcible rapes, 15,478 robberies, 10,375 aggravated assaults, and many thousands more of non-violent crimes. The City of Newark alone realized an astounding 148 murders and non-negligent manslaughters and an additional 44 manslaughters by negligence. There were 325 rapes, 4,788 robberies, and 2,583 aggravated assaults.

Murder and other violent crimes are not restricted to the state's larger communities. Tiny Winslow Township experienced two murders and non-negligent manslaughters last year, Weehawken, 1; West Milford Township, 2; Elmwood Park, 2 and Westfield, another 2. These are simply examples.

The Department of Justice of the Federal Bureau of Investigation tells us that the number of murders in all of the United States increased by five per cent from 1971 to 1972. There was a total increase of 53 per cent since 1967 and last year there were 8.5 persons murdered for every 100,000 residents. In the Northeastern States, which includes New Jersey, the murder rate jumped by seven per cent over 1971 with most of the crimes committed by the use of firearms. Nationwide, 66 per cent of the homicides were committed with guns --- 54 per cent

of these with handguns which have become so readily available in recent years. The Northeastern States, again including New Jersey, reported the greatest use of knives or other cutting instruments with three out of every ten murders being committed with this type of weapon.

There are many falacies about why murders are committed. Many believe that most homicides are committed during robberies and other acts of criminal activity. But, again, statistics indicate otherwise. The circumstances for murder range from family arguments to felonious activity. Criminal homicide is largely a social problem which is beyond the control of the police. In 1972 approximately one-fourth of all murders resulted from spouse killing a spouse. The remainder were parents killing children and other related incidents. Felony murders such as killings during robberies, sex motives and gangland slayings constituted 27 per cent of all murders last year. Another seven per cent resulted from so-called "love triangles."

Based on reports submitted by law enforcement agencies, 11 per cent of all persons arrested for murder were 18 years old and 44 per cent were under 25. Between 1967 and 1972 the nation experienced a 97 per cent increase in the number of persons under 18 years of age arrested for murder. The increase for adult murder arrests was 57 per cent.

Out of the 71 per cent of all adults arrested and prosecuted for murder in 1972, only 41 per cent were found guilty as charged while 23 per cent were convicted on a lesser charge. The remaining 36 per cent won their release by acquittal or dismissal.

Of these murders, it should be pointed out that 112 law enforcement officers were killed in the line of duty last year. During the 10-year period of 1963-1972, 786 policemen died in action, an average of 79 a year! And the statistics increase. In 1963 there were 55 officers killed; 57 in 1964; 76 in 1967; 86 in 1969 and 126 in 1971.

This year thus far New Jersey experienced three deaths of law enforcement officers --- two municipal, one a chief of police, and one state trooper. Officers have been ordered to be more alert while making the most routine investigation or arrests.

But we must not discount the fact that between 1968-1972 a total of 63 policemen were slain from ambush. In lesser crimes, 14 were killed during traffic stops in 1972, five while investigating suspicious persons, 15 while responding to disturbance calls, two while transporting or otherwise engaged in the custody of prisoners and two more while handling civil disorders.

Over 100 of the police deaths last year resulted from the use of firearms, 74 by handguns and 34 by rifles and shotguns. Others were knifed, bombed and run over by cars.

To further point out the urgency for capital punishment in New Jersey and in all other states, one must simply look at more statistics. During 1963 and 1972 when 796 police officers were slain in the line of duty, 76 per cent of those arrested and charged with the murder had prior arrest records for criminal charges. Forty-two per cent had been arrested for violent crimes such as murder, rape, armed robbery, aggravated assault and other related activities. Sixty-one per cent of those who had previously been convicted on criminal charges were on parole or probation when they were involved in the murder of a police officer. Another 12 per cent had prior arrests for narcotics charges and nine per cent had prior arrests for police assaults.

Now let us look at the assault rates of policemen. During 1972 law enforcement authorities in the United States experienced approximately 61,800 assaults, or 15 cases for each 100 policemen! In 39 cases out of each 100 assaults, the injuries were serious and I believe these assaults upon law enforcement officers results from the prevalent attitude of disrespect for the law and the knowledge that stiff jail sentences and the death penalty for those persons convicted of killing officers is not a reality today.

In conclusion, let me say that I can quote statistics from any number of sources. The only way to stop these senseless killings of law enforcement personnel and civilians is capital punishment which would act as a major deterrent to all types of crime. I am not saying, electrocute all criminals, but I am advocating the arrest, conviction of all persons found guilty

of slaying any human being - be the victim a policeman or a housewife - and, after all legal roads are traveled, the elimination of the convicted murderer from our society.

The death penalty to some segments of our society may be an inhuman method of justice. But the murder of innocent men, women and children is also inhuman and, therefore, as President of the New Jersey State Policemen's Benevolent Association, I urge the Assembly and Senate and prevail upon the Governor of the State of New Jersey to pass into law this proposal that would return capital punishment as a deterrent to not only murders, but possibly to many other types of crime.

I am going to make another statement that I jotted down after hearing what happened last night.

The New Jersey State PBA is tired of waiting for a decision to be reached before the death penalty is restored. Must we, therefore, seek justice in the streets before something is done about the senseless killings of police officers and civilians are brought to a halt? Just last night another police officer in Jersey City was murdered over a minor traffic violation. How many more of us have to be murdered before something is done about it?

If the person who pulled the trigger knew he would fry in the electric chair, I wonder if he would have committed the crime?

No statistics will show us how many murders would not be committed if the death penalty was imposed. The ultra-liberals and bleeding hearts complain to execute a convicted murderer is cruel and inhuman punishment. How about abortion where an innocent child's life is taken without the benefit of a trial by jury. Is that not cruel and inhuman, especially when the child is not accorded the benefit of a trial by jury?

Yet a murderer is accorded a trial by jury before he is sentenced. No one cares about the victims or the families of victims that were murdered. Once a murderer



is executed, he will never live to kill again.

Thank you very much.

ASSEMBLYMAN DICKEY: Thank you very much, Mr. Yacovino.

Any questions by members of the Committee?

(No questions.)

Thank you, sir.

Mr. Robert Clement, Socialist Labor Party candidate for Governor.

R O B E R T     C L E M E N T:     Mr. Chairman and members of the Judiciary Committee: As a candidate for Governor on the Socialist Labor Party ticket, I am unequivocally opposed to capital punishment in this State, and indeed in the Nation. There have been many emotional appeals made to the contrary and many of them have called those of us who are so unequivocally opposed "bleeding hearts," "liberals," "ultra-liberals," "communists," etc. I disassociate myself from being lumped with these individuals. I am opposed as a Socialist, as a genuine Socialist.

I am aware, of course, that there are politicians in this State, and at least one, a candidate for Governor, (guess who?), who are in favor of it. The reasons attributed to them is that they believe the people of New Jersey are for it and they feel that if they take what they consider a popular position, it would be to their political advantage. This is about the shabbiest reason that anyone can have for being in favor of the death penalty or for any other issue for that matter. Political spokesmen are supposed to influence public opinion, not be swayed by it, especially when it is so wrong.

In contrast I might say that the Socialist Labor Party never compromises truth to make a friend, never withholds a blow at error for fear of making an enemy.

This is especially true with a measure like capital punishment, one of the most cruel and inhuman measures ever devised by man. In many cases, murder is

committed by individuals in a fit of passion. They are usually victims of a social system that drives them to it. Capital punishment, on the other hand, is calculated and deliberate. It is generally limited to the poor, as Stanley Van Ness so well pointed out earlier today, and has been extensively used as a class weapon against workers in order to instill fear in them.

The Supreme Court was right when it called it "cruel and unusual punishment" and therefore declared it unconstitutional. Since the experience of mankind has been that capital punishment is not a deterrent to crime, despite what some emotional individuals have said here today, one would think that the Supreme Court's decision should have been the occasion of universal gratitude for relieving the conscience of man from the further commission of such uncivilized conduct as legal murder. Instead, we note that those who speak loudest about "law and order" are the most vehement in advocating changing the law when the law is interpreted against their particular concept.

Of course, they have a right to their opinions, just as the Socialists have or, at least, I hope they have. However, one would hope that in advocating changes in the law, they would travel on the high road of civilization rather than try to drag us back to savagery, as has been advocated time and again today.

As a candidate for Governor on the Socialist Labor Party ticket, I believe the best way to solve the problem of murder is to change the social climate that produces it. Socialism would bring about the necessary favorable climate. Thank you.

ASSEMBLYMAN DICKY: Thank you very much, Mr. Clement. Any questions? Mr. Wallace?

ASSEMBLYMAN WALLACE: Yes, I have a question.

Mr. Clement, something bothers me and it has been bothering me all day. I constantly hear this phrase "cruel

and unusual punishment." It is principally used by the advocates of deterrents of capital punishment.

Do you ever think of the cruel and unusual punishment that is subjected on the people who are killed and murdered by the criminals that are walking our streets today?

MR. CLEMENT: I certainly do. I feel sorry for all of them. The point is that capital punishment does not deter this.

Incidentally, the Bergen Record of Hackensack yesterday had something very useful to say on that subject and I suggest you read it. It is entitled, "The Capital Case." This is what they have said about the deterrent value of capital punishment as we have experienced it to date.

ASSEMBLYMAN WALLACE: Just a moment.

MR. CLEMENT: Just two sentences.

ASSEMBLYMAN WALLACE: Mr. Clement, I am really not interested in hearing that because I have heard that before.

MR. CLEMENT: I am sorry you aren't. That is the answer actually. The answer is that it has not deterred crime. I feel as sorry for these victims as anybody else does.

ASSEMBLYMAN WALLACE: Don't you think the State has a right to take some measures against these criminals?

MR. CLEMENT: Oh, yes, they can take measures. But I say that capital punishment is not that measure. Others have stated other ways to do it. I say, no matter what the State does, it is not going to change the matter. You are still going to have these murders until you change the social climate that produces them. I think I have answered that and I tried to make it as brief as possible.

ASSEMBLYMAN WALLACE: I understand that part of it very well. Of course, it is a social problem. I know it is an economic problem too. But I still don't feel

that we should be subject to this cruel and unusual punishment treatment. While we are not talking about the people - we are talking about the criminals - we are saying this is unusual and cruel. But how about the people who are victimized? That is the part that I cannot swallow. Innocent people are being killed and murdered on our streets and we don't say as victims that their punishment is cruel and unusual. We don't say that. We say we are going to take this man and give him some punishment and it is cruel and unusual. I don't see that. I can't understand that.

MR. CLEMENT: I am sorry if you can't see it. As I said before, I feel sorry for the victims too. But you are not going to bring them back to life by continuing this cruel treatment.

As far as this cruel business, I think that that is the experience of mankind.

Talking about popular opinions, incidentally, popular opinions change. Politicians try to find out what the popular feeling is and then they take that side. Not very long ago when the Supreme Court did rule it unconstitutional, there were many people who were relieved about it and the sentiment was against capital punishment. Now it has swung about slightly due to rabble-rousers who use this law and order business. When they say that this is the most popular subject - the statement was made by either Congressman Sandman or Assemblyman Imperiale, I don't remember which, that capital punishment was on everybody's mind - this is an indication of how unaware they are of the pulse of the people. The people are not talking about reinstituting capital punishment. I think that the primary issue the people are thinking about is the high cost of living and inflation, not this business of capital punishment.

I say that the rabble-rousers have tried to create

the impression by talking as loud as they do that the vast majority of people are in favor of this, and I disagree. Mr. Sandman and Mr. Imperiale may have felt the pulse of the people. But I also feel the pulse of the people and I do not get that indication that the people are so hot and bothered about reimposing something that we have already gone through, a system which I think humanity has decided is cruel and inhuman, which actually, as I said before, is a form of savagery. I do not think that we should go back to the savagery that has been committed in the name of so-called law and order in the past.

ASSEMBLYMAN WALLACE: I think, Mr. Clement, when we stop the savagery on the streets, then we can get back to being more civilized and then remove capital punishment. Until we can have a better society than we have at the present time, I think there is no doubt that we must in our laws start to bridge the gap between the relaxation of our laws and the punishment that we should subject criminals to.

It is my feeling, not my personal opinion, although it happens to be my personal opinion, from the people I have spoken to in my constituency that they want capital punishment brought back to stop crime in the street. They have told me that without exception.

MR. CLEMENT: Yes, emotional people will say that.

ASSEMBLYMAN WALLACE: They are not emotional people.

MR. CLEMENT: I do not think that you can neutralize savagery with savagery. I think that there is a better method. I think you are going to continue to have savagery on the streets as long as the social climate creates it. This is the crux of the matter. It goes right back to that. You recognize that it is social and economic.

ASSEMBLYMAN WALLACE: We will not stop savagery by patting them on the head or slapping them on the back.

MR. CLEMENT: I agree with you. Let's not do it. Let's change society and change the climate that produces the savagery on the streets.

ASSEMBLYMAN KEOGH-DWYER: Mr. Clement, supposing you were elected Governor of New Jersey on the Socialist Party ticket, how soon would you change the social climate so that our women, children and police officers could walk the streets without fear of being killed?

MR. CLEMENT: I do not believe that my being elected as Governor of New Jersey is going to change that climate. There has to be a sentiment for socialism to begin with. If I am elected Governor of the State of New Jersey, it means that the people are ready for it. This, of course, is an "iffy" proposition. If the people are ready for socialization, it means they have organized into a new form of government, an industrial form of government instead of a political government.

If under those circumstances - it is, of course, an "iffy" proposition - but if I were elected, it could happen very quickly. It is hard to say how long it is going to be because my only function on being elected Governor would be to turn over the rules of government to the industrial form of government, in which case the social climate that I was talking about where you would remove the "dog eat dog" concept that is existing today into a system of cooperation and brotherhood would come about. Then I believe in a very short period of time this problem would be solved.

ASSEMBLYMAN KEOGH-DWYER: How would you specifically resolve it? You must have certain plans or certain avenues that you would pursue to right all this, not just standing on the fact that you need social climate change. You must have certain ideas about what we are doing wrong, what the State is doing wrong.

MR. CLEMENT: The thing that we are doing wrong is that this is a profit system that we are living under today and it is a "dog eat dog" system. And the "dog eat dog" system incidentally creates the savagery in the streets that has been mentioned before. If we remove that method of producing, if we produce for use instead of for profit, you will eventually change that -- not eventually because it will not be very long before you will change that climate that produces the crime that we all are opposed to.

ASSEMBLYMAN KEOGH-DWYER: Thank you.

ASSEMBLYMAN DICKEY: Can you bring about that economic change if you are elected Governor?

MR. CLEMENT: By an elective government?

ASSEMBLYMAN DICKEY: -- if you were elected Governor.

MR. CLEMENT: The program of the Socialist Labor Party calls for this being done democratically by electing candidates of the Socialist Labor Party. This will be the democratic method. It definitely would be democratic because it is only when the majority of people are in favor of it that we can possibly do it. If we do not have the majority of the people, we cannot have it.

ASSEMBLYMAN DICKEY: Do you conceive that the state could change into a socialistic state, as you have described it, without bringing it about throughout the entire nation?

MR. CLEMENT: No, I do not think so. I think it has to be throughout the entire nation. But to get back to the other question as to what I would do if I were elected Governor, it is inconceivable that I would be elected Governor unless the people throughout the country have the sentiment for it. It is not going to be isolated in the State of New Jersey. However, the movement can be started in a state like the State of New Jersey where we are one of the two states in the nation having a

general election. If a majority of the people vote for me, then I think the people in the rest of the country will sit up and take notice and listen to what we have to say. Then, of course, it could happen in the nation.

ASSEMBLYMAN DICKEY: What is your occupation?

MR. CLEMENT: I am a bookkeeper.

ASSEMBLYMAN DICKEY: Are you employed by somebody?

MR. CLEMENT: Yes, I am presently partially employed.

ASSEMBLYMAN DICKEY: Or are you in business for yourself?

MR. CLEMENT: No, I am employed by somebody else.

ASSEMBLYMAN DICKEY: Thank you very much.

I understand that the Americans for Democratic Action have left a statement for the record. With the consent of the Committee, we will include their statement as part of the proceedings today. Is there any objection from any member of the Committee? (No objection.)

(Statement submitted by Americans for Democratic Action can be found beginning on page 126 A.)

We have submitted to us also a letter from Hon. Harry B. Crook, Jr., Mayor of Avon-by-the-Sea. With the Committee's consent, we will make the letter a part of the record. Any objection? (No objection.)

(Letter from Harry B. Crook, Jr., Mayor, Avon-by-the Sea, can be found beginning on page 124 A.)

Mr. Bedau from the American Civil Liberties Union.

D I N A H S T E V E N S: My name is Dinah Stevens. I am the Legislative Director of the American Civil Liberties Union of New Jersey.

ASSEMBLYMAN DICKEY: Do you have your legislative badge on today?

MS. STEVENS: No, but I have it with me.



ASSEMBLYMAN DICKEY: Will you please wear it.

(Ms. Stevens puts on her legislative badge.)

MS. STEVENS: We are deeply disturbed by the timing of this hearing. We feel very strongly that discussion of reinstating institutionalized murder should take place in the most objective and dispassionate setting possible.

We do not feel that less than two months before a gubernatorial and legislative election can offer that setting.

Approving institutionalized murder sets the worst possible example and conveys the worst possible attitudes. How can one man coldly and brutally - and it is brutal - kill another without himself being brutalized. Is not the society which approves this murder brutalized also? There is a human desire for revenge. But I don't think any of us would consider this desire among men's better instincts.

We ask you as responsible public officials to think long and hard, to be objective and dispassionate, before you restore this desire for revenge to the statutes of New Jersey in the form of the death penalty. We ask you to acquire proof positive that restoration of capital punishment will in any way enhance the protection of the public.

We have provided for each of you - Mrs. Donath has a set - a package of information, a sampling of the overwhelming preponderance of evidence that the death penalty is not a deterrent. I recommend most highly the Case against Capital Punishment by the Washington Research project, which unfortunately was written before the Supreme Court decision. The package also includes testimony by Attorney General George Kugler and the then Commissioner of Police of New York City Patrick Murphy against the death penalty.

Dr. Hugo Bedau is one of the top ---

ASSEMBLYMAN DICKEY: Before you introduce him, are you ready to submit to questions?

MS. STEVENS: Yes, I am. This is a package deal.

ASSEMBLYMAN DICKEY: Yes, I understand, but you have made some statements on your own now as a lobbyist.

You say that this Committee now is set upon revenge. Will you explain why we are set upon revenge?

MS. STEVENS: Mr. Dickey, I didn't say that the Committee was set upon revenge. I will requote. I said that there is a natural human desire for revenge and I request this Committee to think long and hard, to be objective and dispassionate, before you restore this desire for revenge to the statutes of New Jersey. We ask you to require proof positive that the restoration of capital punishment will in any way enhance the protection of the public before you do so.

ASSEMBLYMAN DICKEY: Why can't we be just as fair and dispassionate and objective today as we could any other day of the year?

MS. STEVENS: Because you are all in the middle of campaigns for reelection.

ASSEMBLYMAN DICKEY: No, we are not. If you look at the Committee, there are only three seeking reelection on the panel today.

MS. STEVENS: And how many of the people who testified are seeking election?

ASSEMBLYMAN DICKEY: I think the majority are not as far as the witnesses are concerned.

MS. STEVENS: A campaign period is not the best known period for quiet, cool and objective observation.

ASSEMBLYMAN DICKEY: Shall we shut down government merely because we are having an election campaign?

MS. STEVENS: Mr. Dickey, I am not saying that you are out to create a public furore. I am saying I do not think this is the best time of the year to hold this

hearing.

ASSEMBLYMAN DICKEY: Now, Miss Stevens, the Committee amendments were only recently prepared and printed. This is the first opportunity to let the public give us the benefit of their opinions about these proposals. So why is it untimely? You, or at least your organization, and some others have been taking cheap shots at us about the timing of this hearing. Why is it so untimely?

MS. STEVENS: I don't think the shots were cheap. I think November would have done fine.

ASSEMBLYMAN DICKEY: November would have been just as well? Well, we wouldn't have much time to conclude our work then, would we?

MS. STEVENS: I think if serious consideration was put into what is being said in one day, that in the three weeks that will be left to the Legislature you could conclude your work.

ASSEMBLYMAN DICKEY: Do any other members of the Committee want to ask any questions?

ASSEMBLYMAN DAWES: Mr. Bedau who is going to speak and whom I am not going to hear because I have to leave - is he the gentleman who wrote that book that someone else talked about earlier?

MS. STEVENS: Yes.

ASSEMBLYMAN DAWES: Would it be possible for you to supply me with a copy of it if it isn't too big? Or is it too big? As long as, much to my dissent, we are going to have time to study, I might as well read something because I am not running.

MS. STEVENS: Can you tell me which book was quoted? He has written several pieces on the death penalty.

ASSEMBLYWOMAN KLEIN: It was Mr. Stagg's testimony.

ASSEMBLYMAN DAWES: It was mentioned by Rev. Stagg.

MS. STEVENS: I will find the work and make sure you get a copy of it, Mr. Dawes.

ASSEMBLYMAN DAWES: I might as well read it, right?

MS. STEVENS: Right.

ASSEMBLYMAN DAWES: I will reopen my mind.

I had something else. I don't know anything about the shots, but I just feel that all of the candidates should at this election address themselves to this issue. As to whether or not we should hold the hearing now, I don't know. But I intend to ask as a citizen the various candidates how they stand on this. I don't think there is anything wrong with this being one of the issues of this campaign or any campaign. Sure, cool heads, etc., that could be applied to all legislative matters that we discuss here where the heart and the mind are also involved and I think this gives the candidates a wonderful opportunity when they are campaigning of discussing with the people who are going to vote their feelings on this. I think it is a very appropriate time for them to get a sampling of the public on this.

MS. STEVENS: I am sorry that that became the overwhelming message of what I said. I didn't intend it to be.

ASSEMBLYMAN DAWES: I know you didn't.

MS. STEVENS: I think in any forum where the candidate and his or her constituency, either one or both, decide on a topic that they wish to explore with each other, that is a perfectly appropriate topic.

I don't necessarily think that public hearings should be held on the most delicate perhaps of subjects - and this is one which does relate to life and death and, therefore, I think qualifies as that - during the time when passions are perhaps at their hottest or approaching that point on both sides of that discussion.

ASSEMBLYMAN DICKEY: Mr. Keogh-Dwyer, any questions?

ASSEMBLYMAN KEOGH-DWYER. Yes. Miss Stevens, do you really think that this hearing is for political

expediency? Do you really deep down inside believe that?

MS. STEVENS: I didn't make that accusation. I simply said we were distressed with the timing. As I said to Mr. Dawes, I hope that does not become the overwhelming element either of what I have said or what Mr. Bedau will say.

I am distressed. I think that a delicate issue and a delicate timing are a potential problem. I am not castigating the Committee for this choice of time.

ASSEMBLYMAN KEOGH-DWYER: I have driven 105 miles to get here when I could have been with my constituents for election purposes or perhaps earning a living for myself. I have come down here because I think this issue is of paramount importance and the sooner it is resolved, the better. Why should we let this go on and on and on? We have to come to grips with this even though it is distasteful and there are arguments on both sides of the fence.

MS. STEVENS: I understand that, Mr. Keogh-Dwyer, but no action will be taken until November and whether it is November 11th or November 26th, I think is not a matter of great importance.

ASSEMBLYMAN KEOGH-DWYER: But if we wait until November 11th or 26th, then it may not be done during this session and put off until next year.

MS. STEVENS: That is true.

ASSEMBLYMAN DICKEY: All right, Miss Stevens, you may proceed with your introduction.

MS. STEVENS: Dr. Hugo Bedau is presently Chairman of the Department of Philosophy at Tufts University. He taught Philosophy at Princeton from 1954 to 1971. He is the author of "The Death Penalty in America," the previously-quoted book, and of more specific interest to this Committee, a Rutgers Law Review article called, "Death Sentences in New Jersey, 1907 to 1960." The cites for these are in the packet.

He has testified before numerous committees, including previous committees of the New Jersey State Legislature.

ASSEMBLYMAN DICKEY: Thank you. Dr. Bedau?

H U G O B E D A U: Thank you, Mr. Chairman and other members of the Committee.

If I may correct the record in one small respect, I was introduced as having taught at Princeton until 1971. That was a slip for 1961.

I don't have a prepared statement from which I will speak and I apologize to you for that. I may be more long-winded this way than if I had something written. And I have no difficulty with this Committee or this Legislature facing the death penalty issue at this time. In my experience in New Jersey and elsewhere in the United States, there is never a good time for discussing this issue. Every time is an appropriate time in my judgment if members of the government or a preponderate body of the citizenry is agitated around this issue. And that is evidently true in much of the United States today. And I think probably no more in New Jersey than in many other states.

I regret that I wasn't here this morning and earlier this afternoon. Living in Massachusetts and having students to teach, unlike some absentee professors, I have to come after my classes are over. So I wasn't really able to hear what others have had to say. I understand some distinguished people have been before this Committee today, including the two leading candidates for the office of Governor of New Jersey. I have had a chance to glance at some of the remarks that they have made but I haven't had a chance to study them. And I will resist the desire to ad lib and invent and attribute to them views that perhaps they don't hold in order to rebut them.

I want to try to deal with two or three things that may not have been presented to your Committee before

by others and I will be happy to answer any questions that you wish to put to me.

Throughout the bulk of 1973, I have been working under a grant from a foundation which has provided me the opportunity to organize and collect all the social science research that has been done on all aspects of capital punishment in the United States and it has also been a grant that has encouraged me and provided me with the opportunity to try to stimulate some research and to organize new research. Despite the wealth of information that you might think is available on this issue, the book that I edited ten years ago and other books that have appeared subsequently, there is an enormous amount of information that we don't have on a large number of questions of importance to people in your position and to the people generally.

I think within the next two or three years as this research proceeds that some of these questions will be answered. There are, however, studies that have been made of a lot of issues, some of which I have heard mentioned this afternoon, and it disturbs me that people will give testimony before this Committee apparently in ignorance of this information or blithely contradictory of it without ever mentioning it. Let me cite a case in point. One of the previous speakers this afternoon, speaking on behalf of police in New Jersey, as have his predecessors - and I have heard them in these chambers 15 years ago - insisted that we need the death penalty, we need to restore the death penalty in New Jersey, in order to make a policeman's job a little safer. The evidence that was given apparently for that conclusion simply consisted of statistics from the FBI that more policemen are being assaulted and more are being killed in New Jersey and elsewhere each year in the last few years. Well, there is no connection between the evidence

and the claim.

The issue has been studied fairly carefully at a time when we did have the death penalty in New Jersey, when we had it in New York and we had it in Illinois 10 to 15 years ago and when we did not have it in a few selected states, such as Michigan and Wisconsin and Rhode Island and a few others. And at that time the information was quite clear that there was no greater likelihood of a policeman being killed in a state that didn't have the death penalty than in a state which did.

The same kind of study has been made with regard to the safety of prison guards by looking at the rate of assault and killing upon prison guards in states which didn't have the death penalty and comparing it with the rates in those states which did. Once again, the information was not at all in favor of the doctrine of the unique deterrent power of capital punishment.

It is distressing for me to come and listen to just a few minutes of testimony this afternoon in September of 1973 that strikes me as being as ignorant, as prejudicial, as unhelpful, as misleading, as the evidence that I heard in this chamber in 1957 when much of this information either didn't exist or hadn't been published. It is a long time since 1957 and I am sorry that not all those who are testifying before your Committee have chosen to do their homework. I hope the Committee will do its homework and I hope this Legislature will too because the opportunity to spout doctrine about deterrents, to hold views about what does and doesn't deter is not so easy today as it once was if you have done your homework.

I think at the present time when the United States Supreme Court has solemnly judged 15 months ago that the death penalty is a cruel and unusual punishment, a rather heavy burden falls upon committees like yours and legislatures like this one if it is going to legislate in the interstices, in the gaps, of that decision. Where



are you going to get your evidence? You are certainly not going to get any from the state study commissions that have ever been conducted in this State. You know as well as I do that the State Study Commission on Capital Punishment reported in a very brief statement that its recommendation was for you as legislators to do nothing, pending further determination by the Supreme Court of what is constitutionally permissible in this area. That was their advice. They didn't back it up with 100 pages of study, etc., on their own. They were very thorough and patient in their study, I have no doubt, but the public record of their deliberations does not help you very much. But that was their advice.

There has never been a study commission in the State of New Jersey that has studied this issue in a helpful way for the Legislature or the Governor. Now unless this Committee is going to do a job that no other public body in the history of this State in this century has done, it seems to me you may very well be launching upon rather troubled and dangerous waters if you are going to try to institute capital punishment in 1973 after your State Supreme Court said in January a year ago and the United States Supreme Court said in July a year ago that it is unconstitutional. I am troubled by the ease with which members of this Committee raise old issues about sympathy for the victims, about worry about safety in the streets, and ignore the constitution of the United States. It is not a problem that is peculiar on the issue of capital punishment and I don't presume to lecture you because I know you are busy members of a legislature with a very difficult job on your hands in the best of circumstances.

Still I, being a former resident of New Jersey, most of whose children were born not far from where we are, feel rather strongly about what you in particular

as a legislative committee do on this issue because it seems to me that your opportunities and your responses here are particularly significant. As states go around the United States, I like to think that New Jersey and its legislature and its government is one which just doesn't follow the leader but from time to time indeed leads.

So I am concerned about the quality of the evidence and testimony that you have had served up to you and I hope that your wisdom will triumph over at least some of the inaccuracies and rather unhelpful things I have heard that have been delivered to you so far today.

I think you have a very difficult job in drafting legislation that will pass muster with the United States Supreme Court. Now that is a job presumably for the constitutional lawyers among you to cope with. This is a committee normally largely or exclusively of lawyers and this is your daily bread, not mine. I am no lawyer. But even if you solved that problem - and I am not convinced from the legislation that this hearing is devoted to that you have solved that problem-- but for the sake of argument say that you have solved that problem of drafting legislation that will survive the court test that you know it is going to get. What is the point of it? You have not only a technical legal problem that is very, very difficult, of drafting legislation that would be constitutional, you have a social problem. What is the point of drafting such legislation? What do you hope to gain?

If you leave demagogery to one side, if you leave quite apart from your deliberations the question of what the people in their ignorance want, what the people in their passions demand, and try to look at the connection between the punishment problem and the crime problem, try to look at the connection between capital punishment as a solution to a crime problem, then it is not clear

that you are in the right ball park at all, that you are solving the problem that agitates you and the public in general.

I take it that the problem that agitates us all is the problem of unsafe streets, not the problem of unsafe bedrooms. As the FBI has been telling us for over a generation, that is the most dangerous place to be in an American city, in your own bedroom with your own spouse, because those are the people and that is the place where most of the murders go on. We are not concerned about that problem here presumably.

The problem we are concerned about is the problem of muggings, of assaults, of killings of policemen, of murders of public employees, public officials, and the threat of these. At the Federal government level we worry about sky-jacking and things of that sort - these are the things that alarm us - the assassination of Presidents and attempted assassinations of presidential candidates. And I think we have every right to be worried about these problems.

What you are dealing with in this particular piece of legislation is a tiny segment of what you or some of you, certainly some of the citizens of New Jersey, believe is part of the solution, to increase the severity of the penalty and reduce the likelihood of the offense. If you can pass legislation or vote for capital punishment on any other ground, then I think your reasoning and your rationale are very different from that of the general public as I have observed it around the United States and New Jersey for many years. It is the belief that by increasing the threatened severity of the punishment, you will decrease the likelihood of the crime. It is not just a matter of vindictiveness and retribution for known identified killers. You know what the record on that is. It is a total failure.

If you will look at the record in this century in New Jersey of those who have killed and been convicted of first degree murder and then look at the total number of those who have been sentenced to death and executed, you will see that you have been getting around one out of fifty. So please, ladies and gentlemen, don't let yourselves and your colleagues in this Legislature believe for one moment that by reinstituting the death penalty, you are going to make history and for the first time in the history of Anglo-, European-, and American jurisprudence, you are going to provide a punishment in New Jersey that will in fact produce retribution and kill every murderer, because you aren't going to do it. The rest of the system is not going to produce that result. You are engaged in a fool's errand and history will teach it to you if you give it a chance.

The record in New Jersey is a disaster with regard to the attempt to use capital punishment as a device to secure retribution. It is a complete and unmitigated and unremediable failure. All talk about concern for the victims in the face of that fact is disgraceful.

So you are left with a prior point, that to institute a greater severity of punishment, you are going to reduce the likelihood of the crimes. On the whole that seems to me to be a principle that we all believe whether we should or not. We are taught it in a hundred different ways from the time we are children and we teach it to our children. The question is whether it is true. The question is even if it is true for some crimes and some offenders and some penalties, is it true for murder of policemen and the death penalty. That is the issue that you have to face.

Well, how do you solve the problem? What is the evidence you are going to look at? As we have already seen, you are not going to get the answer by listening

to the partisans on both sides of the issue and, of course, I include myself as a partisan. I make no secret of that. You are going to have to look at the best evidence we have. What is that evidence?

There are two kinds of evidence for you to inspect. One is the kind I have already mentioned. If you will go back in very recent American history and look at the jurisdictions side by side, like Detroit in Michigan without capital punishment for 125 years and Chicago with capital punishment ever since Illinois was in the Union, if you will look at them and compare, look at the evidence that has been published - it is easily available and is mentioned in the materials that we have put before you in this pamphlet - you will see that there is no difference in the rate of assault and the fatal assault on police officers, law enforcement personnel, in the abolition jurisdictions and in the death penalty jurisdictions.

I admit this is not conclusive. No compilation of social science evidence of this sort is going to be conclusive on the issue. But you have to face that fact and then see whether there is anything to weigh on the other side. And I submit that there isn't.

The other thing you have to look at, it seems to me, so far as you can, is the psychology of the people who are willing to do things like this in the first place. Most of us fancy that we are not very familiar with the psychology of brutal murderers. Never mind the bedroom and the kitchen, as I said before, where the real problem is, but we are not concerned with that problem. We understand what it is like to get angry and to lose patience and maybe to have a knife or a gun in one's hands. I think most of us as human beings understand that. That is not our problem. Our problem is the person who cruelly shoots a policeman just because he is a

cop, the person who not so coolly, but still deliberately, shoots a policeman in order to get away with an armed robbery. That is the kind of crime that we are concerned about.

Now what is the psychology of people who will do this? Well, it is not the psychology of people who are worried about what the punishment is because it is not the psychology of people who expect to get caught. If you don't expect to get caught for committing a breach of the law, even a grave injury like killing somebody, what does it matter what the punishment is? The problem is to be honest and faithful with the facts that seem to be the relevant facts.

On the one hand, there are statistics about assaults on police and prison guards and the general public. There the statistics really do support the argument that increasing the severity does not increase the deterrents.

Then take a look also, if you will, at the psychology of people who are prepared to commit the kinds of crimes that you despise. And that psychology is not the psychology of children intimidated by a teacher or a parent, afraid of a whack on the bottom or standing with their face in the corner or missing a trip to the swimming hole, or whatever the punishments are that teachers and parents dole out. Because that is the psychology of somebody who is caught before he has committed the offense, as it were. A child has no place to go but home when it is at home. A child has no place to go but back to school.

Criminals who are prepared to shoot gas station attendants and then policemen to get away do not have the psychology of a seven-year-old child or a forty-year-old professor who has no other line of work. That is not the psychology that is relevant. You have to be realistic in assessing the psychology of the people whom you would put to death if you had the chance. That seems

to me to answer the other question that you have to face, sketchily but in principle to give it an answer.

You have two problems on your hands. One is to draft legislation that will meet the constitutional test - and I am doubtful whether you have done it, but I am not your best witness, if I may quote from a famous American - I am not your best witness on that subject.

As to the second point, what is the point of trying to produce such legislation even if you can? There I think perhaps I can be of help and I have tried to review as briefly as I can what seems to me to be the salient points in the evidence.

There are many other things that need to be said, but let me just end with one.

Anybody who favors capital punishment in the United States today has got to do so on the basis of the demonstrated record of what it has been in our history. The record in New Jersey is clearer than in almost any other jurisdiction in the United States. We know more about capital punishment in New Jersey as it actually existed for 60 years than we do for almost any other state in the United States.

What is that a record of? It is a record of sporadic justice, of racially-discriminatory justice, of "catch as catch can" justice. It is a record, among other things, of a society that refused to have a mandatory death penalty 60 years ago and insisted on having a discretionary death penalty. Only now the Supreme Court of the United States says you can't have a discretionary death penalty. It is going to be unconstitutional.

The record is extraordinarily full and informative on New Jersey's history with capital punishment and I do urge if you haven't already studied it that you study it carefully because I think it teaches many sobering lessons.

It seems to me then that the most one can say on the issue of deterrents is that statistics will prove anything - we knew that before we got together today at this hearing - that the evidence isn't all in - we knew that also because the evidence is never all in - and, therefore, that it is still possible without being willfully ignorant or willfully bold to believe that the death penalty does deter. I concede that it is possible to believe it without being suspect as to one's sanity and one's sincerity. But then having settled your mind on that point, what is it you are going to produce when you inaugurate the new era of capital punishment in New Jersey? Well, my prediction is based upon the record. You will produce what you had and what you had may not have stunk in the nostrils of the gods, but it did in the nostrils of the Supreme Court.

I think the challenge you face in taking seriously the desire to do something about the crime problem, to exhibit some decent and humane sympathy for the victim, is a very, very daunting problem if the only thing you are going to try to use to cope with these problems is this symbolic issue of life and death, of capital punishment. Thank you.

ASSEMBLYMAN DICKEY: Thank you, Dr. Bedau.

Mr. Wallace, any questions?

ASSEMBLYMAN WALLACE: Yes. Mr. Bedau, I just have one question. I am rather overwhelmed by the tremendous presentation you have just made. In fact, you sound so convincing that I might say that you almost convinced me. However, I would just ask you this: Do you have a solution to the problem of our serious crime situation in the United States and, in particular, in the State of New Jersey, particularly in our larger cities?

DR. BEDAU: Let me begin by a frivolous response. If I did, I would probably sell my answer to the highest bidder instead of giving away my observations



as I am doing today. Because the person who has an answer to that problem is a person whose advice we all need to hear. But if I can be not frivolous, I would say this with great caution. First of all, I am told by some of the sociologists that I have been meeting with around the United States in the last few months that the evidence is already beginning to come in that the peak of the crime wave of the last 5, 6, 7, 8 years has subsided without by and large any reason or any one reason that they can put their finger on.

Criminologists and sociologists are not very comfortable with the fact that they are not able to explain and predict what is going to happen in the crime wave. They are not much better off than economists are with regard to the rate of inflation. The trouble is that the one hurts a lot more than the other when you are wrong. But, in any case, that is a bit of solace for us all and I pass it along for what it is worth. And the President, himself, as I recall, not many months ago used this same information in his own way, the implication being that the policies of the Federal government or at least of the Executive Branch of the Federal government or at least those policies that were recommended, whether they were enacted or not, have indeed had some useful effect, and perhaps they have.

First of all, the problem may not be quite as bad in the period ahead as it has been in the period just behind us, leaving everything else the same. To that extent perhaps we needn't be so acutely anxious.

But really to come to grips with your question, I really have to say that I don't have an answer for you. However, I have some partial answers, I think. Europeans, as one of the previous witnesses today indicated, if I can judge from the printed testimony, are constantly amazed when they look at the crime problem in the United States.

I have just been at a conference in Europe with criminologists from all over the world, in which this very point was once again made quite clear to the Americans who were in attendance at that conference. They just are amazed at the crime problem that we have.

It seems to me that in the last five or six years we have had a national education on why we have the problem that we do. To some extent, it seems to be inseparable from our history. Our history is a history of extraordinary violence. Most European nations conducted the kind of violence that we are familiar with in the colonies. We did it right here or our predecessors did it right here. We have a long, long history of this and it is constantly part of the daily bread of all of our children on television, etc. We eat, sleep and drink violence.

Those who are against violence outside the law are often, as I view it, among those who will perpetuate it under the law. The way you stop some kinds of problems is by being sort of slack with the bail system. If you don't like demonstrations outside the White House, you arrest everybody in sight. That strikes me as a violent response to an existing problem. What it helps to do, I think, is support and feed and reenforce the legitimacy of violence for the ordinary person who doesn't have much else in life and who decides to take the future into his own hands, whatever the law may be.

So I think our history helps explain why we have the problem that we do. If I am right about that - and I don't claim to be original in what I am saying at all - but if I am right about it, then it suggests that there is a very real problem about your question: What's the answer?

One of the previous speakers, as you know, had some very radical and far-reaching answers that most of the public in New Jersey probably have never heard of and would

reject if they did, even if those answers were correct. So I think there are severe problems.

I think having white police in exclusively black neighborhoods probably all other things being equal, aggravates the problem of violence rather than reduces it. But that issue has been faced in Newark and elsewhere in New Jersey some years ago.

I think blaming the victim for being a victim is part of the problem, not part of the solution.

So I think there are a lot of little things we can do and many that we have done which people like yourselves have supported, at least spent public money to do, to help cope with the problem of criminal violence. But I don't think there is any panacea. I despair myself, of any wisdom on the matter. I wish I could help more than I have.

ASSEMBLYMAN WALLACE: Thank you.

ASSEMBLYMAN DICKY: Any further questions by members of the Committee? (No response.)

Dr. Bedau, you repeatedly posed the question: What is the point of all of this? You very academically spoke of the psychology of the criminal. I recall that Justice Marshall said that there were six purposes conceivably served by capital punishment, two of which you seem to have dealt with. I will recite the six of them and see if you think there is any possible redeeming value in any of the other four.

You mentioned retribution and you discredited that. You mentioned deterrents and you said that that probably cannot be proven, that it is a deterrent, or at least the statistics are difficult of interpretation.

He went on to say that the third one might be prevention of repetitive criminal acts. That would, I assume, mean that we remove that offender from society.

Fourth, he said, encouragement of guilty pleas and confessions.

Fifth one that I don't quite understand, but he said eugenics.

The sixth one was economy.

DR. BEDAU: Well, if you are inviting me, as I take it you are, to comment on each of those four, I chose the two that seemed to me to be the most relevant in the light of the immediately prior discussion, not because I think the others are fraudulent or irrelevant or because the others in fact, if they are examined, will support capital punishment, but simply because I wanted to pick and choose by virtue of time.

I think these and other purposes of punishment are legitimate and that society has the right to take them into account, indeed the duty, in assessing the schedule of punishments to crimes.

I think the issue of economy, to take that one first, is unfortunately not in favor of capital punishment. It depends, of course, upon how you take into account what the economists call the externalities, as it were. The cost of the electricity that we used to use down the street when we executed naturally doesn't come very high nor does the cyanide pill and the sulphuric acid that they use out in California. But a person who is doing a cost accounting or cost benefit analysis of capital punishment and left it at that would be laughed out of court or anyway out of this room, I would hope. We have to take into account the administrative costs of the capital trial itself and of the policing of the special segregated sections of prisons in which capital offenders are held awaiting their execution. And nobody has ever really done an adequate job on this, I would want to admit. But it certainly looks as though the apparent strong argument that it is very expensive to keep people in prison versus very cheap to hang them or shoot them or gas them or whatever has merit. However,

it is really not that simple at all.

The issue of economy is not a simple one. It is one that I think troubles all of us because we don't like to think that matters of life and death are going to be settled merely on grounds of tax dollars, though I guess we all feel, certainly people in your position feel, that you ought to take this into account and give it some weight. I grant you that.

I am not sure I kept in mind all four of the points. With a little help from you, I will touch on each of them.

The other one that comes to mind is the first of the four that you mentioned, at least as I recall it, and that is the prevention of other offenses by the offender. I certainly would concede that capital punishment accomplishes that purpose superbly. I would say only two things:

If one is really concerned about using that use of capital punishment to prevent offenses, then one might be better off to kill people who commit armed robberies even if they don't kill anybody at all because they are likely to commit a murder in another armed robbery once they get out later. And the way our law and our society are set up, we are really not in a position to anticipate what people are going to do, and as it were, punish them in advance for that. So even though the death penalty works very well for those few who have been executed, it certainly doesn't work for the large portion of the criminal population that I think we all agree is a menace to society when they are released.

The other thing that I would say is that if you look at the actual record of parole in those states which don't have capital punishment in particular as well as states like New Jersey which historically have had it, you will find that the record of parole of murderers,

as I heard Homer Zink who used to be Chairman of the Parole Board in this State say in precisely this room 15 years ago - and he was at that time not opposed to capital punishment when he gave that testimony - that the record of parole for murderers in New Jersey was better than for any other class of offenders. That has now been established nationally through the national parole statistics that are published out in California by the National Council of Crime and Delinquency. That is the national picture as well as the picture both in abolition and death penalty states.

So while the death penalty will accomplish the purpose of preventing repetition of horrible crimes, it isn't really needed to accomplish that purpose, except in the very, very rare instance. Since you can't identify those instances in advance, you are confronted with never paroling anybody or executing everybody, and neither of those alternatives are going to be socially acceptable.

The eugenic argument is a curious one - it is an old one. That seems to be the idea that people who commit murder or other capital crimes are in their very genetic endowment somehow deficient and corrupt and, therefore, we sort of clean up the genetic pool of our society by eliminating these people and preventing them from procreating.

That is a theory that rests upon a doctrine of genes that I don't think has much to be said for it today. There was a brief flareup, you recall, a few years ago when criminologists discovered the XYY chromosome and they thought now they had finally found the crucial thing that makes a person a violent criminal. The trouble is that quite apart from procedural grounds that lawyers and constitutionalists would be interested in, there seems to be some question about the evidence.

I have left out one of the four. I have forgotten which one it is.

ASSEMBLYMAN DICKEY: That would be encouragement of guilty pleas.

DR. BEDAU: Oh, yes, the theme of plea bargaining. Well, this has certainly worked to some extent in New Jersey. There is no question about it. In my own experience the pleas of non vult and nolo contendere have in a few cases I know of - I certainly don't have any statistics on the point - apparently been induced by offenders who wanted to avoid the risk of capital punishment in the way in which a jury could impose it on them if they went to trial. But, of course, you can't leave it at that.

The story about plea bargaining is something where I suspect one of your former witnesses, the Public Defender, Mr. Van Ness, might very well have had some interesting things to say, based upon more acute day-to-day experience in a court room than I have ever had.

I guess all I could say is this, that the importance of plea bargaining is entirely an administrative convenience. That is all there is to it. It is simply a way of saving the taxpayers' money and allowing the administration of the courts to proceed because if every case went to trial, we would have time for nothing else in society but criminal proceedings. So this is a consideration in which society has an interest and wants legitimately to look to see how it can serve that interest. But that a person's life should be put in jeopardy as a convenience to society, that I think strikes all of us as a little strange.

We want something in addition to be said on behalf of capital punishment, rather strong, it seems to me, before we are prepared to say that sure it helps prosecutors, sure it saves time, the guy is guilty anyway so let's not go through all this, but we need the threat of capital punishment in the court room or in the judge's chambers to get that plea. I am uncomfortable about a society such as ours which has so much money and so

much time for so many things, but apparently doesn't have enough time for criminal justice where life and death are involved except to use this kind of argument. So while I think it is relevant and legitimate, I hope that we could all agree that it could never be the decisive argument in favor of capital punishment or any other kind of severe punishment.

ASSEMBLYMAN DICKEY: Changing the subject for a moment, you mentioned sporadic justice.

DR. BEDAU: Yes.

ASSEMBLYMAN DICKEY: And you seemed to say that that was the kind of justice that the death penalty had been bringing about in New Jersey in times past and probably that is the reason why the court did strike it down.

We have we think devised a bill which if enacted into law would set some standards which would provide yardsticks under which a jury or a court could determine after guilt whether the death penalty would be imposed, using certain mitigating factors and certain aggravating features which seem to get away from this sporadic justice which you have been quick to criticize.

In the light of that, doesn't that kind of decimate your argument?

DR. BEDAU: Well, maybe it decimates it. That only means I am down 10 per cent. It doesn't annihilate it.

The trouble with that solution to the problem it seems to me to be that it has been anticipated and it isn't going to work. The whole issue came up in a previous case in the court, McGautha v. California, in 1971. And Mr. Justice Harlan, who as you know was one of the most respected if not the most respected members of the court at that time, respected for his courage - he was an ill man who did a day and a half's work every



day - but also respected for his judicial wisdom -- he wrote the opinion for the court in that case. This is what he said in part and I quote: "The history of capital punishment for homicides reveals continual efforts, uniformly unsuccessful, to identify before the fact those homicides for which the slayer should die. Those who have come to grips with the hard task of actually attempting to draft means of channelling capital sentencing discretion have confirmed the lesson taught by history. To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty and to express these characteristics in language which can be fairly understood and applied by the sentencing authority appear to be tasks which are beyond present human ability." That is *McGautha v. California*, 402 U.S. Reports, page 183.

That is an interesting passage not only because Harlan said it, but because he said it in a case where the issue of sentencing standards was squarely before the court. It is also interesting because Chief Justice Burger in his dissent a year and a half ago quoted those very words in indicating why he thought that it was going to be very difficult to provide capital punishment legislation that would ever be able to contain standards that would avoid the problem.

What I predict quite frankly is that if the legislation that you have in the form in which I have seen it - and I haven't seen it in its amended form -- that that legislation is just leading with its chin directly into this argument that the late Mr. Justice Harlan and the Chief Justice have themselves already set out. So while, as a measured and reasonable response to the problem of sporadic justice, the construction of statutory standards seems perfectly reasonable - and five years ago I wrote in favor of doing that myself - I am on record as thinking that was a good solution to the problem -

what the Supreme Court or Justices on the court have said subsequently make me very skeptical about whether the court will accept that. If you are bound and determined in this Legislature to proceed down that path, we will have a chance to see because other legislatures have also moved down this path, some of them, in fact, ahead of you. But no two bits of statute in this regard anywhere in the United States are quite the same. So particular issues may be served up here.

As I said, I don't think that my argument is more than decimated. At most, that's all that it is; it is dented. It is not seriously damaged, at least if I evaluate these remarks that I have just quoted correctly. But I think there is the other question, the substantive question that we have been talking about, of the point of this legislation in the light of the facts that are at the disposal of people in your position today in contrast, let's say, to your predecessors 15 or 20 years ago.

ASSEMBLYMAN DICKEY: Well, I suppose we could continue this very fine discussion for a long period of time, Dr. Bedau. But I want to thank you for appearing today on behalf of the American Civil Liberties Union. The Committee expresses its appreciation to you for coming all the way down from Massachusetts. Thank you very much.

DR. BEDAU: Thank you very much for your patience and interest.

ASSEMBLYMAN DICKEY: Thank you, Miss Stevens.

DR. BEDAU: With the Chairman's permission but not as part of the record, unless he so wishes, I will leave a reprint of something that I just got in the mail today and I brought a few along. It deals with the subject under discussion, but in a minor way.

ASSEMBLYMAN DICKEY: Fine. Thank you very much.

Mrs. Winifred Canright, New Jersey Friends Council.

WINIFRED CANRIGHT: That is a hard man to follow.

I am going to ask you to relax because I am not going to give you any statistics. As befitting a woman of my generation, perhaps it is more than appropriate that I try to stick to the human, personal side of things.

I sympathize with you people for having such a long session and appreciate your not letting us down.

I think I will skip my introductory paragraph, though I struggled over it a little. But I should like to relate some of the personal experiences. Mr. Bedau asked if we had done our homework. No, I did my prison work and I have been in close contact with many of the people who have been personally involved in this.

The first experiences I want to relate are to demonstrate the fallibility of our courts. In 1968, the State of New Jersey demanded the death penalty for 12 young people who were accused of the murder of Patrolman Gleason in the Plainfield riot. I wanted to see whether it was possible for this minority group to receive a fair trial. For three months I attended the trial and took notes. In their eagerness to get a conviction, the police and the prosecutors presented improper evidence, much of it elicited by pressure. This opinion is not mine alone. The New Jersey Supreme Court reversed the conviction of the two convicted of first degree murder and censured the judge and criticized the quality of the evidence. As I read excerpts of the testimony, some of it in voir dire, please ask yourselves whether the State has a right to impose a death penalty when our courts so badly pervert justice.

Edgar Barnett, a witness for the prosecution, was shown in court a statement he had signed, but said, "I can't read it. Officer Lee axed me a whole lot of questions and what he writ down, I don't know. He told me to sign

it."

"Why did you go along with it?"

"He was a policeman and you gotta go along with him. He told me I'd be in trouble if I didn't sign."

At the police station Barnett had been shown pictures in an album for identification. When they were shown in court, he picked out a "mug shot" and said, "This is the one Officer Lee touched. He told me to pick one out or there'd be trouble. I just go along with him."

Bobby Whitaker was an undereducated, unprepossessing black youth. He testified that he had left Plainfield two hours before the killing and had been picked up twelve miles away on an unrelated charge. The following month, the State Police began a series of interrogations of Whitaker. His court testimony, in brief, was this:

"Did the State Trooper ask you questions?"

"He more or less told me things."

"Did you tell him you were present at the death of the officer?"

"I said 'No.' He said I was there and if I didn't give him the statement he would have me dwelling in Somerset County jail a long time."

"What did you do when he said this?"

"I told him that if I was going to be in jail there was nothin' he could make me do. He came back with a typewriter and wanted a statement. He promised me if I signed it I would get out of jail."

The third time the officer came, he brought a black book of photos.

"He insisted I had seen 'em. I told him I hadn't seen 'em."

"Did you identify any of the pictures?"

"No. He told me I had seen 'em and I went along with him, because he told me I could get out of jail and he wouldn't press other charges."

"Did he let you out?"

"No, because I didn't sign the statement."

Robert Anderson had signed a statement, which he recanted and then testified:

"No, there wan't no pressure."

"Why did you sign?"

"To maintain my freedom. Two officers promised to drop charges of a stolen car."

The prosecution presented a witness - Levon Heard - who insisted that he had been drunk the whole weekend of the riot. The prosecutor questioned Heard about his Grand Jury appearance. "Did you tell the truth to the Grand Jury?"

"I don't know. I was drunk that day, too."

"Did you tell the truth to the Grand Jury?"

"I guess I did if I was there. . . I might have said anything."

"Would you lie?"

"Sometimes. I'm a big liar."

When George "Petey" Morris took the stand for the state, he was cross-questioned.

"Had you been drinking hard liquor that day?"

"Yes."

"Beer?"

"Correct. I was drinking pretty good."

"Before you saw the crowd, how many bags of heroin had you injected?"

"Six or seven. I'm not sure. I was in my own world. I was high."

"Were you able to recognize people?"

"No. . . I just can't remember."

On the day that Petey, a known addict, was picked up and taken to headquarters for questioning, he had had his early morning injection, but as the questioning dragged on and on he became frantic for the next dose. It was in

his pocket. Desperate to get away and shoot the heroin, he was ready to "go along with the police," and signed their statement.

I will skip the next couple. You, as lawyers, know this kind of evidence that came up.

Our courts are fallible, obviously that is so, but electrocution is irreversible. When Bergen County Grand Juries for 24 years had only 2 black jurors, there is reason to suspect that our courts are rigged against minorities. How then can we trust them on decisions of life and death?

When the Azzolina Bill was debated in the Senate, there was much emotional but unproven talk about the deterrent effect of the death penalty. I wondered, "If there is a deterrent effect, why don't they use it to really horrify the people who may need deterrence?" Edgar Smith pointed out in Esquire Magazine, "The very people capital punishment is supposed to deter are the very people shielded from effective knowledge of what an execution is. Executions take place in antiseptic secrecy. The law says you cannot even publicize the day and the time in advance, and the general public may not witness the affair. All the public sees is a few lines in the morning paper. Those who do witness the execution, the curious prison guards, a few newspaper men, perhaps a few spectacle-hungry police officers or public officials, are not the people the execution is supposed to deter."

Why don't the people who believe in the deterrent effect carry their theory to its logical conclusion? Why not hold executions in a huge sports stadium where its chastening message can be visible to the people who need it most? How about putting it on television? How about raising a few funds by selling tickets to executions?

As I watched the voting from the balcony of

the Senate Chamber, I fantasized - suppose that on that platform there was a young man, possibly innocent or perhaps guilty, who was strapped into the electric chair. Voting on the bill is proceeding. The voting mechanism is wired so that a "yes" vote will trip the switch and the man will burn. Would any Senator dare take the awesome responsibility of pressing the "yes" button?

It is easy to shrug off the responsibility for the death of a person by saying, "The state demands the death penalty." It is different when one man, one vote, one conscience bears the burden of decision. Each legislator must live with the knowledge that a "yes" vote in reality turns on the current in the electric chair.

As a volunteer in the Trenton State Prison, I have had an unusual opportunity to be a part of a different life-style. Most of you have used the cliché, "Some of my best friends..." I complete the phrase, "Some of my best friends are men who may have killed, but definitely they are not now murderers." Some of these friends who spent years on death row have made themselves into some of the finest people I know. In a recent letter to me, one of them wrote, "The best asset a person can have is compassion, and to think of others, regardless of their circumstances. Coming from me this may sound strange. I am responsible for a man's death. I am sorry for what I did, make no bones about it, and it has also reestablished my concern for others." Unquestionably there is good in every man.

When I began working in the prison hospital, Dr. DuGan introduced his inmate assistant to me as his "right hand." The term was well chosen. Fourteen hours a day the efficient Jimmy was foreseeing and supplying the doctor's needs, reassuring a worried patient, or calming an explosive situation that might have escalated into a riot. How could he do this? Simply because the men trusted him. One day I discovered Jimmy's private hoard:

instant soup, cocoa, fruit juices and cookies. He was spending his slim wages on these so that when a patient was too sick to even look at prison food, Jimmy could be at his bedside with a cup of hot soup. This was a man who had been sentenced to be electrocuted. By his consistent efforts to help others, he has demonstrated that his life is too valuable to be wasted. I asked him to send me a paragraph to insert in this testimony. Here is his quote:

"I have been under a sentence of death, and was in the death house from June 1967 to February 1972. From the time I spent there, I have learned to value life and decency far more, I believe, than the average person. Once a man has killed someone, he learns to value life more than someone who has never had that sad experience. A life sentence is no feather bed. It is hard living and more punishment than death. You are reminded daily, by yourself, why you are here, and that is the major deterrent - within a man himself."

You may have heard that in Rahway Prison there is an artist of outstanding ability. If Ben Thompson's present development continues, he is likely to make an important cultural contribution. He was awaiting execution in the death house. Unexpectedly word was brought to him that a white inmate in another wing had confessed to the murder for which he had been convicted. There had been only one witness. She had reported seeing a white man, 5 feet 8 inches, weighing 175 pounds, commit the murder. Ben is a Negro, 6 feet 4 inches, and weighed 225. Someone had to pay for the crime. The evidence was changed to fit the suspect and the state narrowly missed killing the wrong man.

Another of my friends from death row is a tall dignified black man, Hap Laws. He is one of the most active members of the Inmate Forum Project and spends most



of his time in their work of helping other inmates to solve their problems and prepare to live in society when released. He is frequently released for a few hours to speak to organizations, promoting understanding and recruiting volunteers for their "one to one" program. The speeches he is most eager to make are to youth groups, urging them, as only a prisoner can, to stay out of crime.

Society is richer for the contributions these men are now making to mankind and the ones they will make when they finally leave prison. The state has no right to waste lives of such potential value. Neither does the state have the right to gamble men's lives on the verdicts of our fallible courts.

I wish to close with a brief paper by Mr. Hap Laws who sent it to me only yesterday, written from the prison:

"Gentlepeople:

"Advocates of capital punishment always buttress their arguments with the statement that the fear of death acts as a deterrent to crime and especially of the crimes of premeditated murder. As a former resident of Death Row, who for over three years lived in the shadow of death, I can assure you that such an argument is without merit.

"The vast majority of the residents on Death Row, although under a sentence of death, did not think that they were going to die! The few who did entertain such a thought did so for the wrong reasons. They viewed their impending execution, not as a form of moral retribution for the crime they were convicted of committing, but as an act of legal lynching or racial repression, and they had statistics to support their contentions.

"Figures released by the U. S. Department of Prisons show that since 1930 there have been 3,859 executions in the United States. Of that number, 2,066 were Black or members of other racial minorities. During that same period, 455 men were executed for the crime of rape and of that number 405 were Black.

"When I entered the Death House in Trenton State Prison on March 10, 1966, we raised the total count of the men under a sentence of death to 17 - 8 Blacks, 8 Italians, and Edgar Smith. All were poor. The figures speak for themselves. Capital punishment has never been administered equally or justly in the United States and it is, indeed, used as an act of legal lynching and the ultimate weapon of racial repression.

"But violence breeds violence. So it has always been and so it will always be. Either all life is sacred or no life is sacred. If the government can kill without compunction and in cold blood, so can its citizens. Such brutalities led to the callous slaughtering of thousands of innocent men, women, and even infants in South Vietnam.

"What has happened to the former residents of Death Row, New Jersey, whose lives were spared by the Supreme Court decision overturning the death penalty? Three are published authors. Three are in the process of completing books. Five have become artists of merit and one of that number has been declared a genius. Ten men on Death Row earned their G.E.D. diploma and at least six are now attending college, although all of them entered prison as functional illiterates. All of the men have been model prisoners since their release from the Death House.

"Does anyone seriously believe that it would have profited society if these men had been put to death? Is it not time for the United States, as a Nation, to reject the medieval philosophy of an "eye for an eye" and rise to a new level of consciousness, a new humanity, in which all life is held to be sacred and in which love, not hate or revenge, reigns supreme.

"Thank you for your time."

Signed, Horace "hap" Laws,

ASSEMBLYMAN DICKEY: Thank you, Mrs. Canright.

Any questions?

ASSEMBLYWOMAN KLEIN: I wonder if we could have a copy of your testimony?

MRS. CANRIGHT: I will try to get one. I have one that is decent. Because of my broken ankle, I couldn't get out to get a typist and the copies are pretty horrible.

ASSEMBLYMAN DICKEY: Well, we will get a transcript anyhow.

ASSEMBLYWOMAN KLEIN: I am sorry I missed part of your testimony.

ASSEMBLYMAN DICKEY: We will have a transcript.

MRS. CANRIGHT: May I say one thing that is a digression, but I felt that it has to be said. This morning a great many of the testifiers mentioned the escapees, particularly one Ravanel, who broke out from the Vroom Building. I felt I need to say that the State is not without guilt in those murders that he committed. I do not justify him in the least. But I know the Vroom Building and the men who have been deteriorating in 21- and 23-hour-a-day confinement in their cells with absolutely nothing to do. The kind of bitterness and mental deterioration that results from the treatment they are getting in the Vroom Building is enough to in some ways help in understanding of a man who got out and was ready to face death himself rather than be returned, no matter how many people he had to take with him.

ASSEMBLYMAN DICKEY: All right. Thank you very much.

MRS. CANRIGHT: Thank you for letting me say the extra.

ASSEMBLYMAN DICKEY: Next I will call Rev. Richard B. Andersen, Episcopal Diocese of Newark. (Not present.) I have been handed a statement by Rev. Andersen and with the Committee's permission, we will make it a part of the record. Any objections? (No objections.)

(Statement of Rev. Richard B. Andersen  
can be found beginning on page 130 A.)

ASSEMBLYMAN DICKEY: Mr. Neil Cohen.

N E I L C O H E N: I guess what I have to say is probably anticlimatic because a great deal of my information came from Mr. Bedau's book and many of his colleagues.

Mr. Chairman and distinguished members of the Judiciary Committee: I would like to discuss my opinions and those of distinguished sociologists and criminologists against the death penalty and why its reintroduction and usage could not possibly solve any of our current crime problems, but only cause further disruption in the State.

The case against the death penalty is many fold, but I will attempt to be as brief as possible.

The death penalty is the antithesis of the rehabilitative, nonpunitive and nonvindictive orientation of the 20th century penology. Capital punishment brutalizes the entire administration of criminal justice and no criminologist in the United States will stand by to support it. The arm-chair and so-called utilitarian criminologists who pleaded its necessity, never its desirability or morality, do so in terms of Darwinian natural selection.

Probably the most frequent question posed by the public dealing with capital punishment --

ASSEMBLYMAN DICKEY: Mr. Cohen, I see you have given us a written statement. Our time is running short. I wonder if you would let us read your statement and give us any additional items that you want to say verbally. I can assure you that the Committee will read your statement.

MR. COHEN: Let me just read the last paragraph.

ASSEMBLYMAN DICKEY: Go ahead.

MR. COHEN: I would like to conclude my opinion with a scenario. Picture a visitor from another planet should stray to North America and observe here and there, on very rare occasions, a small group of persons assembled in a secluded room, who as representatives of an

all-powerful sovereign state were participating in a deliberate and artful taking of a human life. Ignorant of our customs, he might conclude that he was witnessing a sacred rite, suggesting a human sacrifice. And seeing our great universities, scientific laboratories, clinics, charitable institutions and the multitude of churches dedicated to the worship of an executed saviour, he might just wonder about the strange and paradoxical workings of the human mind. Thank you.

(Complete statement of Mr. Cohen can be found beginning on page 133 A.)

ASSEMBLYMAN DICKEY: May we have your address, Mr. Cohen?

MR. COHEN: 1304 Dartmouth Terrace, Union, New Jersey.

ASSEMBLYMAN DICKEY: Thank you very much. Are there any questions by members of the Committee? (No response.)

Thank you very much, Mr. Cohen.

Rev. Phillip Kunz, New Jersey Council of Churches.

P H I L L I P K U N Z: I think you all have the written statement, do you not?

ASSEMBLYMAN DICKEY: Yes.

REV. KUNZ: I believe you would prefer me not to read my written statement.

ASSEMBLYMAN DICKEY: We will be glad to read it, sir.

REV. KUNZ: I know.

Let me just make a few highlights and leave it at that then on the basis of the written statement.

I am speaking for the New Jersey Council of Churches, which is an organization in the State 35 or 40 years old composed of the twelve major Protestant denominations, and the written text is the one they wish to submit.

You will note later on in your leisure that there are seven detailed objections alongside the general argument in opposition to S 799.

I will highlight just a few of these seven detailed objections, the first one being the language in the amended bill talking about manifesting extreme indifference to the value of human life. We find that to be a rather vague kind of concept to leave with future courts and juries and hope that it can have definition and refinement if there is going to be this kind of bill, so we won't have every jury and every court trying to deal with just exactly what that might mean.

Another objection of similar kind that we spotted right away on pages 4 and 5, section 2, is (quote): "Murder which is purposeful is murder in the first degree." I think - and I think we have heard some other witnesses today, of course, mention this - that a great deal of stress and deliberation has to come right down on that English word "purposeful". If that language is to see the light of day in legislation sometime in the future, then the jury and the courts are going to have to know what the Legislature really thought "purposeful" was rather than trying to make that up out of whole cloth.

A few more objections have to do with another kind of substance. One of them was the amendment which apparently brings together fellow travellers in the commission of a murder, before or after the fact - it doesn't exactly state in the amended language - with the person who actually perpetrates the crime. We think you will want to look at that again very hard. We have a very deep-seated philosophical objection to any law which is going to include somebody -- and here is a scenario to illustrate this objection: Say there is someone silly enough to be sitting in an automobile who happens to be 19 years of age, and his buddy drops in the car and says, "let's go," after sticking up a liquor store, and later on is apprehended as an accessory for driving the car where the other person has shot the liquor store clerk in cold blood or otherwise. The way this language

reads. we could end up in a situation where the driver of the car is almost as bad off as the person who fired the fatal bullet. I don't think that is the direction the Legislature really wants to go.

Why don't I just leave it at that, Mr. Chairman, and see if anyone has any comment or question.

(Complete statement submitted by Rev. Kunz can be found beginning on page 142 A.)

ASSEMBLYMAN DICKEY: Mr. Kunz, I am always interested in people like you that come in with a theological background and say you represent so many Christians. We had an officer of the New Jersey Council this morning that spoke almost in opposition to what you are saying today. Now does your Council ever take a position in a convention or an open meeting on this subject?

REV. KUNZ: I could clarify that. Off to one side, would you care to identify who that person was.

ASSEMBLYMAN DICKEY: Yes. Rev. Samuel Jeanes.

REV. KUNZ: Rev. Jeanes has no connection with the New Jersey Council of Churches.

ASSEMBLYMAN DICKEY: I thought he was Executive Director of the Council of Churches.

REV. KUNZ: There is a little slippage there. He is not officially connected in any way whatsoever, nor is he authorized to be a spokesman for a denomination or the New Jersey Council of Churches. He is affiliated with some other organizations. This is just by way of clarification.

ASSEMBLYMAN DICKEY: Isn't the Council of Churches of Camden County a constituent body of your group?

REV. KUNZ: I am sorry, but I missed that.

ASSEMBLYMAN DICKEY: The Council of Churches of Camden County.

REV. KUNZ: No, they are not.

ASSEMBLYMAN DICKEY: They are not?

REV. KUNZ: No. It is a non-federated ---

ASSEMBLYMAN DICKY: I see. How is your Council made up? How many denominations do you have?

REV. KUNZ: There are twelve.

ASSEMBLYMAN DICKY: What are they?

REV. KUNZ: A.M.E., A.M.E. Zion, the Episcopal Diocese of Newark, the Presbyterian Churches, the Methodist Churches - that is two conferences of the Methodist Church, the United Church of Christ. You have gotten me in trouble here. I am going to leave somebody out and they are going to be offended because I haven't been counting. The Roman Catholic five dioceses of New Jersey are not in the Council. They are in their own kind of organization.

ASSEMBLYMAN DICKY: Assuming you have twelve constituent denominations, by what method do they give you this authority to speak for all these Christians in the State?

REV. KUNZ: On an issue so profound as this in several ways: One, almost every one of these denominations has had its own deliberations and come to its own separate statement, which we have consulted with in order to draw testimony.

Two, the New Jersey Council of Churches is controlled by a governing board, a board of directors; it is an incorporated body not for profit. And the people who are on that board are sent, elected, designated by their judicatory, their denomination, whether they are Methodists, Presbyterians, Baptists -- there is one I left out, the American Baptist Churches. The General Baptist Churches I left out.

There is another kind of consultation and representation. But understand everything must get through the governing board in order to be according to hoyle.

ASSEMBLYMAN DICKY: How many are on the governing board?

REV. KUNZ: It is about 45 people.



ASSEMBLYMAN DICKEY: And they have all agreed to this statement you have given?

REV. KUNZ: They have agreed to the substance of this statement. And the way they agreed to the substance of this statement, in order to be precise in my portrayal here, they passed in 1970 the legislative principles which very precisely incorporate opposition to death penalty.

Now they charge people such as myself to stay in consultation with them and work up detailed arguments because gentlemen and ladies in your position come up with detailed bills and we have to put the two in some kind of juxtaposition.

ASSEMBLYMAN DICKEY: Well, if Rev. Jeanes is a member of the American Baptist Church, which I think he is, that is a constituent body of your Council, isn't it?

REV. KUNZ: That's correct.

ASSEMBLYMAN DICKEY: So you really don't have unanimous consent on this subject you speak so profoundly about, do you?

REV. KUNZ: There isn't any unanimity on anything in the State of New Jersey. So the answer is a dead guess.

ASSEMBLYMAN DICKEY: Do you even have a majority of your constituent lay members' consent on this subject?

REV. KUNZ: We believe that we do.

ASSEMBLYMAN DICKEY: You do. Have you ever had any congregational meetings to take a vote?

REV. KUNZ: Many of the churches, for instance, Baptist Churches, United Churches of Christ, and to some degree you could say Presbyterian Churches because they have sessions, operate on a very congregational, grass-roots level. They tend to have their own meetings and discuss these kinds of issues. We have to depend on feedback. To be safe in portrayal for the public record, we don't take Gallup polls. We don't have the kind of wherewithal to do that. We attempt to be faithful in every

kind of way to where we believe the grass-roots level is.

I have to say something else in light of the gospel, and that is, there isn't a church in the State of New Jersey of any stripe that is completely populist; that is, it will say this is what we believe the Bible says on a moral issue by going out and taking a poll, even if we could get a grant to do that.

Let me give you a quick example of that, plus or minus. There have been representations made by another denomination about their stand on another issue, abortion. They have been very forceful about it. Gallup says that is not where their people are. They say that's where their people are. We have checked out with all kinds of denominations on different issues such as this and it depends upon how you do the kind of testing. We know that if we get out of line, when this gets in the newspapers tomorrow morning, we are going to hear about it. And we don't hear negatively about the issue of death.

ASSEMBLYMAN DICKEY: You know I belong to a church and I have never had them poll me about how I felt about it. I am a constituent member of a church.

REV. KUNZ: I have belonged to a couple and they haven't asked me in that context either. I understand the gist of what you are saying.

ASSEMBLYMAN DICKEY: I also received some sort of a communication from you the other day on a number of subjects. You have rated legislators. Is that part of the authority given to the Council of Churches?

REV. KUNZ: That is what we are specifically told to do.

ASSEMBLYMAN DICKEY: You are told to do that, rate the legislators --

REV. KUNZ: That's right.

ASSEMBLYMAN DICKEY: (Continuing) -- on controversial measures.

REV. KUNZ: Well, every one of them is a public issue. They have been garnered from public disclosure. They are in the newspapers.

ASSEMBLYMAN DICKEY: It seems to me that the church has deviated from having men of God to social reformers.

REV. KUNZ: We felt that Jesus was a very strong social reformer and may have gotten himself into a capital crime situation because of that.

ASSEMBLYMAN DICKEY: Well, he seemed to be a man of God too.

REV. KUNZ: I think we are agreed on that.

ASSEMBLYMAN DICKEY: All right. Perhaps I digressed a little.

Any questions, Mr. Wallace?

ASSEMBLYMAN WALLACE: Just one question to follow up your remarks, Chairman Dickey: This 45-member board that you speak about, Mr. Kunz, are they elected by your constituents in the different church groups?

REV. KUNZ: Yes.

ASSEMBLYMAN WALLACE: What is the purpose of the board? What direction and what responsibilities do they have as a board?

REV. KUNZ: They have the responsibility of being accountable back to their judicatories in a way that you all would be familiar with, for money, as well as for posture, that is to say, policy questions. For example, they are responsible for saying whether we should go ahead and assist denominations in creating new congregations because that is another task that is given to us by our members. They are held accountable in each of these different kinds of ways for a budget. It is a very small budget as a matter of fact. I feel strongly, individually, that we are in the same sort of exposed position that a member of this House is in a way, in that if he gets completely removed from where the constituency is, he is at least going to hear about it. He may be reelected,

but the heat is going to come. That happens to us from time to time, plus and minus. Am I being responsive?

ASSEMBLYMAN WALLACE: It is not exactly what I had in mind.

REV. KUNZ: Let me try to be helpful.

ASSEMBLYMAN WALLACE: Do they feel that you should have the responsibility to come forward and testify in a political matter, such as we have here today, or a social matter?

REV. KUNZ: Yes. We are specifically sent in social - and if you want to say political matters, the term doesn't trouble me -- we are specifically authorized in cases such as this to do so. We have testified on gambling, on tax reform, for a number of years etc., my predecessors and myself. I have been doing this now for perhaps three years. Sam Jeanes came once upon a time as a designee of former organizations.

ASSEMBLYMAN WALLACE: Thank you.

ASSEMBLYMAN DICKEY: Any further questions?

(No response.) Thank you, Rev. Kunz.

William Anderson, New Jersey SANE (Citizens Organization for a Sane World).

W I L L I A M     A N D E R S O N:     My name is William Anderson. I am an attorney admitted to practice in the State of New Jersey. I have been asked to speak on behalf of the New Jersey SANE by Dorothy Eldridge, its Executive Director, and have discussed with her the position of New Jersey SANE on this topic.

New Jersey SANE is an organization about 15 years old in the State of New Jersey, with about 7,000 supporting members in every county in this state. It has 8 storefronts located in various parts of this state and it has 20 associated groups around the state. It is a private, non-profit, political action organization and has been dedicated in the movement for peace, justice and human dignity and

it is in that light that they have asked for this time to speak.

Crime and the fear of crime is a serious problem in our cities, in our state and in our nation among our members and among your constituents and ours. It is important that action be taken to meet the criminal element in our society and it is equally important that the Legislature do so. It is even more important that whatever action is taken is effective. Indeed, the most effective action possible to meet a most serious problem is what is absolutely necessary. For if your action is not effective, it only gives the veneer of reaching the violence of crime rather than assuring that the dignity of the lives and property of all of the citizens of this state are not seriously endangered.

It is entirely clear from statistical studies made over and over again that the restoration of the death penalty can only be a most ineffective act of the Legislature attempting to meet the crime problem. There is no substantial evidence that the existence or nonexistence of the death penalty deters crime and there is no reason to believe that even a highly-specific list of heinous crimes, aggravating and mitigating circumstances, would be any more effective.

It has been demonstrated moreover over and over again that the ultimate stake of the defendant to the death penalty and the spectacle of the capital trial and appeal have a seriously detrimental effect on the swift and sure operation of the criminal justice system.

We may not, therefore, say the reimposition of the death penalty in New Jersey will deter crime nor will it effectively punish actual or presumed criminals. It will probably be a serious injustice to the victims of crime since it will retard swift adjudication of all the charges without any demonstrated benefit to the law-abiding of our society.

And what will we have done for so little? The dignity of human life, arguably disregarded by the criminal, will be foresworn by the very government whose highest office is to protect life and human dignity. The refusal to believe that even the most hardened of criminals cannot be rehabilitated is more a reflection, we believe, on our cynical view of human life than it is the judgment of the one whom we are strapping into the electric chair.

New Jersey SANE believes that the State of New Jersey should not stoop to meet the brutality of the basest crimes committed within its borders. Reimposition of the death penalty we do not believe will deter crime. It will not promote swift justice of the accused or the convicted criminals or the victims of crime. It can only provide the veneer of action, a cruel veneer which will distract and delay the work necessary to find effective solutions to the problem of crime. In the process, the institutionalization of death by the state can only serve to crush the human dignity which is the state's best office to protect.

New Jersey SANE on behalf of its 7,000 members in the State of New Jersey urges this Committee and each of its members to recommend to the full Legislature that the death penalty ought not to be imposed for any crime committed in the State of New Jersey. Thank you.

ASSEMBLYMAN DICKY: Thank you, Mr. Anderson.  
Any questions? (No response.) Thank you very much, sir.

MR. ANDERSON: Thank you.

ASSEMBLYMAN DICKY: Next is Mr. Harold Shay.  
(Not present.)

Mr. John Dial. Will you give us your address, Mr. Dial.

J O H N     D I A L: 9 Bleecker Street, Jersey City.

I am with the Fire Department in Jersey City and I think I have a right to say a couple of words anyway

because I had the misfortune to lose my 12-year-old daughter. It will be 3 years this month. And I know this man who did it should never have been walking the streets. I didn't know anything about him. I told my wife that he was no good and I didn't even know that he had a record or anything. But I found out after it was too late that he had a record a mile long and trouble from the time he was 10 years old.

That is why I am for this bill because I think anyone that doesn't think that the death penalty will deter crime doesn't know much about it. No one wants to die who is in their right mind and I think with this bill, bringing it back, it will help save a lot of innocent kids and people.

Also Mrs. Klein before she left said she didn't think the people were for having the death penalty back. Well, I work with a lot of people and I don't know of one of them that doesn't want it back. I could get signatures on top of signatures in 75 per cent of the city I think. So that shows that the people want it back.

That is about the only thing I can say. I just wanted to get my point across a little bit.

ASSEMBLYMAN DICKEY: Thank you, Mr. Dial. You are a member of the Fire Department in Jersey City?

MR. DIAL: Yes.

ASSEMBLYMAN DICKEY: How long have you been a member of the Fire Department?

MR. DIAL: Seventeen years.

ASSEMBLYMAN DICKEY: Any questions?

ASSEMBLYMAN WALLACE: I understood the gentleman had some signatures for us.

MR. DIAL: Yes, I have. I will turn them over to you. I could get plenty more if you need them.

ASSEMBLYMAN DICKEY: Thank you very much.

Is there anyone else here who wishes to testify at this public hearing? Will you step forward and give us your name.

R I C H A R D     J.     S T U A R T:     Mr. Chairman, my name is Richard J. Stuart.

I would like to say one thing. I was literally shocked at the proposal to suspend the hearing this afternoon. I would like to point out for the record that there are some of us who come down here on our own time and at our own expense. And I am glad to see the hearing was continued and I want to say that I appreciate especially Mr. Wallace over here who voted to end it but has stayed with us in spite of that.

With regard to the proposition to restore the death penalty, on its face, it might be argued by some that the issue of whether to have a death penalty in this state or not to have one is not a "correction" matter. But it is very much a correction concern in the eyes of those who understand the ramifications as they extend into our reformatories and prisons.

Without taking sides on whether there should or should not be a death penalty - I am not personally committed to either school of thought - I would like to bring to the attention of this Committee some of those ramifications.

If we have a death penalty once more on the books, where are those convicted and sentenced to be held pending execution? Past experience has shown this can run into many years. And not too long ago this state decided those years need not be spent in any special "death house" or separate "death row." But I ask you now, was that decision a wise one? Was it fair to the other inmates of our institutions? Was it fair to society?

Should men, or women, legally adjudged too horrible to be permitted to continue to live then be turned loose inside our penal communities holding 500 to 1200 prisoners? Would you turn them loose on bond or personal recognizance,



while they are awaiting the results of endless appeals? Would you welcome them into your communities? If not, why should they be turned loose inside our penal institutions among men doing short sentences, some perhaps going home this week or even tomorrow? If anyone feels this is no proper concern of those living outside the institutions, let him or her reflect on the fact that most of the prisoners are coming back out and anything that goes on behind the walls and fences affecting prisoner attitudes is very much a concern of society. Or must you personally become a victim of recidivism to wake up to that fact?

Therefore, it is necessary to consider along with the restoration of the death penalty a restoration of the "death house" and the high cost of building and maintaining such a special facility.

On the other hand, what if there is to be no death penalty? What is society to do with offenders convicted of crimes so objectionable that a vast majority of our people do not want the offender ever released back into society under any circumstances? Are we to have a "natural life" sentence designed to keep offenders incarcerated until they die?

If so, where are those prisoners to be kept along with others having other sentences of such length as to amount to natural life sentences? Again, is it wise penal management and in the interests of other prisoners and society it mix natural lifers right in with short-sentence prisoners? What do they have in common? What problems does this cause for both categories of prisoners? Is a new, special facility for the natural life prisoners going to be needed? What will it cost to build such a facility and maintain it? Is this being considered in respect to the currently-proposed legislation?

All I ask of this Committee and the rest of the State Legislature and the Governor is, do what you will about the death penalty or a natural life alternative, but

know what you are doing when you act and do the whole job. Please don't merely create more problems.

Stemming out of the testimony today-- and I have stayed with it and I would say that if you had suspended the hearing, all of us would have missed Dr. Bedau's testimony which I felt was a highlight. We have heard a lot of opinion here today. We have heard a certain amount of what I would consider ranting and raving. I believe that he came the closest to being an expert witness that we have heard.

I wanted to bring a few things out that may sound to you slightly off-beat. They may be new thoughts and in some cases I hope that you won't necessarily leap at an evaluation on them but maybe take them home with you and think about them.

We have heard the words "murder" and "murderer" bandied around here all day long. And I have to wonder whether some of the people that are using them have really stopped to think it through. I perhaps have had more experience than anyone that came before you today of being in close association with murderers if we divorce this from the armed forces' service, which is a different ball game.

I spent several months as an inmate in the Manhattan House of Detention in what they called a quadrant with perhaps 30 or 35 other prisoners, of which maybe 25 to 30 were in there for murder. One of the people that shared a cell with me there was in for murder. He had been attacked at a dance by another man and in the course of the fight, he stabbed the other man to death with the knife with which the man had attacked him. But technically there is no self-defense in New York and he was there for murder. Another man that I shared a cell with had come in and found his wife in bed with another man. He picked up a chair and beat the both of them to death

and then called the police. These are murderers.

I wonder if you have stopped to think that even in connection with an armed robbery how many armed robberies occur every year that do not result in a murder? It is a fine line many times I think that creates a murder.

From my own experience in prison, I found people who have pulled armed robberies are far from what I would call professionals. I think they are as frightened in most cases as the victim and sometimes I think they panic. But at other times, a person does try to resist and the next thing a man who did not necessarily go in there with the intention to pull a trigger ends up pulling the trigger. If the victim lives, it is not a murder. But because the gunman is not a professional in any sense of the word, if he happens to hit the victim in a vital place, it then becomes a murder in the course of an armed robbery and is a much more serious thing. But it was not a calculated incident in the sense of a hired killer or one of these people who goes in and ends up shooting people at random, but there again you are entering into an area, I think, of mental derangement in that case. Then the defendant perhaps has an argument that he can put up for a mental defense.

Even when we talk about guards being killed in a prison, a point that I have never heard brought out publicly, in the four and one-half years I spent in Trenton and Rahway, you had more guards in there than made me happy who were mentally-, in some cases, and more frequently emotionally-disturbed people. All you need to do is to take a mentally- or emotionally-disturbed guard and rub him up against a mentally-unbalanced inmate— and we have a lot of those in the prisons and the State of New Jersey is not solving that problem. They turn around and send these people there and if they get out of line, they send them over to the Vroom Building and put them on

medication. They bring them back. They keep them on medication. But sometimes the first time the medication isn't quite the right formula. But they may go along for a long time. Many of these inmates end up attacking other inmates and there isn't too much concern about that. But if he attacks a guard, especially if he murders him, then you have a big hullabaloo about it. But to me it is just as distressing for an inmate who might be in there doing a one-and-a-half-year sentence to be murdered in there as for a guard to be murdered. The crime he went to prison for did not incur the death penalty. But he was thrown in there with people who may be fully capable of murder.

The problem to me is not to set up a death penalty because a death penalty is not going to prevent that guard from being murdered. The thing that is going to prevent guards from being murdered is, on the one hand, to screen out - to set up procedures to screen out these people who should not be on the staff. And, on the other hand, set up procedures to find the inmates who need mental help and give it to them. That is more than just putting a man on sedatives.

Even when we talk about guns - and there has been quite a bit of talk today about the use of guns in connection with murder - over and over again I hear people talk about guns as being -- Well, armed robbery is considered a violent crime. But I wonder how many of you have thought about armed robbery as perhaps being the least violent crime. Let me put it shortly here. Would you rather have a gun pointed at you in a robbery and you give up your wallet without getting hurt physically - and this might happen where the person who is trying to pull the robbery is smaller than you are - or would you rather have two or three people approach you from the back, as happens in some of these muggings, and throw you on to the sidewalk or hit you in the head

with something from the back and take your wallet? Those types of crimes are more violent than one that is done with a gun where the gun is not used, but it is used certainly to intimidate.

One of the speakers today - I don't know which one - mentioned the death of a boy in New York. I suspect that I know which one he was talking about. But what immediately occurred to me is that in the last few months we have had the deaths of at least two boys in New York that got a lot of publicity. One of those deaths was caused by a policeman and it was interesting to me to hear a speaker today sit here and say that any well-trained and armed policeman doesn't need to use a gun against a man with a knife.

Well, I am old enough to recall 1964 when the riots occurred in New York over the fact that a policeman of long standing and who had received awards for disarming people and so forth said that the only alternative he had was to shoot down a teenager coming at him with a gun.

Murders are not committed just by people in the kitchen and in the bedroom and in armed robberies. I think when law enforcement people talk about respect, we are not going to have the respect we should have for law and order and for the people responsible for bringing law and order until they do some housecleaning in their own areas and take the same attitude toward people within the law establishment that they take toward people outside the law establishment. The law is the law and murder is murder and I would hope that some day they can see it that way.

One other thing in closing - and I do not say this facetiously - I say it very sincerely - we are talking about the death penalty as something to be used in connection with murder and it seems to have gone by the board here today that murder is the most heinous

crime in our society. I would personally dispute that. This is not to say that it isn't, and particularly deliberate cold-blooded murder. But I would rank right alongside murder a betrayal of the public trust by public officials and the misuse of police authority. And if the death penalty can be proven to be a deterrent to crime, let us broaden the death penalty law to make the betrayal of trust by public officials and the misuse of police authority -- let's bring them under the death penalty and I think we will have a much better society than we have had.

ASSEMBLYMAN DICKEY: Why don't we just cut their hands off so they can't put it in the pot?

MR. STUART: I would like to share one little thing more with you. Incidentally in some sections of the world they are still chopping hands off for picking pockets and they still go on picking pockets. So I am not sold on that.

The Star Ledger back here on the 5th of September had just this little tiny item in it.

ASSEMBLYMAN DICKEY: You have some competing newspapers here that are not looking favorably on this quotation.

MR. STUART: This is an AP item which others may have carried. I happened to have gotten it out of the Star Ledger. It came from Japan. "A 48-year-old man, convicted of murder, spent 13 years on death row transcribing 850 books into Braille for the blind. He was hanged before finishing Dostoevsky's Crime and Punishment.

ASSEMBLYMAN DICKEY: All right. Thank you very much, Mr. Stuart. Any questions from members of the Committee? (No questions.)

Are there any other witnesses who wish to testify? If not, I will declare the public hearing on Senate Bill No. 799, with Assembly Committee amendments, closed.

Thank you very much for attending.

(Hearing Concluded)

OFFICE OF THE  
COUNTY PROSECUTOR OF MONMOUTH COUNTY  
FREEHOLD, NEW JERSEY 07728

JAMES M. COLEMAN, JR.  
COUNTY PROSECUTOR

MALCOLM V. CARTON  
FIRST ASSISTANT PROSECUTOR

13 September 1973

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Honorable William K. Dickey  
Chairman, Assembly Judiciary Committee  
Assembly Chamber  
State House  
Trenton, New Jersey

RE: Senate Bill #799

Dear Assemblyman Dickey:

I am sending this letter to you regarding Senate Bill #799 which is on for public hearing before your Committee today. I regret that I cannot personally appear to testify, but I would appreciate your reading my remarks into the record.

I favor the passage of Senate Bill #799. I have many reasons, but I know that most of them will be expressed ably and persuasively by other witnesses.

One of the great arguments to be considered when talking about a death penalty is whether in fact the existence of such a law is any deterrent to the crime of murder. Over the years statistics and statistics have been produced, pro and con, some indicating presence of a death penalty acts as a deterring factor, others indicating the contrary. I cannot in good conscience say that the presence or absence of a death penalty statute is or is not a limiting factor when analyzing the reasons and causes for the crime of murder. However, I would limit that observation to seventy (70%) per cent of murders committed. I think we can agree that that percentage is somewhat realistic for those cases where the crime is one of passion and is committed, as the experts say, by spouses, lovers, relatives or close friends.

I'm concerned with the remaining thirty (30%) per cent, and am concerned that it doesn't become forty or fifty per cent. And I'm convinced that without a death penalty those figures will change and those murders not of so-called passion will increase.



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Assemblyman William K. Dickey

RE: Senate Bill #799

I would like to interject that in the County of Monmouth, where I am the Prosecutor, that there has been an increase in murder since abolition of the death penalty. As to some of these, surely they might have been committed even were there a death penalty on the books. However, it's a fact that such a law does not now exist and speculative or not, one might hope that some of these would not have been had there been a death penalty.

The main argument I have for the reimposition of the death penalty is this: Breaking and entering and larceny, robbery without the armed feature and even larceny from the person are non-violent crimes. Burglars don't need weapons to ply their nefarious trade, and I would submit that burglars would shun the thought of even carrying a weapon, were there a death penalty. But without ~~bearing~~<sup>HAVING</sup> one there is little to prevent the burglar from being converted into an armed robber. Armed robbery, I submit is not on the wane, it is on the increase. I firmly believe that the absence of the death penalty is the main reason that more and more persons, bent on committing a crime, are carrying weapons. be they guns, knives or whatever.

Consider the penalty now for murder. Life in prison, life conceivably meaning approximately fifteen (15) years. That's the period for parole eligibility. Put against that the ultimate penalty, forfeiture of life. Does it take much imagination to see the criminal mind at work. It must give rise to this thought: "I'll carry a gun. I'll commit a hold up. It's worth the risk." I certainly can't condone the burglar, and were you to ask if I'm saying I prefer it to murder my answer is, "You bet your life I do!"

I say to you, members of the Judiciary Committee of the General Assembly, that there must be a law on the books that will make even the criminal mind reflect and perhaps reconsider before he starts out on his ill-advised mission, armed with that force capable of producing the death of another human being. That is the principal reason for the need for a death penalty, to nip in the bud the thought that it's not too much of a risk to carry death-dealing weapons on the criminal path.

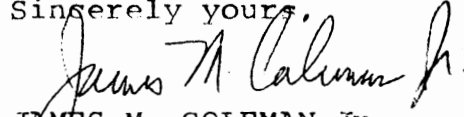
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Assemblyman William K. Dickey

RE: Senate Bill #799

I respectfully ask that after you have heard all the testimony that you release Senate Bill #799 so that it may be voted upon by the General Assembly. I thank you for your kind attention.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James M. Coleman Jr.", written in a cursive style.

JAMES M. COLEMAN, Jr.

Monmouth County Prosecutor

JMC/es

13 September 1973

STATEMENT OF BRENDAN T. BYRNE TO THE ASSEMBLY JUDICIARY COMMITTEE

I would support the restoration of the death penalty if it could be shown that it will save the life of just one policeman. The function of capital punishment is to deter crime. But at present, the evidence of its deterrent effect is inconclusive. Murder rates between states with the death penalty and those without it are no different; murder rates after abolition of the death penalty are no higher than the rates prior to abolition; and police officers and prison personnel have not suffered higher rates of criminal assault and murder in states without the death penalty than they have in states with it.

Further, it would be political fraud for me or any other candidate for Governor to claim that he can promptly restore the death penalty in New Jersey. Capital punishment is not an honest issue in this campaign.

One year ago, the Supreme Court of the United States (Furman vs Georgia, 408 U.S. 238) held that the death penalty is unconstitutional, at least under most circumstances. The members of the Supreme Court could not agree whether capital punishment can ever be constitutionally permissible, and the decision provided no guidelines for drafting legislation under which the death penalty could legally be imposed.

Because of this uncertainty, several states already have passed death penalty statutes which are expected to be reviewed in a future U.S. Supreme Court case. Hopefully, such a case should provide a definitive ruling as to whether a convicted criminal may ever be sentenced to death. The Supreme Court may say that the death penalty

is unconstitutional in all situations, or it may say that the death penalty is constitutional under certain specific conditions. Only after such a ruling is handed down can a New Jersey law be drafted which is certain to be legal.

Therefore, to speak glibly at this time about reimposing the death penalty is to deliberately deceive the people of New Jersey. The foremost responsibility of a Governor, and a candidate for Governor, is to be honest with the people. At this time, the only honest thing to tell the people of New Jersey about the death penalty is that until the U. S. Supreme Court provides further guidance, no convicted criminal anywhere in this nation will be executed, regardless of the promises which political candidates may make and regardless of the law which state legislatures may pass.

Rather than emotional attempts to reimpose the death penalty -- with its serious constitutional questions -- the next Governor and state legislature must go forward to develop realistic and effective means of reducing crime.

Moreover, reimposition of the death penalty at this time would be unnecessarily costly for the taxpayers of this state. As a former prosecutor, who succeeded in having a number of criminals sentenced to death, I know the great added expense which is involved in the trial of a death penalty case. It is more time-consuming and expensive than a non-capital case, and if the defendant is convicted, numerous lengthy and expensive appeals are inevitable. Since no criminals were executed anyway during this period, it is foolish for New Jersey taxpayers to incur these added expenses until a clear ruling is rendered by the Supreme Court.

In addition, the time consumed in capital cases can cause a delay in processing other cases involving violent crime.

Governor William T. Cahill's Haneman Commission suggested a delay so that the commission could operate in a non-political, unemotional setting. I have urged that this matter be considered by that commission in its entirety.

SUBMITTED BY T. GIRARD WHARTON  
ACTING CHAIRMAN, CRIMINAL LAW REVISION COMMISSION

EXERPTS FROM PROPOSED NEW JERSEY  
PENAL CODE AND COMMENTARY

**SECTION 2C:11-3. MURDER.**

a. Except as provided in Section 2C:11-4a(1), criminal homicide constitutes murder when:

- (1) it is committed purposely; or
- (2) it is committed knowingly; or
- (3) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life.

(4) it is committed when the actor, acting either alone or with one or more other persons, is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, aggravated rape, aggravated sodomy, aggravated arson, burglary, kidnapping or criminal escape, and in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this Subsection, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

b. Murder is a crime of the first degree but a person convicted of murder may be sentenced to death, to life imprisonment or as in a crime of the first degree, as provided in Section 2C:11-7, if the conviction is under Subsection a(1) or (4) of this Section. If the conviction is under any other provision of Subsection a of this Section, the defendant shall be sentenced by the Court to life imprisonment or as in a crime of the first degree.

**SOURCE OR REFERENCE**

N. J.: 2A:113-1 and 2  
Model Penal Code: 210.2  
Other: N. Y. §125.25

Study Draft Page: IIB-15  
Tentative Draft Page: 308  
Commentary Page: 155

### § 2C:11-3. COMMENTARY

1. This Section delineates the criminal homicides that may be denominated murder, with the specific result of establishing them as crimes of the first degree and, for some of them, subject to the further requirement of Section 2C:11-7, the possibility of the death sentence or of life imprisonment.

2. *Purpose or Knowledge.* The Code places criminal homicides committed purposely or knowingly in the murder category. Subject to the mitigation based on provocation under Section 2C:11-4a(2), we believe that homicides committed purposely or knowingly belong in the ultimate category. Unlike the MPC, however we further grade this category. It is only purposeful killings which subject the defendant to capital punishment. We do this to follow the distinction made in existing law that only willful, deliberate and premeditated killings are murders in the first degree.

This is because we do not believe the category of potentially capital homicide should be expanded. Even though certain knowing homicides may be as bad or worse than some purposeful killings, we retain that distinction to limit the death penalty to cases where it is now available. Homicides committed purposely or knowingly would clearly fall into the murder category under existing law. *State v. Gardner*, 51 N.J. 444, 458 (1968) holds that malice is established by proof that the defendant had an intention to cause the death of, or grievous bodily harm to, any person, whether such person is the person actually killed or not. While this definition encompasses more than what would be purposely or knowingly taking life under the Code, it clearly encompasses at least that much.

3. *Recklessness Manifesting Extreme Indifference.* Intention or purpose to take life or cause grievous bodily harm is not, however, required to prove malice. A lesser culpability will suffice. This was described by our Supreme Court in *State v. Gardner, supra* as

“... knowledge that the act which causes death will probably cause the death of, or grievous bodily harm to, some person whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.”

The Code carries this basic judgment reflecting the view that there is a kind of reckless homicide that cannot fairly be distinguished for this purpose from homicides committed knowingly. Recklessness presupposes an awareness of the creation of substantial homicidal risk, a risk too great to be deemed justifiable by any valid purpose that the actor's conduct serves. Since risk, however, is a matter of degree and the motives for risk creation may be infinite in variation, some formula is needed to identify the case where recklessness should be assimilated to knowledge. The conception employed is that of extreme indifference to the value of human life. The significance of purpose or knowledge is that, cases of provocation apart, it demonstrates precisely such indifference. Whether recklessness is so extreme that it demonstrates similar indifference is not a question that, in our view, can be further clarified; it must be left directly to the trier of the facts. If recklessness exists but is not so extreme, the homicide is manslaughter.

4. *Purpose to Injure.* The Code definition of murder accords no express significance to an intent to cause grievous bodily harm. Such a purpose establishes malice under our existing law (*State v. Gardner, supra*; *State v. Williams*, 29 N.J. 27, 36 (1959)) and such a killing



would generally constitute second-degree murder. We think, however, that such cases are more satisfactorily judged by the standards of recklessness and extreme recklessness as to causing death. In making that determination the fact that the actor's purpose was to injure is, of course, a relevant consideration, as also are the nature and the gravity of the injury intended or foreseen.

5. *Felony-Murder*. The Code advances a somewhat new approach to the problem of homicides occurring in the course of the commission of felonies. Such homicides will continue to constitute murder if they are committed during the course of and in furtherance of certain enumerated major crimes. In this regard we reject the presumption provision found in MPC § 210.2. We believe that provision to go too far in failing to recognize the deterrent effect of a felony-murder rule. We use, instead, the provision found in the New York Code. This allows a limited affirmative defense as to the non-perpetrator participant in the felony where that person is able to demonstrate that he did not assume a homicidal risk. We believe this to be a workable and appropriate limitation on existing law.

New Jersey now has a broad felony-murder rule. N.J.S. 2A:113-1. Further, under N.J.S. 2A:113-2, "murder which is . . . committed in perpetrating or attempting to perpetrate arson, burglary, kidnapping, rape, robbery or sodomy, is murder in the first degree." Thus, the intent to commit the felony not only makes the killing murder but also makes it first degree murder. The definition of those felonies used is the more restrictive common law definition *State v. Butler*, 27 N.J. 560 (1958); *State v. Hauptmann*, 115 N.J.L. 412 (E. & A. 1935); *State v. Burrell*, 120 N.J.L. 277 (E. & A. 1938); *State v. Lucas*, 30 N.J. 37 (1959). Aside from this, however, in many other ways, New Jersey's cases broaden rather than restrict the rule. See *State v. Hauptmann*, *supra* (*res gestae*); *State v. Carlino*, 98 N.J.L. 48, 54 (Sup. Ct. 1922); *State v. Turco*, 99 N.J.L. 46, 102 (E. & A. 1923); *State v. Smith*, 32 N.J. 501, 521 (1960) (aiding and abetting); *State v. Rosania*, 33 N. J. 267, 270 (1960); *State v. McKeiver*, 89 N.J. Super. 52, 55 (L. Div. 1965); *State v. Kress*, 105 N.J. Super. 514, 525 (L. Div. 1969) (Killing by a police officer of a person who was either a bystander or was being used by defendant as a shield is felony-murder as to defendant.)

Despite the generality of the felony-murder rule and the frequency with which it is deemed applicable to even accidental homicide, principled argument in its defense is hard to find. Such argument as can be made reduces in essence to the explanation Holmes gave in *The Common Law* (pp. 58-59) for finding the law "intelligible as it stands," though he carefully withheld his own endorsement:

" . . . if experience shows, or is deemed by the lawmaker to show, that somehow or other deaths which the evidence makes accidental happen disproportionately often in connection with other felonies, or with resistance to officers, or if on any other ground of policy it is deemed desirable to make special efforts for the prevention of such deaths, the law-maker may consistently treat acts which, under the known circumstances, are felonious, or constitute resistance to officers, as having a sufficiently dangerous tendency to put under a special ban. The law may, therefore, throw on the actor the peril, not only of the consequences foreseen by him, but also of consequences which, although not predicted by common experience, the legislator apprehends."

It is true that we have no way of knowing how many of the homicides resulting in felony-murder convictions were committed purposely, knowingly or recklessly and how many were negligent or accidental. But it is our belief that this rule of law does lead some to refuse to assume a homicidal risk in committing these other crimes. Allowing this limited defense should deal with such persons in an appropriate way by holding them responsible for the felony but not for the homicide.

6. *Sentencing Provisions.* Under Subsection b, murder is a crime of the first degree. We categorize murders, however, depending upon whether they were (1) purposeful or felony-murders or (2) other forms of murder. The first subjects the defendant to the possibility of the death penalty; the latter subjects him only to life imprisonment or sentence as in a crime of the first degree. Under existing law, first-degree murders are punished by death or by life imprisonment, as determined by the jury. N.J.S. 2A:113-2. See *State v. Reynolds*, 41 N.J. 163, 187 (1963). Second degree murder is punished by imprisonment for up to 30 years, sentencing being by the court.

**SECTION 2C:11-7. SENTENCE OF DEATH FOR MURDER; FURTHER PROCEEDINGS TO DETERMINE SENTENCE.**

a. *Death Sentence Excluded.* When a defendant is found guilty of those forms of murder which under Section 2C:11-3b subject him to a sentence of death, the Court shall impose a sentence of life imprisonment or sentence for a crime of the first degree if it is satisfied that:

(1) none of the aggravating circumstances enumerated in Subsection c of this Section was established by the evidence at the trial or will be established if further proceedings are initiated under Subsection b of this Section; or

(2) substantial mitigating circumstances call for leniency; or

(3) the defendant, with the approval of the Court, pleaded guilty to murder as a noncapital crime or as a crime of the first degree; or

(4) the defendant was under 18 years of age at the time of the commission of the crime.

b. *Determination by Court or by Court and Jury.* Unless the Court imposes sentence under Subsection a of this Section, it shall conduct a separate proceeding to determine whether the defendant should be sentenced for a crime of the first degree, to life imprisonment, or to death. The proceeding shall be conducted before the Court sitting with the jury which determined the defendant's guilt unless the Court has discharged that jury in which case a new jury shall be empanelled for that purpose. Even though the defendant may have entered a plea of guilty or may have waived trial by jury with respect to guilt, the separate proceeding to determine sentence shall be before a jury. In the proceeding, evidence may be presented as to any matter that the Court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition and any of the aggravating or mitigating circumstances enumerated in Subsections c and d of this Section. Any such evidence, not legally privileged, which the Court deems to have probative force may be received, regardless of its admissibility under the exclusionary rules of evi-

dence, provided that counsel be accorded a fair opportunity to rebut such evidence. The prosecuting attorney and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

The determination whether sentence of death shall be imposed shall be in the discretion of the jury and the Court shall not impose sentence of death unless it submits to the jury the issue whether the defendant should be sentenced to death or to imprisonment and the jury returns a verdict that the sentence should be death. If the jury recommends against the sentence of death or if the jury is unable to reach a unanimous verdict, the Court shall dismiss the jury and impose a sentence of life imprisonment or sentence for a crime of the first degree.

The jury, in determining upon its verdict, shall take into account the aggravating and mitigating circumstances enumerated in Subsections c and d and any other relevant facts but it shall not recommend sentence of death unless it finds, beyond a reasonable doubt, one of the aggravating circumstances enumerated in Subsection c and further finds that there are no mitigating circumstances sufficiently substantial to call for leniency. When the issue is submitted to the jury, the Court shall so instruct and also may inform the jury of the nature of the sentence of imprisonment that may be imposed, including its implication with respect to possible release upon parole, if the jury verdict is against sentence of death.

*c. Aggravating Circumstances.*

(1) The murder was committed by a convict under sentence of imprisonment.

(2) The defendant was previously convicted of murder, manslaughter, robbery, aggravated rape, aggravated sodomy, kidnapping or other crime involving the use of violence to the person.

(3) At the time the murder was committed the defendant also committed another murder.

(4) The defendant knowingly created a great risk of death to many persons.

(5) The murder was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, aggravated rape, aggravated sodomy, aggravated arson, burglary or kidnapping.

(6) The murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from lawful custody.

(7) The murder was committed for pecuniary gain.

(8) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

*d. Mitigating Circumstances.* Mitigating circumstances include, but are not limited to:

(1) The defendant has no significant history of prior criminal activity.

(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(3) The victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

(4) The murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct.

(5) The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor.

(6) The defendant acted under duress or under the domination of another person.

(7) At the time of the murder, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication.

(8) The youth of the defendant at the time of the crime.

#### SOURCE OR REFERENCE

N. J.: N.J.S. 2A:113-2, 4  
Model Penal Code: 210.6  
Other: None

Study Draft Page: IIB-51  
Tentative Draft Page: 331  
Commentary Page: 168

#### § 2C:11-7. COMMENTARY

1. *The Problem of Capital Punishment.* Under existing law, the death penalty may be imposed in New Jersey for murder in the first degree (N.J.S. 2A:113-4), kidnapping for ransom (N.J.S. 2A:118-1), treason (N.J.S. 2A:148-1) and assault on certain high governmental officials (N.J.S. 2A:148-6). Generally, we consider the issue of the abolition of the death penalty to be beyond the scope of the Commission's mandate although there is considerable sentiment within the Commission for abolition. We have taken the steps of eliminating capital punishment for all crimes other than murder and restructuring both the standards and procedure for imposition of the sentence of death.

2. *Capital Murder under New Jersey Law.* Following the Pennsylvania model, murder in New Jersey is divided into two degrees. This was done as part of an early reform to mitigate the death penalty. The aggravated form, first degree, is murder which is:

"Perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which is committed in perpetrating or attempting to perpetrate arson, burglary, kidnapping, rape, robbery or sodomy, or which is perpetrated in the course or for the purpose of resisting, avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, or murder of a police or other law enforcement officer acting in the execution of his duty or of a person assisting any such officer so acting. . . ." (N.J.S. 2A:113-2.)

See *State v. DiPaolo*, 34 N.J. 279, 294 (1961); *State v. Mangino*, 77 N.J.L. 644 (E.&A. 1909). Only such murders are capital.

In addition to this grading, a second form of mitigation is written into our statute, *i.e.*, jury discretion. Under N.J.S. 2A:113-4, the death penalty is only to be imposed if the jury does not recommend life imprisonment:

"Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after consideration of all the evidence, recommend life imprisonment, in which case this and no greater punishment shall be imposed."

See *State v. Laws*, 51 N.J. 494 (1968) ; *State v. Forcella*, 52 N.J. 263 (1968) ; *State v. Reynolds*, 41 N.J. 163 (1964).

3. *The Problem of Grading and Discretion.* We recommend replacement of the existing structure of grading and discretion with a different set of standards. The Code rejects the usual division of capital murder into degrees although we continue to make the death penalty available only for purposeful killings and felony-murders.

We agree that the deliberation standard ought to exclude from the capital category cases where the homicide is committed under the influence of an extreme mental or emotional disturbance produced by causes which give rise to proper sympathy for the defendant. Insofar as this is the objective to be sought, it is accomplished by the Code in the provision for a reduction to manslaughter in cases of "extreme mental or emotional disturbance for which there is a reasonable explanation or excuses." We consider this grading to be appropriate. Given such mental or emotional disturbance resting on such cause, the case for a mitigated sentence does not depend on a distinction between impulse and deliberation; the very fact of long internal struggle may be evidence that the actor's homicidal impulse was deeply aberrational, far more the product of extraordinary circumstances than a true reflection of the actor's normal character, as, for example, in the case of mercy killings, suicide pacts, many infanticides and cases where a provocation gains in its explosive power as the actor broods about his injury. And apart from such disturbance of the actor, we think it no less clear that some purely impulsive murders may present no extenuating circumstance. As Stephen put it long ago (3 *History of the Criminal Law* [1883] p. 94): "As much cruelty, as much indifference to the life of others, a disposition at least as dangerous to society, probably even more dangerous, is shown by sudden as by premeditated murders. In many cases there is no premeditation unless the word is used in a sense as unnatural as 'aforethought' in 'malice aforethought,' but each represents even more diabolical cruelty and ferocity than that which is involved in murders premeditated in the natural sense of the word."

The same point was made by the Home Office before the Royal Commission on Capital Punishment, as follows:

"Among the worst murders are some which are not premeditated, such as murders committed in connection with rape, or murders committed by criminals who are interrupted in some felonious enterprise and use violence without premeditation, but with a reckless disregard of the consequences to human life. . . . There are also many murders where the killing is clearly intentional, unlawful and unaccompanied by any mitigating circumstances, but where there is no evidence to show whether there was or was not premeditation." See *Minutes of Evidence* p. 12; *Report* pp. 174-174.

The question then is whether it is possible to construct a more satisfactory delineation of the class of murders to which the capital sanction ought to be confined insofar as it is used at all.

We have attempted, first, to ask ourselves what we believe to be the simpler question: whether there are any cases in the murder category in which we are clear that a death sentence never ought to be imposed. As noted above, we first do so for killings which are

merely knowing or reckless. Here, we differ from the MPC. We agree with their point that the distinctions we make are not entirely rational—but we believe this to be necessary to avoid any expansion of the category of cases subject to the death penalty. Having limited capital cases to purposeful killings and to felony murders, we then point to the main circumstances of aggravation and of mitigation that should be weighed against each other when they are presented in a concrete case. Such circumstances are enumerated in Subsections a, c and d. Standards are not constitutionally compelled. *McGautha v. California*,—U.S.—, 91 S.Ct. 1454 (1971). Such an enumeration is desirable, we submit, if only as guidelines to the exercise of sound discretion by the court or jury, as the case may be.

Under Subsection a(1) the Court is directed to sentence to life imprisonment or as for a first degree crime, without conducting any further proceeding, if it is satisfied that none of the aggravating circumstances was established by the evidence at the trial or will be established if a further proceeding on the issue of the death sentence should be initiated. Thus if no aggravating circumstance appears in the evidence and the prosecuting attorney does not propose to prove one in the subsequent proceeding, sentence of imprisonment will be imposed. The Court also is instructed by Subsection a(2) to impose sentence other than death if it is satisfied that the evidence at the trial established substantial mitigating circumstances which call for some leniency in the sentence; or, under a(3), if the defendant, with the consent of the prosecuting attorney, has been permitted by the Court to plead guilty to the charge as a noncapital crime or as a crime of the first degree; or, under a(4), if the defendant was under 18 at the time of the killing. We believe MPC § 210.6(1)(e) to be covered by our Subsection a(1) and MPC § 210.6(1)(f) to be covered by Section 2C:43-11. See MPC T.D. 9, pp. 68-73 (1959).

4. *The Court or Jury as the Organ of Discretion.* If a sentence of imprisonment is not imposed by the Court under Subsection a, a further proceeding must be initiated to determine whether or not sentence of death should be imposed. Under Subsection b the issue is placed in the hands of a jury and requires that the jury affirmatively agree to the imposition of the death penalty. This continues existing law. N.J.S. 2A:113-4. But cf., *State v. Laws*, *supra*. Our formulation is different from the MPC which would require the Court and the jury to agree.

5. *The Separate Proceeding to Determine Sentence.* The Code establishes a bifurcated trial on the issue of the death penalty. In New Jersey, the issue is determined as part of the jury's verdict (N.J.S. 2A:113-4) and evidence admissible solely on the issue of punishment is offered at trial with a limiting instruction. *State v. Mount*, 30 N.J. 195, 210 (1959); *State v. Reynolds*, *supra* at 175. In our opinion, this rule creates an inescapable dilemma. Either the determination of the punishment must be based on less than all the evidence that has a bearing on that issue, such for example as a previous criminal record of the accused, or evidence must be admitted on the ground that it is relevant to sentence, though it would be excluded as irrelevant or prejudicial with respect to guilt or innocence alone. Trial lawyers understandably have little confidence in a solution that admits the evidence and trusts to an instruction to the jury that it should be considered only in determining the penalty and disregarded in assessing guilt. Although the Supreme Court of the United States has upheld the unitary trial (*McGautha v. California*, *supra*) we believe it appropriate to abandon it by legislation.

There is no reason to insist upon a choice between a method which threatens the fairness of the trial of guilt or innocence and one which detracts from the rationality of the determination of the sentence. The solution is to bifurcate the proceeding, abiding strictly by the rules

of evidence until there is a conviction, but once guilt has been determined opening the record to the further information that is relevant to sentence. This is the analogue of the procedure in the ordinary case when capital punishment is not in issue; the court conducts a separate inquiry before imposing sentence. It is the plan that California has adopted with satisfactory results. The system is adopted in the Code. Unless a capital sentence is precluded by Subsection a, the Court is directed to conduct a separate proceeding after conviction of murder to determine whether the defendant should be sentenced for a felony of the first degree or sentenced to death. The proceeding will be before either the trial jury or one specially empaneled.

A subcommittee of the New Jersey Supreme Court's Advisory Committee on Criminal Procedure recently submitted a report on the Bifurcated Trial. See also *State v. Laws, supra*; *State v. Mount*, 30 N.J. 195 (1959); *State v. Forcella, supra*.

6. *Background Evidence.* Subsection b allows the admission of evidence relevant to sentence. Such "background evidence" may be presented as to any matter that the Court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition and any of the aggravating and mitigating circumstances enumerated in Subsection c and d. It also provides that the exclusionary rules of evidence shall not apply. The prosecution thus may offer reports of investigation of the defendant, subject to a safeguard we believe to be important. The defendant's counsel should at least be granted a fair opportunity to rebut any hearsay statements, which would require only that he be seasonably informed of the factual contents and conclusions stated in any reports that will be used. This is the solution that the Code proposes for pre-sentence reports in general. Our law is in general accord. *State v. Mount, supra*; *State v. Reynolds, supra*. The Code does change the existing practice in this State of allowing evidence to be admitted without regard to its legal admissibility.

7. *Trial Jury or New Jury.* Generally, the Code anticipates that the sentence hearing will be before the same jury that determined guilt.

"If the proceeding is before a jury, it is contemplated that it ordinarily will be the jury that determined guilt; the evidence relating to the crime will thus not have to be repeated. We think, however, that it is desirable to recognize that good cause may be shown for empaneling a second jury and such power is conferred upon the Court, as in the California statute. There is an argument against such power in the Court which should be recognized, a juror's knowledge that he may not be in a position to control the verdict as to sentence may induce him to hold out against conviction, the elimination of this risk is, indeed, one of the virtues of the whole discretionary plan. If this is deemed, as it may be, a point entitled to controlling weight, the provision for another jury ought to be eliminated. We think, however, that practice would so uniformly use the trial jury that the problem is largely theoretical." (MPC T.D. 9, p. 76 (1959).)

8. *Argument on Death Penalty.* The Code explicitly allows both the prosecution and the defense to make argument for and against sentence of death. No effort is made to limit the arguments that may be made. This is not a problem that will yield to any legislative formulation and the Court must be relied upon to assure that decencies prevail. See *State v. Reynolds, supra*.

9. *Standard for Imposition of Capital Punishment.* Our cases give no standard to the jury and this accords with the majority of cases in other states. See *State v. Bunk*, 4 N.J. 461 (1950); *Petition of*

*Ernst*, 294 F. 2d 556 (3rd Cir. 1961) ; *State v. Forcella*, *supra*; *State v. Johnson*, 34 N.J. 212 (1961). The Code changes this. We think the jury should be told that it may not decide that sentence of death shall be imposed unless it finds that there was an aggravating circumstance specified in Subsection c and further that there were no substantial mitigating circumstances but that the judgment otherwise is within its discretion. MPC T.D. 9, p. 77 (1959). See *McGautha v. California*, *supra*.

10. *Jury Instruction on Parole*. The Code allows, but does not require, the jury to be told about parole possibilities, *i.e.*, the nature of the sentence of imprisonment that is the alternative to death. The argument in favor of such information is, that a decision presupposes an awareness of alternatives, and that the jury necessarily will speculate about the matter if it is not so informed. The instruction will, if given, give the Court an opportunity to put the matter in its proper light, not merely stating that there is a legal power to parole, but also noting that the parole system permits the retention as well as the release of the prisoner upon the basis of a reconsideration of his future by a competent tribunal years after the commission of the crime, when time and the correctional experience may have effected fundamental changes in his personality. This is a change from existing law. Under *State v. White*, 27 N.J. 158 (1958), the jury is to be instructed that this issue is not of concern to them and they are to ignore it. See also *State v. Laws*, *supra* at 186.

11. *The Requirement of Jury Agreement and of Unanimity under Subsection b*. Existing New Jersey law is that the jury must be unanimous on both guilt and on the death penalty. *State v. Reynolds*, *supra* at 187, overruling *State v. Bunk*, *supra*, and *State v. Tune*, 17 N.J. 100 (1954). The Code requires that the jury must agree that a sentence of death should be imposed. This respects the tradition that a jury verdict in a criminal matter ought to be unanimous. It has the further virtue of reducing the danger that one or two jurors may hold out against conviction of the crime because of opposition to the punishment. The bifurcated hearing system may enlarge that risk, as we have previously noted, insofar as a different jury is at least theoretically possible. The risk ought not to be further enlarged. More than this, however, we believe that sentence of death is so enormous and exceptional a disposition in our time in the United States that it should not be imposed upon the judgment of a jury unless the case is clear enough to produce unanimity.

If the jury is unable to agree, there is a question whether the Court should be empowered to submit the issue to a second jury. We think that one submission ought to be enough and that if there is disagreement the Court should terminate the matter by imposing sentence of imprisonment.

14. *The Alternative to the Death Penalty*. The Code authorizes imposition of a sentence of life imprisonment or sentence for a crime of the first degree in the event the jury rejects the death penalty. The decision whether to impose life imprisonment or a sentence for a crime of the first degree is a judicial decision to be made in the usual manner for sentencing.



# Borough of Avon-by-the-Sea

New Jersey

07717

HARRY B. CROOK, JR., MAYOR  
DIRECTOR OF PUBLIC AFFAIRS & SAFETY

JAMES A. ROGERS, COMMISSIONER  
DIRECTOR OF REVENUE AND FINANCE

RICHARD J. CONNORS, COMMISSIONER  
DIRECTOR OF PUBLIC WORKS

774-0871  
AREA CODE 201

SEPTEMBER 11TH

19 73

THEODORE F. BELASCO, JR.  
BOROUGH CLERK

Ms. Pat Donat  
Counsel to Assembly Judiciary Committee  
State House,  
Trenton, New Jersey

Dear Ms. Donat:

Some time ago I notified Senator Azzolina that I would appear on September 13th to support Senate Bill #799.

Due to the recent death of my father, I will not be able to attend.

However, I would like to be recorded as being very strongly in favor of the Death Penalty as the punishment for anyone who deliberately murders or causes to be murdered, another person or persons.

I am in the armored trucking business and, after 48 years without incident, on June 16, 1973, in broad daylight, one Terry Alden did yank open the door of one of my trucks and pump 8 bullets into one of my guards, killing him instantly and then put 2 bullets into the other guard and creased him with 2 more bullets.

Alden did not get any money in the attempted holdup and did not give my men a chance to defend themselves.

Alden is still a fugitive and, after he is caught, does not have to worry about having his life taken from him.

My entire lifetime has been spent in the security business and in police work.

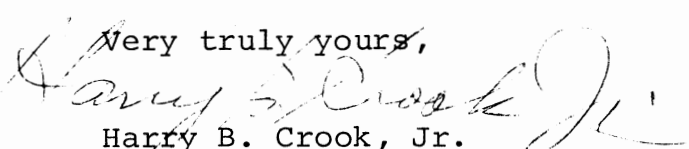
At the present time and for most of the past 23 years, I am the Director of Public Safety in the Borough of Avon-by-the-Sea.

It is my firm conviction that any criminal intent on taking the life of another will be greatly deterred from such an action if he knows that death in the electric chair would be his punishment for performing such a violent act.

I strongly urge both houses to adopt Senate #799 and also strongly urge the Governor to sign the bill upon passage.

The present system of treating cold blooded murderers with kid gloves must be stopped and NOW is the time to do it!

Very truly yours,

  
Harry B. Crook, Jr.  
Mayor, Avon-by-the-Sea.

HBC:mf

cc: Senator Azzolina

# AMERICANS FOR DEMOCRATIC ACTION

Southern New Jersey Chapter 618 Fountain Ave., Cinnaminson, N. J. 08077 Telephone: (609) 829-0333

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## MEMORANDUM

Testimony to be given at the hearings of the Assembly Judiciary Committee  
September 13, 1973 by Leif Christensen, Chairman of the Southern New Jersey  
Chapter of Americans for Democratic Action.

Mr. Chairman, Members of the Committee, Ladies and Gentlemen I appreciate  
this opportunity to present to you the position of Americans for Democratic  
Action regarding the restoration of capital punishment in New Jersey.

ADA opposes the death penalty under any circumstances.

Three years ago our South Jersey Chapter established a committee to study  
capital punishment. The specific impulse at the time was a bill proposed  
by the - then State Senator Edwin B. Forsythe to abolish the death penalty  
under most conditions.

Our committee reviewed various studies made in recent years by many  
private, public and governmental agencies both in the United States and  
throughout the world. We found the facts indicated overwhelmingly that  
capital punishment was a senseless relic of ancient systems of justice.

There are so many reasons not to return to the death penalty that  
one hesitates as to where to begin.

In a recent article about the Supreme Court decision which found capital  
punishment unconstitutional, Ramsey Clark said, "During the five years ~~that our~~  
United States courts stayed the death penalty while they agonized over the  
power of the state to kill its people, more than half the world's executions  
were in Racist South Africa, which has less than 1 per cent of the planet's  
population. Need more be said of the uses of capital punishment?"

Unfortunately the reason for our being here indicates that more does need to be said. Many senseless and terrible crimes are committed far too often. These crimes sometimes enrage and frustrate even the most timid and complacent among us. Our outrage sometimes leads us to overreaction and misdirected efforts towards ending these crimes.

As human beings and as citizens of this country with its great democratic traditions we must stop and take the time to examine the effects of what we are now considering.

There are many reasons for opposing capital punishment. Most of them can be divided into two categories, moral or humanitarian reasons and practical reasons. There will probably be many eloquent spokesmen at these hearings who will emphasize the moral issues, therefore we will stress the practical.

Of the practical reasons the most important is the failure of the death penalty as a deterrent.

Many scholarly and detailed studies have compared various geographical and political areas which use the death penalty with similar areas which do not. Comparisons have been made of states and countries which switched from capital punishment to life imprisonment and vice versa. In every case these studies indicated no correlation between the severity of the penalty and the incidence of serious crime. For instance during the year 1967 the state of Georgia which employs electrocution as a maximum penalty had a serious crime rate more than 20 times greater than the state of Maine which employs life imprisonment as a maximum penalty.

During the last century an English chaplain remarked that of the 167 men whom he ministered to on the gallows 161 had previously attended one or more hangings.

There is also some evidence that use of the death penalty is conducive to more serious crime because of the actions of psychopathic or psychotic persons who have suicidal tendencies or who seek the publicity and notoriety in connection with a crime which might result in the death penalty.

Perhaps the second most important reason for opposing the death penalty is the possibility of - and the incorrectability of - mistakes.

In New Jersey during the past 50 years there has been at least one innocent man put to death, one man found to be innocent while awaiting his execution and one man freed from a life sentence who would have been dead had his jury not recommended mercy.

If capital punishment is not a deterrent how can we justify taking even one innocent life?

Another major reason for opposing this legislation is the fact that the death penalty has been biased in its application against the poor and those with black or brown skins.

Of the 3,859 Americans legally killed from 1930 to 1967, 2,066 or 53% of them were Negro. At this time <sup>only</sup> 13% of the national population are black.

Rape executions in the South have been almost totally black. At the time of the Supreme Court decision against the death penalty there were 79 people in 10 Southern states facing death for rape. Of the 79 only 3 were known to be white.

Economics is also very important. Those who can afford the best lawyers almost never reach the electric chair. The former San Quentin Warden Quinton Duffy said: "I officiated at executions of 88 men and two women and not one of them was rich."

Nothing in the presently proposed legislation would prevent this tendency from continuing.

There are many, many other important moral and practical reasons why we should reject a return to the death penalty at this time, not the least of which are the following:

1. The demoralizing effect in all of the people who must participate in executions.
2. The distortion of our system of justice which has occurred because of the use of executions.
3. The fact that the idea of rehabilitation is completely denied by execution.
4. The fact that as a deterrent it is no better than many alternative penalties which do not have so many undesirable side effects.

The recent Supreme Court decision is an excellent opportunity to confront the problems we face with crime and punishment in our state.

Criminologists, penologists and psychologists almost universally agree that it is the swiftness and certainty of conviction which acts as a deterrent and not the severity of the penalty.

ADA will support efforts at all levels of government to make our system of justice more swift, more certain and more just.

Thank you,

Leif Christensen, Chairman  
Americans for Democratic Action

September 13, 1973

Mr. Chairman, and Members of the Judiciary Committee:

I am the Rev. Richard B. Andersen of the Department of Christian Social Relations of the Episcopal Diocese of Newark, speaking on behalf of the Rt. Rev. Leland Stark, Bishop of the Episcopal Diocese of Newark; and of the Rt. Rev. George E. Rath, Bishop Coadjutor; and of the Department of Christian Social Relations of the Episcopal Diocese of Newark. We state herewith our opposition to Capital Punishment imposed under any circumstances and to Bill S.799 in particular. I am grateful to you for the opportunity of appearing before this committee to record the mind of our Diocese and National Church upon the subject. First, we reaffirm the official stand of the Episcopal Church as adopted by its governing body, the General Convention, in its opposition to capital punishment. The resolution adopted by the General Convention reads in part:

"Inasmuch as the individual life is of infinite worth in the sight of Almighty God; and whereas the taking of this human life falls within the providence of Almighty God and not within the right of man; therefore be it RESOLVED, that the General Convention goes on record as opposed to capital punishment."

And we reaffirm the official stand of the Episcopal Diocese of Newark as expressed in a similar resolution adopted by its 88 Annual Convention which reads in part:

"Whereas Capital Punishment is contrary to the Christian doctrine of redemption, rehabilitation and reverence for life, and in view of the stand of our General Convention against capital punishment, Be it resolved by this Convention that the Diocese of Newark go on record as being opposed to capital punishment."

Resolutions similar to those above have been passed by no less than fourteen other national religious bodies, including those of both Jewish and Christian persuasions. The Judeo-Christian heritage teaches us respect for the worth of every individual and the deepest concern for those who offend against the laws of society. The

forgiveness of the sinner, the reclamation of the offender, and the rehabilitation of the criminal are the ways in which our faith teaches us to deal with those who have made even the most serious mistakes. We do not accomplish this perfectly within our individual lives, but we cannot support or condone practices which make a mockery of these goals in our corporate relations. Capital punishment has been defended as a deterrent to crime, as a warning to criminals, as a safeguard for our society and its laws. It has proved to be none of these. An enlightened public conscience has removed from the list of capital offenses many of the original acts which were so regarded only a few centuries ago. Sociological and penological studies today show no significant difference in the criminal records of states within which capital punishment has been outlawed and those within which it is still legal. Psychiatrists, parol officers and others who have studied the psychology of the murderer tend to agree that the threat of his own destruction is no deterrent to his act. Even if it were true that capital punishment acted as a deterrent to those contemplating murder and as a safeguard to society, there would still remain the monstrous injustice of the way in which the law is administered. Relatively few women are condemned to die; relatively few wealthy individuals are condemned to die; relatively few white persons are condemned to die. The sentence of death is most frequently pronounced in cases involving members of minority races who are too poor to employ their own counsel or to make use of the elaborate systems of appeals and reviews.

Capital punishment brutalizes both the condemned person and the condemning society. It allows the condemned to bear the sins of all in such a way that he has no opportunity for redress or reform because his life has been taken from him; and it allows society to forget its corporate guilt and its responsibility for a single man's wrongdoing. Some of our religious colleagues will quote liberally from the Old Testament about "an eye for an eye and a tooth for a tooth," and if they are Christians, they forget that Jesus himself declared in the Sermon on the Mount:



"Love your enemies and pray for them which despitefully use you." Others will claim that this is all right and necessary for personal relationships, but impossible in a society at large. But Jesus was speaking to everyone in his discourse, not only to his disciples. From our vantage point we are led to say that the new must interpret the old; and that Jesus reinterprets the Law and the Prophets, and He becomes the basis of our moral attitudes and actions.

Some will call our concern for the abolition of capital punishment, or in this case, its reinstatement as suggested by Bill S. 799, unrealistic and sentimental and out of touch with man's real nature. But surely, to assume that one man can be condemned to death and thus make any further rehabilitation impossible, and that his death can atone for the sins he has committed against another person or society is another kind of unrealism and sentimentality, naive, and in some instances brutal and cruel.

Rather than destroy all a man's chances and opportunities in the name of revenge and as a supposed deterrent; and the statistics are very uncertain and not at all conclusive here; it seems much more humane and reasonable to pursue vigorously all avenues of rehabilitation in our prisons, our probation offices, our courts, our half-way houses, and in our training and use of as many volunteers as possible. Not for a moment are we claiming that laws and penalties should not be imposed. These are all necessary if we are to maintain law and order, but there are limits and points beyond which we go to our own and society's detriment.

Because capital punishment affords no redress to those wrongfully accused, tried, and executed, and because it is barbarous in nature, because it makes for unequal justice, because it fails in its announced purpose, but most of all because it usurps a prerogative that belongs only to the God who gave us life, and because it is against the dictates of a religion that professes belief in the mercy and justice of God and in the practice of forgiveness among men, we urge you not to release Bill S. 799 from your committee. I speak for the Bishops of the Episcopal Diocese of Newark and the Department of Christian Social Relations. 132 A

STATEMENT SUBMITTED BY NEIL COHEN

Probably the most frequent question posed by the public dealing with Capital Punishment is whether or not it acts as a deterrent to others. Capital Punishment has failed to accomplish its stated objectives; 1) that the Death Penalty has a uniquely deterrent effect on those who contemplate committing capital crimes, and (2) that the provision of the Death Penalty as a mandatory penalty for stated offenses in the statute books, removes for all time the danger of future similar offenses by those whose criminal acts have made them subject to its rigors. Now Proposition I is dependent on the pleasure-pain principle of past century penology, in other words a rational man will weigh the prospectives of profit or pleasure derived from his crime. However most people are not rational at the time the crime is committed. Dr. Shaw Grigsbee of the Univ. Of Florida in his recent studies at the Rayford State Pen. found that more than 75% of the males and 90% of the females were under the influence of alcohol at the time they committed the offenses for which they were serving. Proposition I presupposes knowledge by the prospective offender that there is prior knowledge of the statutory penalties that exist. The faulty reasoning here is that many lawyers do not know the penalties, till they do their research. Proposition II assumes that all or a high portion that commit crimes for which the

the Death Penalty is prescribed won't in fact be executed and an assumption rebutted above which was false even in the heyday of Capital Punishment when more than 200 offenses were punishable by the gallows.

Death is the rarest of all punishments that can be applied to an act of crime. In 1965,<sup>1967</sup> only <sup>10</sup> men were executed after their conviction of a capital crime. These are the lowest figures since 1935, when a total of 199 died at the hands of the executioner. Since World War II, there has been a decline in the usage of the Death Penalty, though not a lack of candidates. It is evident that our reluctance to execute murderers necessitates reforms. Why should we assume that the fear of the gallows is more potent in regulating our actions than the fear of dying in prison, or of spending the best part of our life in abnormal settings. The perpetrators have either not been taught the proper respect for life or they find themselves in a situation where hatred, desire, or sudden anger place them in a situation where the legal consequences are forgotten. Even the premeditated murders, that are carefully planned, generally are committed under the stress of a great emotion and the penalty is seldom considered.

One weakness in Capital Punishment as a deterrent is the fact that threats of future punishment, especially if

apprehension is uncertain, do not have the same motivating power as the desires of the moment. While some people live in a state of perpetual concern for the future, others live or focus only on the present. When the risks of detection are small, the questions about the severity of the penalty tend to lose their significance. The criminal often acts upon the assumption that all is going to end well. Also the very severity of the penalty may give the illegal action a specific appeal, in the same way dangerous sports are attractive to some people. If the potential criminal does deliberate about the risk of punishment before he takes action, then both the Death Penalty and life imprisonment can appear so drastic that the difference between them may seem fairly insignificant. With homicide you are dealing with a split second reaction of emotions and if the police are involved immediately, you must add fear of being caught. Can an irrational thinking man make a quick decision to surrender and go to jail or fire a shot at the cop and escape. No man is going to be thinking of Capital Punishment at that moment.

Much has been studied about states which have the Death Penalty and those that have not. I would like to submit a few of the findings. I) when comparisons are made between contiguous states with similar populations and similar social and economical conditions that whether the

the state has the penalty or not there is no significant change in the homicide rates. 2) the abolition, introduction or reinstatement of Capital Punishment is not accompanied by the effect on homicide rate that is postulated by the advocates of Capital Punishment. and the 3rd part I submit is probably the most relevant. If the death penalty has any deterrent value it presumably lies in its actual execution rather than in the legal possibility. No significant difference was found in this respect in a study by a noted criminologist, Leonard Savitz. Mr. Savitz studied the homicide rates sixty days prior and sixty days subsequent to five executions in Philadelphia. In another study by the same man, he analyzed the rate of capital crime for a period of eight weeks just before and eight weeks after the sentencing of four men to death. He hypothesized that the greatest deterrence would occur in the locality where the crimes were committed and where the criminal and victim were known. The four cases were selected because the sentencing was given great publicity in the newspapers. The result was that no significant increase or decrease in the murder rate occurred.

Studies of Capital Punishment in the United States show that the Death Penalty has been randomly envoked and inconsistently applied. The logic of the retentionists would be strengthened if they could demonstrate that even handed justice exacted the supreme penalty without regard to race or nationality, age or sex, social or economic condition. Accurate Death Penalty statistics for the United States are available for the 30 year period 1939-1959, an analysis of the more than 3000 cases in which Capital Punishment was exacted discloses that more than half were black and a very significant proportion were defended by court appointed lawyers. Whether a man died for his offense depended not on the gravity of his crime, not on the number of such crimes, or the number of his victims or even on his present or prospective danger to society. He died due to such adventitious factors as the jurisdiction in which the crime was committed, the color of his skin, his financial position, whehter he was male or female and also depending on the character of his victim. The Death Penalty seems to be meant for the poor, uneducated and legally impotent offender. Individuals of better than average ability are rarely on Death Row.

A statistic that exemplifies the prejudicial use of the Death Penalty is an Ohio study of those prosecuted for and convicted of capital crimes. 31% of the males were found

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guilty and 80% of the females were found also to be guilty,  
but 8% of the males were executed, and not one female was.  
Another study by the Florida Civil Liberties Union showed a  
disproportionate amount of blacks were executed for rape in  
relation to whites convicted of the same crime. In some  
southern states it has been on rare occasions that a white  
has been sentenced to death for the murder of a black. A  
study in New York from 1957-1962 shows that blacks and other  
minority groups have had the Death Penalty evoked upon  
them in more cases than whites. The disproportional use is  
attributed not to greater criminality, but to basic prejudice.

I feel that quoting endless statistics is not going to prove either the case for abolition or the case for retention. There certainly seems to be no convincing volume of evidence which would satisfy any unbiased individual that abolishing the Death Penalty has not resulted in an upsurge of homicide or that those states which have returned to the Death Penalty are any freer of capital crimes than those which have not. The Death Penalty is a symbol of the imperfections and a hypocrisy of our affluent society. I say this because too many people want security in their conscience with the mistaken belief that the Death Penalty produces for them at least a degree of protection against what they seem to think is a segment of society in which they have nothing in common and will never come in contact with.

Capital Punishment performs none of the utilitarian functions claimed by its supporters, nor can it even be made to serve such functions. It is an archaic custom of primitive origin that has been disappearing in most civilized countries, and is withering away in many others.

I hate the Death Penalty because it makes a mockery of our moral code, for it is as wrong for all to kill, as it is for one. Any homicide committed under whatever auspices is an act of violence. The idea of Capital Punishment is and should be repugnant to modern civilized man. Punishment



whether it is the ultimate or the most minor penalty should be a by product of societies system of control and not its control purpose.

The people who stand by the heinous merits of Capital Punishment don't see that murder and the Death Penalty are not opposites that cancel each other out, but similars that breed their kind. The price we are paying in placing faith in punishment is a continuing high rate of crime and failures.

Man has used the Death Penalty in other forms of retributive punishment throughout the centuries to control and govern the conduct of his fellows and to forge conformity in compliance to laws and codes. The record of every civilization makes it clear that punishment, no matter how severe or sadistic, has had little effect on the crime rates. No new approach to the criminal is possible so long as the Death Penalty and its discredited penolgy that it represents prevades our criminal justice system.

I would like to conclude my opinion with a scenario. Picture a visitor from another planet should stray to North America and observe here and their, on very rare occasions, a small group of persons assembled in a secluded room, who as representatives of an all powerful sovereign state were participating in a deliberate and artful taking of a human life. Ignorant of our customs, he might conclude that

he was witnessing a sacred rite, suggesting a human sacrifice. And seeing our great universities, scientific laboratories, clinics, charitable institutions and the multitude of churches dedicated to the worship of an executed man, he might just wonder about the strange and paradoxical workings of the human mind. I ask the members of the Committee if they could pull the switch?

NEW JERSEY COUNCIL OF CHURCHES  
COMMISSION ON GOVERNMENT

Sept. 13, 1973

Testimony opposed to S799

I am Philip E. Kunz, Director of Social Concerns of the New Jersey Council of Churches testifying for NJCC in opposition to S799.

NJCC is composed of 12 major protestant denominations in New Jersey and is charged by its members with study and position representation on Key social questions such as the death penalty and penal matters. Death penalties are expressly opposed in our Legislative Principals voted by the NJCC Governing Board. Moreover, each of our member judicatories takes its own stand against death penalties.

NJCC's Commission on Government has worked against S799 from the beginning. In that light, let me thank the Assembly Judiciary Committee for its obvious effort to clarify and thus, in its own view, improve the text of S799 through committee amendments.

The Committee version is easier to understand and shows signs, in this person's view, of effort to bring more humanity to the legislation of penalties in first and second degree murder.

Nonetheless, NJCC finds the imposition of death penalties and life sentences with mandatory 30 year periods before parole eligibility regressive in light of contemporary penology and psychology, and thereby still quite unacceptable.

Let us look quickly at the Assembly Committee version to note some of NJCC's problem with the bill:

A. On page four, section 1 the language "manifesting extreme indifference to the value of human life," while perhaps intended to be more coherent to future juries and the man in the street, still offers cloudy meaning. This is a serious fault. What is "extreme indifference?" Why is there no tight definition in this text? We submit that 10 persons will haltingly offer 10 definitions of "extreme indifference." Incidentally, we may justly charge the legislature in such an undertaking to say more about the "value of human life." What is the value of human life? This kind of language will throw courts into a morass of passions.

B. On pages 4 and 5, section 2 the language "Murder which is purposeful is murder in the first degree." At initial view that line may only be droll. A firm grasp of the obvious. But, unfortunately the law is not helped by humour, or such vagueness. If the people of New Jersey must be repressed under legislation like S799, can we not at least have a definition in the law for "purposeful" which would pass one of Messrs. Harris, Quayle, or Gallup's polls? Again the risk of future juries generating ad hoc definitions of "purposeful" is far greater than the commonwealth deserves.

C. The third section forbidding guilt pleas to murder is very worthwhile.

D. The Committee's language at pages 5 and 6, section 4, stating that every person convicted of first degree murder, including aiders and abettors, in the new penalty requirement is incredibly harsh and unreasonable. Inclusion of such fellow travelers in the same view as actual killers is totally unacceptable to NJCC. This new line of reason in the bill does not square with Biblical, sociological, or psychological reality.

E. The Committee amendment language on page 7, section 4, lines 72, 73, 74, which places a burden of proof on the defendant for mitigating circumstances is poor and not consonant with the kernel of the Constitution. The burden under section five, as well as six, must be on the State. In short, the law should presume that the defendant is not a monster but is subject to mitigating circumstances unless the Prosecution brings adequate evidence to court in the sentencing proceedings and wins a verdict for a more grievous penalty. Let us remember the great preponderance of investigative and presentational ability that ever rests with the Prosecution. This is especially clear to any open to sociology and who thereby see the reality of a majority of defendants falling into a de facto class of poor, hispanic, or black. Court decisions have underlined the special difficulties of such persons in defending themselves. Thus we must not now attempt a reversal of the Constitutional thrust by placing the relatively defenseless under the burden of proving mitigating circumstances.

F. Section five as it stands could lead to blatant racist or classist proceedings against defendants. This would not meet the situation which motivated our Supreme Court to hold death "cruel and unusual" in the present era.

F. The Committee amendment on page 8, section 6 (f) referring to the killing of police and corrections officers is not acceptable. NJCC underscores the ungradeable quality of all human lives. The death of an officer is the deepest tragedy. Yet so is the death of a child, grandmother, storekeeper, or any other human being. We cannot buy the false case that certain officers are special human beings before the law. However politic it may seem to a few to press for a special category for officers, we must reject this specious reasoning which only generates more trouble in the society by leading to more divisions and polarizations.

G. The Committee's continuance of section 7 providing life without parole for those convicted of assault on certain Government officials is wrong and unacceptable. Again, however important to domestic tranquility these officials may be, they are not super-persons more equal before the law. This clause could be taken as a silly effort to drag in supposed patriotic feelings into law. The penalties in New Jersey for assault on persons, whomever they might be, are adequate.

Now beyond these detailed objections to the bill as amended, NJCC reminds the Committee that the burden of proof for harsh penalties such as death and life without parole remains on the new advocates for penalties. Where is the overwhelming proof that terrible penalties bring effective deterrence? Indeed, studies have shown no deterrence. Other study indicates corrections officers enjoy an equal security from death in

States where there is no death sentence for killing an officer while incarcerated. Centuries of human experience have shown, rather, that rehabilitation measures are the best recourse for societies. The problems of developing more effective rehabilitation cannot, must not prejudice now the historic case against death. The dead, of course, are never rehabilitated, nor are their victims brought to life by executions.

But more, those whom we wish to deter by the specter of death are not deterred. Indeed, later study in science and humanities indicates that "blood lust" is raised in societies with death penalties. History shows too many instances of a higher level of violence following upon a rising threshold of harsh penalties. Paranthetically, the problem of rising violence and "blood lust" may well be related to the rising level of violence in movies and television today. Perhaps this Assembly could better profit society by writing a Constitutional statute which deterred the peddling of pornographic violence which may be contributing to the Oswalds, Starkweathers, Bremers and their sad lot.

Let us be conservative and stay death, regardless of those who now howl for it. They have no sufficient evidence for their case, only their repeated demands.

Now members of the Legislature, there are those, such as the Mayor of Philadelphia, who drop their religious mantle and call publically for death as revenue. NJCC does not believe a responsible Legislature can espouse a lust so depraved as revenge; a motivation almost as mad as murder itself.

As we are all well aware, the New Testament Gospel does not commend more and more death, even through the premeditated ways of the State.

We challenge the Judiciary Committee, the Assembly, the Legislature to scrap S799 and get over to the offensive in reforming the justice system, probation, parole, penal rehabilitation, juvenile justice code, and related systems. The level of alienation in society may be growing due to the breakdown of these systems. Certainly executions and "throw the key away" sentences will not turn us from alienation toward productive function, cooperation and rehabilitation. We note that the juvenile justice code reform languishes while we stoop to dignify S799 by these hearings. With a projected \$200 million State surplus, the Legislature could design responsible programs for half-way houses, psychiatric treatment, and prevention programs. The backers of S799 prefer the cost of one device and some electric current. Some measure for the value of human life.

Thus, we not only oppose S799 in principal, but point up the specific items where the amendment process has failed to write an effective statute providing fair interpretation in every court case. The Legislative response to murder must turn toward affirmation of humanity and reason.

New Jersey Council of Churches respectfully suggests that S799, a dangerous anti-social measure, be allowed to quietly rest out its days on the shelves of the bill room.

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