

---

---

# *Committee Meeting*

of

## SENATE JUDICIARY COMMITTEE

Senate Bill No. 171

*(Repeals the death penalty and replaces it with life imprisonment  
without eligibility for parole in certain circumstances)*

and

Senate Bill No. 2471

*(Eliminates the death penalty and replaces it with life imprisonment  
without eligibility for parole)*

---

---

**LOCATION:** Committee Room 4  
State House Annex  
Trenton, New Jersey

**DATE:** May 10, 2007  
10:00 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator John H. Adler, Chair  
Senator John A. Girgenti, Vice Chair  
Senator Nia H. Gill  
Senator Raymond J. Lesniak  
Senator Paul A. Sarlo  
Senator Nicholas P. Scutari  
Senator Bob Smith  
Senator Gerald Cardinale  
Senator Joseph M. Kyrillos Jr.  
Senator Robert J. Martin

**ALSO PRESENT:**

Patricia K. Nagle  
*Office of Legislative Services*  
*Committee Aide*



*Meeting Transcribed by*  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

---

---

## TABLE OF CONTENTS

	<u>Page</u>
Edward J. DeFazio, Esq. Prosecutor Hudson County, and Member New Jersey Death Penalty Study Commission	7
James P. Abbott Chief of Police Township of West Orange, and Member New Jersey Death Penalty Study Commission	18
Gary J. Hilton Sr. Private Citizen	22
Senator John F. Russo Former New Jersey State Senator, and Member New Jersey Death Penalty Study Commission	34
Robert Blecker, Esq. Professor of Law New York Law School	43
Marilyn Flax Private Citizen	66
Sharon Hazard-Johnson Private Citizen	68
Bill Piper Private Citizen	77
Vicki Schieber Private Citizen	81
James H. Wells Jr. National Chairperson New Jersey Chapter National Association of Black Law Enforcement Officers, Inc.	85

## TABLE OF CONTENTS (continued)

	<b><u>Page</u></b>
John M. Smith Bishop Roman Catholic Diocese of Trenton	88
<b>APPENDIX:</b>	
Testimony submitted by James P. Abbott	1x
Testimony submitted by Gary J. Hilton Sr.	6x
Testimony submitted by Senator John F. Russo	15x
<i>The Road Not Considered: Revising New Jersey's Death Penalty, and But Did They Listen? The New Jersey Death Penalty Study Commission's Exercise In Abolitionism: A Detailed Reply</i> submitted by Robert Blecker, Esq.	19x
Testimony submitted by Bill Piper	73x
Testimony submitted by Vicki Schieber	75x
Testimony submitted by Bishop John M. Smith	79x

## TABLE OF CONTENTS (continued)

### APPENDIX

	<u>Page</u>
Statement submitted by David A. Ruhnke, Esq. Representing Ruhnke & Barrett	83x
Statement submitted by Ronald J. Tabak, Esq. Special Counsel Skadden, Arps, Slate, Meagher, & Flom LLP	85x
Testimony submitted by Jonathan E. Gradess, Esq. Executive Director New York State Defenders Association	87x
Testimony submitted by Jennifer Thompson Private Citizen	99x
Testimony submitted by Kirk Bloodsworth	102x
Testimony submitted by Roy Riley Bishop New Jersey Synod Evangelical Lutheran Church in America	106x
Letter addressed to New Jersey Death Penalty Study Commission from Forty-three private citizens	108x

## TABLE OF CONTENTS (continued)

### APPENDIX

	<u>Page</u>
Statement submitted by David Shepard Private Citizen	111x
“Innocence Lost in New Jersey” Plus attachments submitted by Celeste C. Fitzgerald Director New Jerseyans for Alternatives to the Death Penalty	115x
rs: 1-111	

(This is an excerpt from the Senate Judiciary Committee meeting of May 10, 2007, pertaining to the Senate Committee Substitute for Senate Bill Nos. 171 and 2471.)

**SENATOR JOHN H. ADLER, (Chair):** We now have one piece of legislation to consider, which this Committee is going to consider by way of a substitute bill. And so I'm going to ask Ms. Nagle to describe the substitute bill that we're going to consider today, which is different than the original S-171 and S-2471.

Ms. Nagle.

**MS. NAGLE (Committee Aide):** The Committee has before it a substitute for those two bills. This substitute amends the murder statute, and it does eliminate many of the subsections, including Subsection C, which was the death penalty sentencing phase. It keeps as eligible for the new sentence, which would be life without parole, those persons who were potentially eligible for the death sentence under the current -- as they are under the current scheme, under 2C:11-3, would continue to be the persons eligible for this new sentence of life without parole, assuming that there is one aggravating factor found.

So it's perhaps too simplistic to say, but in some sense that is being substituted. Life without parole is being substituted for the possibility of a death sentence. In other words, the same persons would be eligible for that.

The substitute then eliminates many of the subsections of that statute, because they deal very -- they deal pretty exclusively with, in fact, capital sentencing. There are some very technical amendments made to, for

example, jury selection, etc., references made to the capital statute which would no longer be necessary.

There are several new sections added. An inmate would have 60 days, if this were to be enacted and signed into law, to -- who is currently serving a death sentence -- to have that sentence changed to life without parole. They would make application to the sentencing court.

There is a new section providing for restitution for murder -- for a person convicted of murder -- restitution for nearest surviving relatives, making it mandatory. Currently, it is permissive.

And there -- as I guess I mentioned, there are some technical amendments conforming, and also a repealer of other sections in the criminal code which, again, deal exclusively with the imposition of the death penalty.

SENATOR ADLER: Thank you very much.

This may be the most serious measure we're to consider this year or maybe for many years in New Jersey. We are talking about life and death, the life and death of New Jersey residents, and potentially the life and death of heinous villains who have caused death to others.

I hope the people in this audience treat this matter with the seriousness it involves. I would ask members of the audience not to exclaim or applaud. We respect the views of everyone in this room. And they may be different and they may be very passionate from their own perspectives. I would ask the members of the audience to be seated -- unless you're a member of the press, or a sergeant at arms, or a State Trooper, or I guess a former senator -- you should be seated, please.

I'd like Senator Lesniak, as the original sponsor of the bill, to take us through the bill.

I will tell you, the bill that Ms. Nagle described -- that's the bill we are to consider today. So while people might suggest changes, we're going to consider this bill on its merits. I know there will be a temptation to try to carve out exceptions for particularly heinous acts. I think any murder is a tremendously heinous act. And whether it is of a police officer, a child, a spouse, a vulnerable elderly person, a firefighter-- To me, that life lost is an unbelievable tragedy. And I don't want us to be in the position today of considering bills that make exceptions for certain types of murders or under certain circumstances. Because I think each one of these lives lost is a tremendous blow to society overall and particularly to the families and the friends of a victim.

Having said that, Senator Lesniak.

SENATOR LESNIAK: Thank you, Mr. Chairman.

Three years ago, I introduced legislation to abolish the death penalty, to ensure that the system of justice administered by our State is effective, consistent, and just. Today, the Senate Judiciary Committee has an opportunity to make that a reality.

One hundred twenty-nine days ago, the New Jersey Death Penalty Study Commission submitted its report to the Governor and to us. That report confirmed that the death penalty actually costs more than life in prison without parole, that there is a very real risk of executing an innocent person, that it stands in direct contrast to our evolving standards of decency, and that it cannot be proven to deter crime. It also confirmed

that the death penalty is a cruel hoax on the family members of murder victims.

In short, this report reaffirmed what many New Jerseyans already believe: The death penalty in this state has failed to ensure that our system of justice is effective, consistent, and just. In the Commission's opinion, the death penalty is fatally flawed and should be replaced with a stronger and more certain punishment of life in prison without any possibility of parole.

I want to thank Chairman Adler for his leadership in bringing us here today to give New Jersey an opportunity to lead the nation by recognizing that the death penalty has no reason to exist in a civilized society.

I also want to acknowledge the leadership of my good friend Bob Martin. He has been steadfast and courageous in doing what is right on this and many other issues.

We should also thank Senator Shirley Turner, whose bill last year placed a moratorium on executions and created the Study Commission.

Make no mistake, the bill we consider today will be one of the toughest sentencing laws in the country. In addition to abolishing the death penalty, it broadly expands the list of crimes for which life without parole sentence would be a mandatory sentence. It also requires that an inmate sentenced under the statute will have to spend their entire life in a maximum-security prison.

The bill to create the Death Penalty Study Commission was supported by 75 percent of the Senate and nearly 70 percent of the

Assembly, many Republicans and many Democrats. Members of the Commission included a distinguished retired Supreme Court Justice who had voted to uphold capital punishment; a Republican police chief who supported the death penalty; two sitting county prosecutors who had sought the death penalty; the father of a murdered daughter; religious leaders; victims' advocates; and other murder victims' family members. This was an unbiased, exhaustive, and bi-partisan study that was supported by an 11-1 vote, with one abstention.

In addition to the Study Commission, the County Prosecutors Association supports this bill. It is important to note that not a single law enforcement officer testified before the Commission in favor of the death penalty.

To reiterate, there is no credible evidence that the death penalty deters anything. There is, however, plenty of evidence that mistakes are made in capital cases, not only throughout our country, but also right here in New Jersey. Larry Peterson told the Study Commission the following: "I want you to remember that I spent 17 miserable years behind bars after being convicted of a murder someone else committed. DNA evidence allowed me to walk out of prison a free man. As long as the death penalty exists in New Jersey, the next innocent person may not."

The most difficult aspect of abolishing the death penalty is assessing its impact on families of murder victims, for there is no right way or wrong way to feel when a family member is murdered.

Committee members have before them a letter signed by more than 50 family members whose views differ greatly on the death penalty but who stand united in telling us to end it. Here is what they say: "To be

meaningful, justice should be swift and sure. Life without parole, which begins immediately, is both of these. The death penalty is neither.” There is no closure for them, no moving on, just more attention to the murder and less on the needs of victims’ families. To make matters worse, there is currently a serious lack of funding for the family members of murder victims. That all changes with what we are doing today.

The death penalty cannot be fixed. The time has come to abolish it. All the safeguards in the world cannot ensure that an innocent person will not be executed. All those safeguards will just add to the costs of unending appeals.

Our State has not imposed the ultimate punishment since 1963, and we should never impose it again.

Some of my colleagues argue that we should maintain the death penalty for cases of terrorism. I disagree. Terrorists want to be martyrs. Let’s not give them another reason to commit heinous acts by singling them out for the death penalty. Additionally, there have been numerous arrests for terrorism that have proved to be mistaken. The same chance exists, with the same lengthy appeals process, to execute an innocent person. As a society, we’re better than that.

Thank you.

Thank you, Mr. Chairman.

SENATOR ADLER: Thank you, Senator Lesniak.

We have a lot of folks signed up to testify, and we’re going to try to take them in groups of two or three. And some people are for, and some people are against, and they have different reasons to be for or against this proposed legislation.

The first panel of three I'd like to have come up is James Abbott, who is a West Orange Police Chief; Gary Hilton; and Hudson County Prosecutor Edward DeFazio.

If you three gentleman could come to the front table.

Mr. DeFazio, do you feel capable of beginning the discussion for us?

**E D W A R D J. D e F A Z I O, ESQ.:** Well, let me just say, it's an honor to be here before all of you Senators today. And I do really appreciate being permitted to go first.

My name is Ed DeFazio. I'm the Hudson County Prosecutor. I was a member of the Death Penalty Study Commission as the representative of the County Prosecutors Association of New Jersey.

The county prosecutors concur with the conclusion of the Death Penalty Study Commission. Our membership was not unanimous on that decision, but the vast majority of county prosecutors do support the substitution of life without parole for the death sentence.

The reasons for that were very individual to the individual county prosecutors. But I stand ready to answer any questions on that.

Obviously, I'm not going to go into the personal opinions of the various county prosecutors when we discussed the matter.

So if anybody has any questions about it, I'll try to answer them the best I can.

**SENATOR ADLER:** Maybe if you could briefly just explain personally, from your own perspective, as a county prosecutor who deals with a wide array of, I'm sure, awful crimes in Hudson County that you and your folks in your office have to prosecute -- if you could tell me why you've

reached the conclusion that capital punishment is not the right vehicle of punishment for New Jersey.

MR. DeFAZIO: Well, let me first say that I've been the County Prosecutor for almost five years. But before I was the County Prosecutor, I was a member of the County Prosecutor's Office for approximately 20 years. I have tried murder cases, I have tried death penalty cases.

So having said that, my personal reason is that 25 years of history, since the death penalty statute has come into effect in New Jersey, has shown us that nobody has been executed, people linger on death row for extraordinary periods of time. I think that that erodes public confidence in the criminal justice system. And as Senator Lesniak noted in the letter from the victims, I think that punishment, of course being fair, has to be swift and sure. That's not what we're getting. And I don't think we're going to be able to effectuate that in the State of New Jersey.

I think that opinion that I gave you is held by many of the county prosecutors.

SENATOR ADLER: Senator Scutari, followed by Senator Sarlo.

SENATOR SCUTARI: Yes, thank you, Mr. Chairman.

What was the vote of the county prosecutors?

MR. DeFAZIO: I'm not going to discuss the specific vote, but the vast majority of the county prosecutors concurred with the recommendation of the Study Commission. And I will add this much: It was not, in any way, based on partisan lines.

SENATOR SCUTARI: The appellate process that is long and exhaustive, with respect to the death penalty when it's being sought-- Would you agree that if Mr. Peterson hadn't had that exhaustive amount of appeals, and he had been sentenced to life without parole, would the truth have come out, or would his appeals have exhausted and he would have been in jail for the rest of his life?

MR. DeFAZIO: Well, I think the truth would have come out. You have the post-conviction relief process -- goes on whether somebody is serving a life sentence or has been sentenced to death. So I believe he would have been released.

Now, I just want to make one point, if I may, Senator. There has never been, in the State of New Jersey, an exoneration of anybody on death row. And I just want to make that point. And I think that that is a testament to the quality of representation that defendants in New Jersey get. And I think it's a testament to the fairness of county prosecutors and to the vigilance of the courts. So I just wanted to make that point. Nobody has been exonerated in New Jersey. Larry Peterson was not on death row.

SENATOR SCUTARI: Do you have a position on whether or not the death penalty can exist in any form or fashion within the State of New Jersey and be utilized in a way that it would actually be utilized?

MR. DeFAZIO: History tells me that that's not going to happen. I think in theory we can all come up with certain circumstances -- or many of us would come up with certain circumstances where we would believe that somebody would be executed. But in New Jersey, based on what we've seen, I don't think that, as a practical matter -- reality, I don't think it would happen. If you're getting to a point about terrorism -- I

understand Senator Lesniak's point that terrorists would want to be martyrs. Take Timothy McVeigh for example. Timothy McVeigh -- quite frankly, I'm glad he got executed. I don't have a problem with it, whatsoever. But you have to remember, Timothy McVeigh wanted to be executed. And I think that in the terrorist's mind, they want to be in the limelight, or martyrs, or whatever term we want to use.

And there's another side to the terrorism. Maybe I'm going too far, Senator. If I am-- But you have to remember that in a terrorism case, chances are it's going to be federally prosecuted. Timothy McVeigh was federally prosecuted. And I think that if there was, God forbid, a terrorism act in New Jersey that caused fatalities, it would be federally prosecuted.

SENATOR SCUTARI: You brought up the Federal prosecution of people under Federal death penalty statutes. And I'm certain you're aware that there is one going on in New Jersey right now, with respect to witness tampering and the ordering of hit of a witness. Do you see witness intimidation as a growing problem in New Jersey?

MR. DeFAZIO: Witness intimidation is a problem in New Jersey. Yes, it is. Growing problem? I think it's been a problem, and it will continue to be a problem to varying degrees in different jurisdictions.

SENATOR SCUTARI: Do you believe that the Federal government's seeking of the death penalty in that circumstance -- that would be something that you would -- that your office would no longer have at its disposal if the bill passes in its current form?

MR. DeFAZIO: That's correct.

SENATOR SCUTARI: Is that a drawback?

MR. DeFAZIO: I don't believe so, because if the substitute were to be life in prison without parole in a maximum security prison, I think we effect the necessary punishment under those circumstances.

SENATOR SCUTARI: It has been written, at least, that the individual who had performed the actual hit, under the Federal witness tampering case that we're speaking about, was leveraged into testifying against the person who ordered the hit based upon the fact that he would have faced the death penalty for what he did. And in exchange for not facing that death penalty, he has agreed to testify against the person who ordered the hit. You would lose that leverage if this bill passes in its current form.

MR. DeFAZIO: That's perhaps the case. Although I would have to think that we would still have leverage with the life without parole statute as well.

SENATOR SCUTARI: Other states obviously have the death penalty. What do they do better than New Jersey in order to actually have executions take place of parties that are convicted?

MR. DeFAZIO: I don't know if I would use the word *better*. (laughter) I think that the level of representation that people get in other states is not commensurate to what they receive in the State of New Jersey.

I just want to say, I have -- and I don't want to sound here like I'm an expert, but frankly, I've been around a while now. And I've done this, and I see what's going on. And we are lucky, here in the State of New Jersey, to have the criminal justice system that we have. So I think a lot of it has to do with the quality of representation.

SENATOR SCUTARI: Is there any way, in your estimation, that the death penalty could exist in New Jersey, basing it on any models of any other states, or any model that you could come up with? Not giving history as your guideline -- but as you, dealing with a blank slate to determine the procedures that would go forward, with the necessary safeguards. Is there any way that it could, in your estimation, given your experience -- that the death penalty could exist and serve the purpose?

MR. DeFAZIO: I think it would be extremely difficult in New Jersey because of various statutory provisions. For instance: proportionality review. I mean, that has become so complex and so confusing that, quite frankly, even the courts don't understand it anymore. I don't-- The models of the proportionality review, I, quite frankly, can't even comprehend.

SENATOR SCUTARI: Well, say we had a blank slate. Would that be one thing that would need to be fine-tuned or eliminated, or is that a necessary safeguard?

MR. DeFAZIO: Well, I think that the people of New Jersey want to make sure that we are sure and that we're guaranteeing that this process can be as fair as possible. And I think if you eliminate something like proportionality review, you probably are impacting, in some degree, to that guarantee that we are correct, that we are doing the right thing, and that there is not error. And as I said, I think, in large part, our system has guaranteed that nobody who's gotten the death penalty has been exonerated in New Jersey. But then the other side of that is we have this incredibly cumbersome system.

SENATOR SCUTARI: Is there any way to make it less cumbersome and continue to ensure that it's still fair?

MR. DeFAZIO: That would be such a massive undertaking that I don't think the people of New Jersey would be prepared to go down that road. I think that we have come to the point here where we should accept the fact that we are better off with eliminating the death penalty and substituting it with life without parole.

SENATOR SCUTARI: You indicate that your estimation would be -- it would be massively cumbersome. But would it be possible?

MR. DeFAZIO: Would it be possible? I think it would be possible, Senator. I think that, obviously, when you have reasonable people dealing with a difficult issue -- I think anything is possible.

SENATOR SCUTARI: Just not practical?

MR. DeFAZIO: I don't think it's practical. I really don't.

SENATOR SCUTARI: Thank you very much.

MR. DeFAZIO: Thank you.

SENATOR ADLER: Senator Sarlo, followed by Senator Cardinale.

SENATOR SARLO: Thank you, Mr. Chairman.

Thank you, Prosecutor, for being here this morning.

We heard your personal beliefs, and we've heard those thoughts and beliefs of the prosecutor community as a whole.

Without -- and I know Senator Scutari asked you how the vote actually went down. Without asking you to provide any of that information, can you just give us a little bit of information on those prosecutors who did support it, and some of the reasoning behind why they did support it? I know it was the vast majority of those around the state

who supported abolishing it. But I would like to just get the other opinion, if we could -- if the members of this Committee could hear that.

MR. DeFAZIO: Well, the other opinions, quite frankly, were based on the thought that we, as prosecutors, should not take the position to eliminate the death penalty because perhaps it would be taken as a sign that we were being soft on crime, to use that expression -- which I don't especially care for, but I'm using it.

I think that was the real reason why the minority of our membership felt that we should not get involved with recommending the repeal of the death penalty.

SENATOR SARLO: Thank you.

MR. DeFAZIO: Thank you.

SENATOR ADLER: Senator Cardinale, then--

Before the other Senators ask questions, I'm going to have the other two panelists testify.

I apologize to you, gentlemen. I couldn't get to you. But while you were out of the room, we started with questions.

Senator Cardinale.

SENATOR CARDINALE: Thank you, Mr. Chairman.

Thank you for your opening statement. I listened very carefully. Your statement speaks loud and clear to the frustration that you feel with the present system.

I want you to know, even though I come to a different conclusion, I share your frustration. But I depart from your conclusion because I'm hopeful that rather than throw the baby out with the bath water, we can reform the system. Now, you spoke, in answer to Senator

Scutari's questions, to the fact that you think it's very difficult. You said it could be done if we had reasonable people getting around the table. Do you think we're dealing with reasonable people when we talk to the judges, the justices of the State of New Jersey on this topic?

MR. DeFAZIO: I think -- and I'm assuming the justices of the Supreme Court are definitely people who come to--

SENATOR CARDINALE: On this issue?

MR. DeFAZIO: --who come to different opinions on this very issue.

I don't always agree with the decisions of the Supreme Court of New Jersey, but I respect them, and we follow them, because that's what we're sworn to do.

SENATOR CARDINALE: We all have to respect them, and we all agree to follow them. But we do have remedies.

There was a member of your Commission who departed from the view of the Commissioners -- former Senator. I think he's in the room. I think I saw him a little while ago. And I read with interest the remarks that were attributed to him. I get a sense that he shared the frustration that you've expressed, and that I feel, and he attributed our problems to -- his term -- *liberal judges*. When I read that, of course I was a little wistful. And I said to myself, "When John was a Senator, he had the opportunity to change the Supreme Court." If he had voted differently on one nominee, we would have had a different court. But he didn't, and that's history.

But looking forward, is it not incumbent on us to try to deal with the will of the people of the State of New Jersey, which was expressed in a public vote by a three-to-one margin, in 1992? They essentially

endorsed the death penalty versus the notion by our justices at that time, that somehow this might be cruel and inhuman punishment. Not the difficulties of the system, but just the sort of morality of whether or not the death penalty should be exercised.

What justification can you give me for that Commission saying we should ignore that vote of the people?

MR. DeFAZIO: Well, Senator, I think that since 1992 there has been a change in public opinion. We heard testimony before our Commission about various polls. And for all sorts of reasons, support for the death penalty has eroded. And in fact, if you look nationally, the number of executions across the country have been steadily going down over the past number of years. That's for all sorts of reasons. So I think there has been a change.

And I think something that you have to remember, Senator, is, when you ask people the question about the death penalty, in relation to life without parole being the substitute, the support for the death penalty comes down even further when they realize that it's going to be a mandatory life without parole in those cases where the defendant would have gotten the death penalty.

SENATOR CARDINALE: I hear what you're saying. But the polling information I have seen on the question that you raise doesn't support what you're telling me. But if you believed that, as a Commission, why did you not suggest to us we put this question on the ballot, rather than us reverse the will of the people by a simple act of the Legislature, signed by the Governor? Wouldn't it be more logical? If the conclusion of the Commission -- if you were sure that the conclusion of the Commission

would be supported by the public, why not put it on the ballot? We could put it on the ballot this year. We have time. We're all up for election. What better time to put this on the ballot when it will be hotly contested in legislative races all over the state?

SENATOR ADLER: Mr. DeFazio, before you answer, I'm going to ask the other witnesses to summarize their experiences in law enforcement and their view on this issue.

And frankly, Senator, without being disrespectful to you, I think that's really a question you really should be posing to us in consideration of this legislation today. And I'm sure you'll make that suggestion later on. But I don't think it's necessary for us to have dialogue about whether we have a representative form of government in which elected officials should make decisions, or whether we have a pure democracy in which the people get to vote on all the issues.

SENATOR CARDINALE: Senator, it's not the question I'm asking.

SENATOR ADLER: Senator.

SENATOR CARDINALE: You're using your right as Chair when you--

SENATOR ADLER: Senator, I'm going to ask you to stop now.

SENATOR CARDINALE: (indiscernible) that you don't like the way the questioning is going.

SENATOR ADLER: So, Mr. DeFazio, if you would just wait for a second. We have two other witnesses: Chief Abbott, of West Orange; and Gary Hilton.

If you gentlemen would care to summarize your perspectives on this issue.

**JAMES P. ABBOTT:** My name is James Abbott, I'm the Chief of Police of West Orange, New Jersey. I was Governor Richard Codey's Republican appointee to the New Jersey Death Penalty Study Commission, and I am here to share my experience about the work of our Commission and my own evolving position on the death penalty.

As a law enforcement officer, I've dedicated my life to making the people of New Jersey safer. Police officers get up every day knowing that our primary goal is to protect the public. It is up to us to make sure that people who commit crimes are caught and taken off the streets so they can't do more harm. I'm also aware that as law enforcement officers, we put our lives on the line every time we go to work. Police officers face the dangerous reality that someone may try to kill us, simply because of who we are and what we stand for.

People who support the death penalty often say it's needed to protect people like us. That seems like a logical argument, and I must admit it made sense to me too before I joined the Study Commission. However, I submit if this were true, then why is there not one inmate on death row after 26 police officers have been murdered in the line of duty since the death penalty was reinstated?

I supported the death penalty at the time of my appointment and did not think I would ultimately vote to end it in favor of life without parole. But what I learned throughout our six months of study opened my eyes to the reality of the death penalty. It turned out that what sounded good in theory was actually a complete failure in practice. Most

importantly, what I learned about the death penalty convinced me that there was simply no way to fix it and make it right.

As a Police Chief and proud Republican, you should have no doubts that I support tough-on-crime policies and harsh punishment. Make no mistake, the bill before you is just that. I have no empathy or sympathy for killers, absolutely none.

My commitment, like all of you I'm sure, is with the families of murder victims. It was those very families, including some whose loved ones were police officers killed in the line of duty, that changed my mind about the death penalty. I had no idea how much families suffer facing years of death penalty appeals and reversals. We've had capital punishment for 24 years, and we haven't executed anyone. For every person that's been sentenced to death, there's a family waiting for the promised punishment to be delivered. They go to court year after year, only to find in the end that the person will never be executed. The reality is that there is no closure in capital cases, just more attention to the murderer and less to the victim. Unfortunately, it's easier for most of us to name notorious killers than it is their victims.

As I sat on the Commission, I heard from these families, one after another. Their cries of pain were devastating. Many of them supported capital punishment when their loved one was killed, and it was only the direct experience of suffering through the process that prompted them to change their minds and beg us to recommend replacing it with life without parole. I heard from mothers, fathers, daughters, and sons who spoke of families being divided, lives lived in limbo, and childhoods abruptly ended by a never-ending court process. The death penalty was

supposed to help families like these, and virtually everything I heard told me that it was tearing them apart.

At first I thought this problem was unique to New Jersey. But in the months since the Study Commission made its recommendations, I've taken the time to learn more about the death penalty in other states. It doesn't seem to work any better anywhere else. Even in Texas, the death penalty capital of the United States, it still takes years, and millions more dollars, for an execution to be carried out. It doesn't seem like any state has found a way to carry out the death penalty quickly, cheaply, and accurately.

After the Commission released our report, I began giving media interviews and talks about my experience. One thing I've been asked a lot is whether, as a Police Chief, I would still support the death penalty for the killing of a police officer. My consistent reply is that while it may be an appropriate form of retributive justice, if I were ever to be killed in the line of duty, I would never, ever want my wife or children to have to suffer the way the families who testified before me have. Instead, I would want to know that the person who did it was behind bars for life so they could never kill again and that my family had the services they needed to heal and the financial support they needed to live without further sacrifice. Our Commission learned that those kinds of services are sorely lacking and that they could be improved with the financial savings from ending the death penalty.

I should also note that our Commission found no evidence that the death penalty deters murder, even in the case of the killing of a police officer. That makes sense to me, as anyone who is already at the point of killing a police officer is clearly not thinking logically about the

consequences. The South, who executes the most perpetrators of murder, also regularly leads the nation in the number of police officers killed in the line of duty.

Finally, I want to speak briefly to the makeup of the bipartisan Commission and the integrity of our process. I already told you that I didn't go into my work on the Commission thinking I would vote to end the death penalty. The same was true for many of my fellow Commission members. Sitting around me were two sitting county prosecutors, the Attorney General, distinguished religious leaders, a retired Supreme Court Justice who had upheld that sentence, and several family members of murder victims, including a man who lost his daughter to murder and a woman who became a victim's advocate after the loss of her nephew to murder.

This was nothing if not a fair and balanced group of individuals. And for any elected official or citizen to suggest otherwise is reprehensible. Our analysis was also transparent, credible, and comprehensive. We held five public hearings at which anyone could testify. The hearings were public and well-advertised. People on all sides of the issue were able to testify. The only witnesses who were allowed to testify more than once were pro-death penalty witnesses. The breadth of knowledge and the passion of all the witnesses who testified were inspiring and informative.

As I said, I learned a lot about the death penalty in the last year. If I could leave you with the one most important lesson for you to think about as you deliberate on this legislation, it is: I learned that you can continue to support the death penalty and also support its end. That is

the position I have come to now. Philosophically, I still favor the death penalty. I believe that it is an appropriate means of retribution and a just punishment for some crimes. But I also know that, in practice, it does more harm than good. So while I maintain my theoretical views, as I'm sure some of you also will, I also stand before you to say that New Jersey is better off without an irreparable system of capital punishment. Life in prison without parole is a better alternative. It is harsh, it ensures public safety, and it puts victims' families first. With the study concluded, and the overwhelming verdict in, it is time to do what is in the best interest of the people of New Jersey. And I hope you will vote for Senate Bill 171.

Thank you.

SENATOR ADLER: Chief, thank you.

Mr. Hilton, welcome.

**GARY J. HILTON SR.:** Good morning.

My name is Gary Hilton, Sr., and I retired from the New Jersey Department of Corrections after 33 years of service. For a period of approximately 17 years, I served as the Department's Assistant Commissioner for Operations, Deputy Commissioner, Chief of Staff. And at the point of my retirement, I had the privilege to serve as Acting Commissioner.

While serving as Assistant Commissioner, I was personally responsible for overseeing the development of the procedures for the Capital Sentence Unit at the New Jersey State Prison, as well as developing procedures and protocol for the implementation of the lethal injection penalty.

I have never been, nor am I today, opposed to the death penalty on the basis of a moral consideration. Obviously, during an earlier period of my professional life, I supported and believed that the death penalty had a proper and appropriate position in our criminal justice system. It has only been with the passing of time, firsthand observation, and careful deliberation that I've come to a clear and firm opinion that the death penalty is poor public policy and ill-advised correctional practice.

When the death penalty was reinstated in New Jersey, it was a different time in New Jersey's sentencing history. This is no longer the case today. In addition to a sentence of life without parole, New Jersey now has an 85 percent parole ineligibility statute, which essentially means anyone sentenced to a life sentence for murder must serve 63-and-a-half years before eligibility.

The State -- New Jersey's experience with long-term incarceration, or natural-life incarceration, is not new. It is not new to New Jersey. Today, there are approximately 1,000 or more persons serving some form of life sentence, or the practical equivalent, in the New Jersey State Prison at Trenton, which is the state's most secure facility. The bottom line is clear, no one sentenced to life without parole can be paroled.

New Jersey's experience, similar to the national experience in dealing with inmates serving actual or practical forms of life sentences has been that these inmates pose no additional challenge, nor require any special resources beyond that of any other inmate classified for maximum security confinement. There is a substantial body of empirical research which supports this notion.

Anyone who might suggest to this Committee that life in a maximum security prison is a lark, and inmates pass the time of day in sun-drenched yard areas, and immerse themselves in creative art or literary interests, is simply misinformed. By its very nature, the maximum security prison environment is cold, dangerous, and frightening. As difficult and overbearing as life in a maximum security prison is for the younger and middle-aged inmate, I can personally think of nothing more horrific than contemplating and enduring the process of growing old in a maximum security prison.

Within the maximum security prison environment, the majority of inmates accede to the security controls, limited movement, long hours of self-confinement, and the uncompromising rules, regulations, and repetitive schedule. Generally, they accept the daily routine of imprisonment in order to make what they view as the best of a bad situation. For those inmates who choose to act in a violent or disruptive manner, or incite others to do so, the management -- the maximum security environment has specially structured living units to effectively control and manage these recalcitrant individuals. At the New Jersey State Prison at Trenton, these specially structured units include the disciplinary administrative segregation units and the Management Control Unit. These are tested and proven classification options for disruptive inmates. Within the last year, I had the opportunity to tour the New Jersey Prison, including the closed-custody units, and can report to you that the State Prison at Trenton is an extremely well-managed and extremely secure facility.

In conclusion, I ask that you carefully review and consider what I have had to say, both about the general realities of life in a maximum

security prison and the specific realities of growing old and eventually dying in maximum security confinement. Upon such reflection, I am confident that you will share my conviction that true life without parole provides a real and powerful measure of retribution.

I'm going to take a moment just to make a point in a graphic manner. My definition of *life without parole* means the only way an individual leaves prison is in a rubber bag and a tag on their toe. No ifs, ands, or buts.

I trust my observations have been of assistance to you this morning. I look forward to answering any questions you may have.

SENATOR ADLER: Commissioner Hilton and Chief Abbott, thank you very much.

Understanding we have lots of witnesses from lots of different perspectives, I thank you for the relative brevity of your comments. But I understand you have real law enforcement experience from different perspectives. I think they're valuable to us.

Senator Cardinale, you asked a question to Mr. DeFazio. If you want to expand that to either of the two witnesses -- and then other members can ask questions of the two new witnesses as well.

SENATOR CARDINALE: Thank you.

Commissioner Hilton.

MR. HILTON: Yes, sir.

SENATOR CARDINALE: Your final parting shot is that your definition of *life without parole* means, in effect, it's a death sentence.

MR. HILTON: Death by incarceration, yes, sir.

SENATOR CARDINALE: Did the Commission come to the conclusion that were we to follow your recommended legislation, which is before us, that none of the nine people presently on death row in New Jersey would ever be released?

MR. HILTON: I was not a member of the Commission, sir.

SENATOR CARDINALE: Okay.

Do you have an opinion with respect to that?

MR. HILTON: I have a personal opinion that--

SENATOR CARDINALE: That none of them would come out?

MR. HILTON: And this is--

SENATOR CARDINALE: None of them would come out. Is that your opinion?

MR. HILTON: My personal opinion would be that their capital sentence be converted to life without parole. If I were king, that would be my rule.

SENATOR CARDINALE: Well, unfortunately, none of us are kings. And Legislative Services has given us an opinion that we cannot guarantee that. And the last time we had this kind of upset, there was a guy named Trantino, who had been sentenced to death for killing a couple of cops in a very heinous crime. It happened in Bergen County. I was very familiar with it. He got out. We changed our statute, and Trantino got out. There is no guarantee that if we changed our statute any of those nine would not get out, for your information.

Now, there are a couple of questions that have to be answered on this. There are some folks who have a real, deeply held moral conviction

that the death penalty is just a wrong thing to do. I'd like all three of you to tell me whether, from that perspective, you feel the death penalty is wrong.

MR. HILTON: Well, I'll start. I do not support the abolishment of the death penalty on a moral basis. I do so on the basis I think it's poor public policy, I think it aggravates the suffering of the victims' families. And another significant concern is the emerging progress being made in terms of new forensic evidence. We sit here today with little, if any, idea what kind of forensic evidence will be available three to five years down the road -- not to think of 10 or 15. I don't think we're a 90-percent society. I think there are cultures in this world where, if you're right 90 percent of the time, that's good enough. Our system of justice is not 90 percent. So for a combination of these reasons, I believe that the death penalty needs to be abolished and replaced by life without parole.

SENATOR CARDINALE: You've answered more than the question that I asked. So if I can ask each of the next two--

MR. HILTON: I apologize.

SENATOR CARDINALE: --to just answer the question that I asked. Because the Chairman will become impatient and will stop the questioning at some point. And we won't get all of the points across that need to be made for us to make an intelligent decision.

Do you have a moral objection to the death penalty.

MR. ABBOTT: No, I do not.

SENATOR CARDINALE: Mr. Prosecutor?

MR. DeFAZIO: No.

SENATOR CARDINALE: Okay. Then the objection that you're raising falls into the other category, the practicalities of the death penalty. Is that correct to say?

MR. DeFAZIO: Yes.

MR. ABBOTT: Yes.

MR. HILTON: Correct.

SENATOR CARDINALE: The practicalities of the death penalty, though, have to do with the system that we have set up. And while I was here when we did that -- and I voted for it -- some of us believed we didn't do a good enough job. Some of us voted for it in that form because we had the impression that the other branch of government, the judiciary, would follow the process -- the thought process, the public policy process, that we were trying to institute.

It seems to me, from what I've heard from at least two of you, is that you feel the practical problem is insoluble. But everything that you've told me reinforces my belief that it's only insoluble because we have a judiciary that's kind of headstrong and is looking for loopholes rather than justice.

Would you concur with that, Mr. Prosecutor?

MR. DeFAZIO: No.

SENATOR CARDINALE: No.

MR. HILTON: No.

SENATOR CARDINALE: Chief?

MR. ABBOTT: No.

SENATOR CARDINALE: Then tell me why you think it's impossible, practically, to get at it.

UNIDENTIFIED SPEAKER: (indiscernible).

SENATOR CARDINALE: Well, I'd like to find out what they think. That's what we're here for.

SENATOR ADLER: Well, Senator, in fairness, I think they've already testified at great length and gave a very articulate speech about what they believe and why they believe it. They've given their basis and their opinions. You've given your basis for questioning their opinions. It's been a very healthy dialogue, and I think you've made your points very, very competently, in a very fair way. But I think we're now going back over things a second time. To make Mr. DeFazio say again what he said very clearly the first time seems unfair to other witnesses who have their own personal perspectives from their own experiences as victims, as members of families who have lost loved ones, people who have moral basis for or against the death penalty. There are so many people here who want to speak. I think it's unfair to have these three gentlemen have a second go-round of what they've already said very clearly.

So I'm going to ask them not to answer that question. If you have different questions, maybe you can think about those questions while we go to other members of the Committee to ask questions. I'm not going to curtail your time to talk, because you've talked certainly more than anybody else at this point.

Maybe, Senator Lesniak, do you have questions?

SENATOR LESNIAK: Thank you, Mr. Chairman.

I would just like to add that-- I mean, the testimony was clear that this problem exists not only in the State of New Jersey but throughout the country. And I just concur with your statement that these three fine

law enforcement officers have made their point very clear and, I think, answered, in their testimony, Senator Cardinale's question.

SENATOR MARTIN: (PA microphone is not on) This is sort of like a comment too, but may (indiscernible) say something.

I read in a newspaper clip earlier this week, one of the justices of the New Jersey Supreme Court, who actually wrote a dissenting opinion in a recent case you're probably familiar with-- But he talked about the fact that when you have a death penalty case, the margin for error should be much less. In fact, I think he said something to the extent that it should almost be error-free or perfect in terms of process, which creates, it seems to me, a very difficult burden. On the other hand, I have a tendency to want to agree with him, since the ultimate penalty, of course, is something which is irreversible once it happens.

So I guess my comment or question to you is: To the extent to which the system may be cumbersome, as I think you described it -- but yet has these safeguards in it, which is part of the cumbersome process -- should we throw the baby -- or in this case, the procedural safeguards -- out in order to expedite the system? What would your thoughts be with respect to that?

MR. DeFAZIO: Well, Senator, that's a difficult judgement that has to be made. Clearly, I think in the State of New Jersey we want to make sure that we have all the procedural safeguards in place to guarantee that only people who are guilty are eligible for the death penalty and, if they get the death penalty, that we are, within a reasonable degree of certainty, sure that they're the ones who did it and that they deserve it.

But that's the problem. You hit the nail on the head, Senator. That's the problem we're trying to fix in this system. We don't want to make a mistake. But in order not to make a mistake, we have to be more certain, we have to be beyond reasonable doubt. It's beyond, beyond reasonable doubt.

UNIDENTIFIED SPEAKER: (PA microphone not on)  
(indiscernible)

MR. DeFAZIO: No, go ahead.

SENATOR MARTIN: It's not just whether the person has committed a homicide, as I understand it. It's these other factors -- whether the aggravating factors outweigh the mitigating; the way in which proportionality, that would determine whether somebody who has committed a certain type of murder is not out of line with his -- with similarly situated persons when they've committed a similar crime. Those kinds of things are very, very difficult to be able to do simply, I assume. Is that true from your experience?

MR. DeFAZIO: Yes.

SENATOR MARTIN: Thank you.

SENATOR ADLER: Very briefly, then Senator Russo, who is one of the members of the Commission who dissented, has to testify now because he has to leave shortly. So if you could be very brief, I'd appreciate that.

SENATOR CARDINALE: Prosecutor, you got to the point that I was attempting to reach, and you seem to agree with the point that I was going to suggest. Namely that we reserve the death penalty, in the second phase, to a higher standard than our standard of reasonableness -- to

a standard of greater surety. But I heard in your original testimony that you also said you don't believe anybody on death row today in New Jersey is innocent or can make any claim of innocence. As a matter of fact, I've seen reports that they all admit that they are guilty. Now, maybe that's wrong, but that's only a report I read. And their current appeals are not based on whether they were guilty or not, but rather on various procedural matters -- not the kind that Senator Martin was talking about, which are used to determine guilt or innocence -- but rather whether the judge hiccupped at the wrong time in the trial, or some other similarly inane loophole. Do you kind of agree with that? I see you smiling.

MR. DeFAZIO: I think you're making a good point in that, Senator, it's the penalty phase of the proceeding that leads us to where we are. And the review at the penalty phase, and the proportionality review that goes after that certainly are of a, let us say, *heightened* standard. But I get your point that the appeals that are going on, as a rule, do not have to do with the guilt or innocence. That is correct.

SENATOR CARDINALE: Now, this proportionality -- is that part of the statute?

MR. DeFAZIO: Yes.

SENATOR CARDINALE: It is part of the statute?

MR. DeFAZIO: Yes. It's statute in case law, yes.

SENATOR CARDINALE: Can we change that in any effective way? Is there something we could pass that, in your opinion, would simplify proportionality?

MR. DeFAZIO: Could the Legislature pass-- The Legislature could pass a bill that would eliminate proportionality, if that's what they deemed appropriate.

SENATOR CARDINALE: Could we pass legislation that said the only type of appeal that would be considered after the sentence had been imposed would be whether they were guilty or innocent?

MR. DeFAZIO: No, you could not.

SENATOR CARDINALE: We couldn't do that. Why couldn't we?

MR. DeFAZIO: Senator, respectfully, what happens here-- Even when it goes through the State court appellate process, and even when you have a death penalty affirmed by the State courts after years and years, the case then goes to the Federal system. And in the Marshall case, it went through the entire State system and was affirmed, and then it was reversed in the Federal system. So it's not only a question-- I guess what I'm trying to get at is it's not only a question of amending our State statutes.

SENATOR CARDINALE: But in terms of our State process, which is the only thing we impact, we could do that. We might be subject to being overruled by the feds, but we could do that within our State process.

MR. DeFAZIO: There could be changes to the death penalty statute, no doubt about it.

SENATOR CARDINALE: Okay. I thank you very much for your testimony.

I'm finished, Mr. Chair.

MR. DeFAZIO: Thank you, Senator.

SENATOR ADLER: Gentlemen, we thank all three of you. For two of you, thank you for serving as Commissioners and issuing a report. For the three of you, thank you for your wise testimony, and thank you for your time today.

MR. DeFAZIO: Thank you very much.

SENATOR ADLER: Our next witnesses are former Senator John Russo and Professor Robert Blecker.

Gentlemen, welcome. And thank you both for being here.

Senator, first of all, thank you for your many months of service on the Study Commission. Maybe you could summarize your experience on that Commission and why you dissented. We've read your dissent. But why don't you summarize so we understand your perspective.

**SENATOR JOHN F. RUSSO:** Okay.

Thank you, Mr. Chairman.

Members of the Committee, my former colleagues, and some I didn't serve with, let me first say, as Prosecutor DeFazio said, I, too, have a little bit of experience in this area. I served 10 years as a Prosecutor. I served 19 years, I guess it was, in the Senate. I even sat where you do, Mr. Chairman.

And I've had a position on the death penalty, I guess, for 35 years or so. I prosecuted murder cases, I prosecuted death penalty cases. I experienced, firsthand, what it's all about. And I can tell you I took no satisfaction in either the fact that I had a conviction for a first degree murder case, nor do I take any satisfaction in the death penalty in general.

We passed the death penalty three times before this bill was signed that I sponsored, starting in 1975, I guess. It was vetoed three times

by Governor Byrne. I want to tell you that I have nothing but the utmost respect for Governor Byrne and anybody who disagrees with me on this issue. No one can be certain, on this issue, what the right thing is. We can only do what we think is the best thing with the information, and experience, and knowledge that we have. Governor Kean believed in it. He added the part about one who hires one to commit murder. That was not in my original bill.

But the thing I want to emphasize -- and, Senator Lesniak, you remember when we -- and you supported me on the bill, originally -- we tried to make this bill so tight, so tough, that mistakes just almost couldn't conceivably happen. And as Prosecutor DeFazio said, they have not happened in any death penalty case that's been -- that's come out of New Jersey. This isn't Texas, this isn't Kansas. And make no mistake also, you are not hearing, today, for the first time a choice between life without parole and the death penalty. That was discussed, argued, and debated in 1981, when this bill passed, and the three times before that. The Legislature rejected that as an alternative.

But the Legislature felt, and so do I-- And incidentally, let me tell you, should you decide that you don't agree with me, and you agree with-- And incidentally, that Commission was some really fine people. I got to know them, and they're really outstanding. But I could have -- and I said that to others -- I could have told you the vote the day we first walked into that room. I won't go into any details about who was appointed, why, where, whatever. I knew what the vote -- maybe within a vote or two. That Commission had an outcome that was not in doubt.

And by the same token, probably neither was mine. I knew how I was going to vote when I first walked in that room, because I have lived with this issue for many years. And we talk about victims. Though it had nothing to do with my support of the death penalty, I, too, had-- My father was a murder victim. But he would not-- The defendant would not have received the death penalty under my bill. And it was proper, because that bill was drawn so tight and so tough that we wouldn't ever have to have this problem.

The only thing is: It hasn't worked, we say, and so let's throw it out. Well, it hasn't worked not so much because of "liberal judges". We have a Supreme Court justice that voted for the majority in this Commission -- with the majority -- wonderful man, I think the world of him -- and who voted to uphold the death penalty as a judge. Yes, he did. He upheld the law. But I knew where he stood on this issue from day one. And I respected it, as I did Governor Byrne. And today, Senator Lesniak's comments on -- in voting -- or in supporting the opposition to this bill. This is not an easy one.

Some day-- And I will never forget this. When that bill passed, from that day I started thinking: "I dread the day when there's an execution." I would hope there never would be one. I would hope there would never be a need for one. Because I'm going to have to then look back and say, 'Hey, maybe it's because of something I did, a bill that I proposed.'" And we tried so hard to make this bill so tough.

And I would think that the thing to do is not to throw the bill out, although it won't break my heart if you do. There's no joy in it. It's no personal thing, even though I was the sponsor so many times. But

rather, let's see if we can clean it up, so to speak, as I think the questions directed to one of the prosecutors was. Let's see if we can make it work. I don't know that we can.

I do know though that having, in New Jersey, a situation where you have maybe -- some people have talked about terrorists. And incidentally, McVeigh was convicted, as I understand it, under the state, as well as the Federal statute, not just the Federal statute. But to have, in New Jersey, a brutally heinous crime and not have available a punishment that's commensurate with that crime, I think leads to the decay in law enforcement -- or in the public confidence in law enforcement.

We can talk about the possibility of a mistake. You haven't had one. Peterson, as I think Senator Lesniak -- it was pointed out by the Prosecutor -- was not a death -- that was not under the statute that we're debating today. We have not had a mistake. God willing, we never will have a mistake. And you know what? If because -- if this bill remains in effect, and we don't have an execution, no tears, because we have something that Justice Gregg (phonetic spelling) talked about in the Supreme Court decision -- that's in my dissenting opinion -- shows that there's a need -- the public has a need for a punishment that fits the crime.

What are we going to do if, for example -- using Fort Dix just as an example -- not to inflame. But what if something like that happens some day and, under the State statute, it's life without parole? And I just can't accept that the public will be willing to be acceptable to the law that allows that person to live.

A pedophile-- You know, we had a case in Ocean County. It involved a juvenile, where a pedophile brutalized and then murdered a

young boy -- the Warner case. The boy begged for his life. I will never forget those words. It came out in the newspaper how the murderer talked about what the little boy was saying, how he pleaded for his life. We can't do anything more than put him away? Forget the minor part. I agree. The death penalty should never apply to a minor.

And, Senator Adler, I agree with you. It should never be singled out depending on who the victim was. I'm close to the PBA, always have been. But don't tell me that the life of a man in blue is worth more than the life of a little girl in a blue dress who is raped and murdered. No. The death penalty should apply if it's going to apply, if we have one, based upon the facts of the case, not who the victim was.

We talked a lot about the cost of the death penalty. Come on. We can't equate life and death with dollars and cents. It doesn't have any-- You just can't do that. I never will.

And then the business about life without parole -- releasing the people who are on death row. I understand that. You can't take some sentence, five, 10, 15 years later, and change it because you changed the law. I don't believe you can. But that's another issue, and that's not the basis of how I feel.

We saw what the U.S. Attorney said the other day. I don't envy you folks if you have to vote on this thing this year. Because it looks like, with the comments of the U.S. Attorney, this will be a major political issue. And the death penalty should not be decided on politics. And anyone who votes for the death penalty is going to get crucified by those who are against it. And anyone who votes-- We know what's going to

happen. And the issue then will not be voted on based upon what's right or wrong, but rather on politics. And I think we all know that.

So my feeling has always been that that law should be as tough-- You know, maybe we could make it tougher. I mean, the Governor, and I, and the Legislature -- Ray and the rest of us -- and Gerry -- and tried to make it as tough as we could so mistakes wouldn't happen. They have not happened. Why haven't there been executions? Yes, there's been an attitude in the judiciary -- and I've said it -- against the death penalty. That should not be allowed. And I think it was Senator Cardinale who said I could have changed that with one vote.

Gerry, we all know how they feel before we pass on them in judiciary. You just cleared a bunch of people today, and some of whom you may regret. I hope not. I don't think so. But that could happen.

So all I'm saying is, this issue should be debated on its merits, not on money, not on politics. And the outcome, really, to me, personally, makes no difference. I've done what I believe in. I've said today what I believe in. It may not be popular, it may be popular.

You talk about polls. You put out a poll talking about these people in Fort Dix, for example, and then ask the public. I mean, it's going to be shocking. It will be overwhelmingly in favor of the death penalty. However, on the other hand, should someone be executed, and DNA or something proves they were innocent, the results will be the other way. The public will be against this.

So I don't know if these thoughts are of any help. But it's something I feel strongly about and have for so many years. I haven't

changed my view one way or the other. And I hope it's not because I'm stubborn. I just believe that what we did was right.

Thank you, Mr. Chairman.

SENATOR ADLER: Senator, thank you.

I'm going to let Professor Blecker speak, and then questions. I know Senator Lesniak has questions for Senator Russo. And I think Senator Girgenti does, as well.

Professor Blecker, hold on a second.

Senator Lesniak.

SENATOR LESNIAK: (PA microphone is not on) Senator Russo, I would like (indiscernible).

Thank you, Mr. Chairman.

As usual, Senator, your comments are direct, and sincere, and certainly very helpful, even though I disagree with you. They're always very helpful.

I do want to, however, take issue with two things you said and set the record, I believe, straight on that. I do believe that the three gentlemen who testified before you, the three law enforcement officers -- the Police Chief, the Prosecutor, and the Corrections Officer -- testified very clearly and stated very clearly that they went into the Commission's hearings either with an open mind or actually opposed to eliminating the death penalty. You may have thought otherwise that they had preconceived ideas. But it's in direct testimony (*sic*) to what they said. And I have a lot of respect for those gentlemen. And I believe that they were sincere when they said that.

Secondly, I hope and I pray -- and, again, I know you're a very practical person. But I hope and pray that the votes on this Committee, and in the Legislature, will be based on what each member thinks is the right thing to do and not in terms of what political gain they may get from that. And I believe that's the case, and I hope that's the case.

That's all, Senator.

SENATOR RUSSO: May I just respond on one thing?  
(affirmative response)

The two prosecutors who -- one, of course, is from my own county and the other I got to know -- Prosecutor DeFazio. Prosecutor DeFazio impressed me as very sincere. And I thought his testimony today was very fair. You know, Governor Corzine is opposed to this death penalty. And I respect that view as much as I did Kean's -- I'm sorry, Byrne's. But he makes appointments. There were a number of people on that Commission that are coming up for appointment. Would that influence him? I don't know. I wouldn't want to be on that Commission having to make a judgement that might be against a Governor who I depended on for reappointment. Although, I think these people were -- had the ability to rise above it. But in all fairness, just as you hope that legislators won't be influenced by politics in this judgement, you and I know that they will be. Not all of them. Not you, not me, not Senator Adler, whatever. But it will be a very heavy political issue, no question.

SENATOR GIRGENTI: Thank you.

Senator, I just have one question for you. You've gone through the history of it. You were one of the sponsors originally of the legislation, I

know. What purpose does the death penalty serve -- if we say since 1963 no one has been executed in New Jersey -- in your opinion now?

SENATOR RUSSO: Sure. Let's find out: Why hasn't there been an execution, assuming there has been justified for execution-- And let's correct that instead of just saying, "Well, there hasn't been an execution. Let's abolish the bill." In other words, they beat us.

If the death penalty is justified, there should be an execution, and courts should uphold it.

Now, just the other day, the New Jersey Supreme Court upheld the death penalty conviction as I understand it.

It took a long time for this thing to work through the system. I'll never forget, when I first sponsored the bill, there was a murder up in Bergen County.

Senator Cardinale, you may remember. Victoria Zielinski was her name. I'll never forget it. And Edgar Smith was the murderer. Fifteen years on death row before he was finally executed. Look, there's no rush to judgement in these things.

I don't agree, for example-- I think Senator Cardinale suggested we abolish the appeals process to a certain extent. No way. I don't care how long it takes, I don't care how much money it costs, so long as we do the right thing. Because I don't want to have to live with it if we don't. And should the right thing be to abolish, so be it. I don't think that is the right thing. I think we ought to try to correct it so that if there's a justification for execution -- if there ever is a Fort Dix type thing, if there ever is a pedophile killing -- a child begging for his life -- that be available to us in those very, very, very extreme cases. We always said that. It had to

be an extreme case. Only the murder, not the accomplice, not a felony murder. Only the murder -- in a most extreme and grievous type of murder should there be consideration of an execution. I believe in that.

UNIDENTIFIED SPEAKER: Professor Blecker will speak, and then we'll ask questions.

Senator, you're not leaving yet, right?

Senator Russo.

SENATOR RUSSO: No, I will wait as long as you need me.

UNIDENTIFIED SPEAKER: Let's let Professor Blecker speak, and then we'll ask questions of both.

**ROBERT BLECKER, ESQ.:** Well, thank you for allowing me to speak.

First, some brief comments in response to the opening comments. It may be true that all lives lost are equal, but it's not true that the experience of dying is always equivalent. Someone who is shot in the head and instantly dies, someone who dies in his sleep through murder has not gone through the same kind of experience as someone who has been raped and tortured. And therefore, it is a perfectly appropriate aggravator to include the way in which someone died.

It is also not true that everybody has equivalent attitudes who kill. Again, from the point of view of the killer who preys mercilessly on the handicapped and the vulnerable, those too are appropriate aggravating circumstances. So if we are committed, as I am and my fellow retributivists are, to making sure that all, but only those, who deserve to die, die, then we quite appropriately separate, as aggravating circumstances we can, both the

attitude of the killer and the experience of the victim without it all implying that we think that lives are of different value.

The Commission's report, you've heard, was apparently thorough and unbiased. And that's been the spin and the bias in the press and around the world. The fact is contrary, however, sadly. Yes, they did hold hearings; yes, the hearings were extensive; and yes, they did allow various points of view. However, the Commission's report does not reflect those various points of view.

Senator Russo was the lone dissenter, and he chose to use that position to make, appropriately from his perspective -- and that's quite fine -- the personal statement that he still supported the legislation which he had been a prime mover on. He chose not to use that occasion to actually engage the Commission's report point-by-point. And it's very important for your perspective in deciding the public policy and making the decision as to whether to retain or abolish the death penalty, that you really do understand that the Commission's report was tainted with abolitionism from start to finish, that its seven findings -- and then its eighth additional recommendation -- consciously or unconsciously failed to recognize essential key perspectives in opposition.

So, since no one else was doing it, I felt obliged to do it. And I've circulated to you, and you have there, two documents both in blue covers. The first one is called: *But Did They Listen? New Jersey's Death Penalty Commission's Exercise in Abolitionism: A Detailed Reply*. And in that -- if you just turn to the table of contents on Page 3 -- you'll see in the 40 pages of single-spaced reply, roughly the same length as the Commission's report itself, I've gone through it, point-by-point, finding-by-finding. I've reviewed

every page of every testimony in all the public hearings and pointed out -- and this was especially designed for this Committee and for the Legislature -- and pointed out over these last few months -- and pointed out places -- significant places in which the retributive perspective, and also the deterrence perspective, was either distorted or understated.

Then there's a second document. And I'd like to just, in three or five minutes, highlight that for you. I'm hoping that you will take the time, before you make your decision, to actually review the counter, since there is a counter. And unfortunately, it was never issued.

The second document-- We've now heard-- And I'm very glad to hear Senator Russo point that out -- that it can be fixed. Yes, it can be fixed. It should be fixed. I testified before the Commission that it could be fixed. And I've made some concrete suggestions in the second document, *The Road Not Considered, Revising New Jersey's Death Penalty Statute*, in which, in a dozen or so ways, I've suggested a way to take the present statute as a starting point; and, in fact, revise it to make sure that super due process takes place -- to, primarily among them, drop the felony murder aggravator, especially the robbery-murder aggravator, and clarify the burden of persuasion to make sure that it's not only proof beyond a reasonable doubt that he did it, but proof to a moral certainty that he deserves it; and also acknowledging lingering doubt, and all sorts of other recommendations.

Now, obviously, if you choose-- This is the third way. And what remains so frustrating is that the Commission did not acknowledge -- even if they chose to reject it -- never so much as acknowledged in one sentence that their options were not just two, which were stand pat as is or simply abolish the death penalty and substitute life without parole. They

never once considered, if only to reject the other option, which was to refine -- to morally refine New Jersey's death penalty to make certain that only the worst of the worst would be subject to it and, with a degree of certainty, so that we could be confident, bordering on certain, that no person who didn't deserve to die would ever be executed.

Now, the principal -- some of the principal failings of the report -- and we've heard it already mentioned today. Senator Lesniak, once again, repeated what he had earlier said, that there is absolutely no evidence that the death penalty deters anybody. That statement flies in the face of human nature, common sense, and every study that I know. It imposes too great a burden on him and those who urge the end of the death penalty. The question of deterrence is not: Does the death penalty deter? Of course it sometimes deters some people, and it will never deter others. As the British Commission pointed out, we can number its failures just by looking at prison, but we can never number its successes. We can never know how many people, who otherwise would have killed, don't by virtue of -- and only by virtue of -- the threat of death.

The question really of deterrence is: Does it have a more marginally effective deterrent impact than its principal alternative, life without parole? And here, studies differ. The most sophisticated recent ones, the most recent six, show a significant greater deterrent effect of the death penalty. But they, too, have their critics.

What the Commission never considered -- excuse me -- but was brought to their attention and never acknowledged in the report, is basic human nature of risk aversion about death, the subconscious restraints that a -- in deterrence that a death penalty may impose.

When it turned to cost, it never acknowledged all the money saved from guilt -- the hundreds of thousands of dollars saved for every guilty plea obtained under threat of death. It never-- It talked about the intangible and emotional costs, and it never talked about the cost of not doing justice. You see, *justice* was a dirty word for this Commission. They did everything they could to avoid it in order to get unanimity or near unanimity. Because the moment that you start talking about justice and whether some people uniquely deserve to die -- the worst of the worst, the torture killers, the child killers, the child rapist killers -- the moment you start talking about that, then the Commission splits.

Then Commissioners like Kathleen Garcia -- who was clearly in support of the death penalty, and clearly thought that some people deserved to die -- would have been forced to issue her own separate statement, which she did anyway -- but her own separate statement dissenting on the grounds of justice. So justice never appears. And retribution is virtually dismissed. Retribution, which is the primary justification for the death penalty; retribution, which under the proposed new model penal code becomes the primary justification for all punishment. Retribution was dismissed by a majority of the Commission as simply irrelevant. And yet, retribution saturates the Death Penalty Study Commission's concerns.

If you look at their findings, Findings 1, 5, 6, and 7 concerning disproportionality, concerning legitimate penological intent, concerning irreversible mistakes, and concerning life without parole as an adequate substitute all concern the question of justice, all concern the question of whether somebody who is sentenced to life without parole is getting his or her just desserts when he or she is the worst of the worst.

Now, you've already heard testimony today by Mr. Hilton, who says how miserable life is in life without parole, and obliquely suggesting that those of us who appeared before the Commission and suggested otherwise are simply mistaken and ignorant. I've spent over 3,000 hours in six states over 22 years documenting life inside maximum security prisons and life on death rows. And what I have -- what I can show in picture, and can express to you now in word but cannot show in picture in New Jersey -- because the Department of Corrections would not allow me to take a camera inside the New Jersey State Prison, though five other departments of corrections have-- They did allow me a brief, two-hour tour, during which no inmates were exercising, strangely; no inmates were eating; no inmates were moving; etc. So I saw an empty facility, except for the cells. But, of course, what you do see inside the cells are color televisions, what you do see in the libraries are books, they do watch TV, they do root for the New Jersey Nets and watch the playoffs, they do socialize, they do have friendships, they do laugh, they do cry, they do cheer, they do grieve, in fact they do look up at a sky. Now, it was a bleak setting, and it is a bleak setting. But do pay very careful attention to what you've just heard. What you've just heard is that the average life sentence, regardless of life without parole, leaves someone ineligible for parole for 62.5 years -- or 63.5 years. A repeated robber who injured no one, who is given a life sentence; a drug dealer who killed no one, but possesses a heavy weight to sell, can be given a life sentence-- They all serve their sentence in conditions similar to, the same as, those mass murdering rapists of children, the worst, of the worst, of the worst.

In fact, the Department of Corrections in New Jersey, as it is in every state in the United States, by its formal mission statement disavows punishment. Punishment is no part of its mission statement. Its mission is to keep us safe from them, to keep staff safe from the inmates, and to keep the inmates safe from each other. The only place punishment occurs, as the present administrator confirmed to me in my tour -- my brief tour of the New Jersey State Prison recently, about three weeks ago -- the only place that punishment consciously takes place at the behest of the Department of Corrections is when somebody violates prison rules, once inside. What a person did outside, whatever the crime a person committed-- No matter how heinous that crime is, once inside prison, that person's experience of life in prison will be no different than, no worse than, and in fact may predictably be better than what the experience will be for much lesser criminals. So don't for a moment think that by substituting life without parole you have somehow achieved either justice, proportionality, or retribution. How odd and how disturbing that the Commission's report, discussing proportionality in detail, never once considers the question of whether life without parole is a disproportionately lenient sentence. Proportionality has two phases to it and two aspects to it. Is it too great than what's deserved, or is it too little from what's deserved?

I could go on, and on, and on. But just two more comments and then, hopefully, I'll get questions and an ability to respond further.

You've heard about the drop in support, even today, for the death penalty in New Jersey and elsewhere. Well, the Commission conveniently -- when they talked about an increasing trend of drop in support -- failed to acknowledge a couple of things. Number one, the major

polling question fundamentally distorts it. It asked the question of whether you would prefer murder -- or whether you prefer the death penalty or life without parole, with absolutely no chance of parole, for those convicted of murder. Well, what about a retributivist like me, who in 95 percent of murders would prefer life without parole? Most murderers do not deserve to die. Most of them deserve a life in prison. Very few, and only very few deserve to die. How am I supposed to answer that? Would I prefer the death penalty or life in prison for someone convicted of murder? It's almost always life in prison, not the death penalty.

But of course, what they didn't mention when they found increasing evidence of rejection of the death penalty is that Wisconsin -- and they used just the introduction of legislation by a single legislator in various states. They failed to mention that Wisconsin conducted a referendum, and 56 percent of the people of the state -- which had not had a death penalty in over a hundred years -- still supported it. And of course, they couldn't mention, because it hadn't happened yet -- but do be aware that after the Commission's very report came out, the next Quinnipiac Poll, in February 2007, reported that the people in New Jersey, by a very substantial majority -- something like 53 to 42 percent -- rejected the Commission's own suggestion that the death penalty be abolished. Yet they still reported a small preference for life without parole over death. The newspaper reported that is an inconsistency. It is no inconsistency. It is perfectly consistent. The people of New Jersey want, need, feel certain that the death penalty is sometimes deserved, and they want it retained. On the other hand, for most of the cases of murder, the people in New Jersey -- like me and my fellow retributivists -- understand and know that most cases of

murder -- people are not the worst, of the worst, of the worst, and don't deserve to die.

And then one final note, and then I quit, and that is-- You have before you an indiscriminate statute. When you read the Death Penalty Commission's report, pay careful attention to the Public Defender's separate concurrence. Now, she gave me a hard time when I was a witness, but that's okay, and that's expected. But she makes a very important point. If you simply substitute life without parole as a mandatory penalty for all other cases that are presently death-eligible, what you'll be doing is eliminating the jury's ability, case-by-case, to do justice. What you'll be eliminating is the jury's ability to look at mitigating circumstances. Because there will be no penalty phase. The net effect of it will be that, in an even more morally indiscriminate manner, you will once again be lumping huge classes of people together that will range from the very worst, of the worst, of the worst, who most deserve to die, to people who committed terrible crimes but are not even close to the same moral universe, who had backgrounds that would have deserved the sympathy and mercy from the juries. But those backgrounds will never be raised and will never be at issue.

So don't make a mistake of substituting what is presently a good first try, but needs refinement -- a death penalty statute -- for something that is more morally discriminate than what you presently have, the net effect of which will not be to increase justice, it will be, in fact, to further profane it.

SENATOR ADLER: Senator Scutari, sorry.

SENATOR SCUTARI: Senator Russo, we've had a death penalty in effect in New Jersey for the past 25, with the exception of recent

history -- with the moratorium that's gone -- which I personally did vote for. Why has no one been executed?

SENATOR RUSSO: Primarily-- First of all, it takes an awful long time to go through the whole system, as we found out in the cases I mentioned -- the Edgar Smith case; and Federal cases -- Carl Chessman wrote a book -- it took even longer.

We're dealing with some heavy stuff. We're dealing with life and death. It's going to take a long time. Add to that the fact that our judges basically have been somewhat philosophically opposed to the death penalty, until very recently. There seems to be a change as evidenced by that court decision just the other day upholding the death penalty.

I've always felt that eventually, some day, there will be an execution. I don't look forward to it, I would rather there not be. But there will be under this law. But this law is so tight, it requires so many things before that could happen. It's going to take a lot of time, not because it doesn't work in the sense that -- I hope it's not because it's not a good law. I mean, it was really drawn tight, as evidenced by the overwhelming support in the Legislature. It's just that it's going to take time to educate the courts, I guess.

SENATOR SCUTARI: It's my understanding that if the moratorium is lifted, one of the death-sentenced individuals in New Jersey might be facing an execution order in the near future. Is that correct, as far as you know, Professor?

SENATOR RUSSO: I'm not sure.

DR. BLECKER: That's my understanding also. There's at least one, and perhaps two, who have cleared the State process. I mean,

everyone has just given up because the New Jersey Supreme Court reversed the first 28 death penalties that they had before them. And they are, clearly, an abolitionist court. But on rare occasions, they have said yes.

And that's right. And it seems like the Commission just gave up. Commissioners like Kathleen Garcia said it will never happen. Well, why is everyone so willing to give up?

SENATOR SCUTARI: What can be done, if anything? Well, let me ask this question first. What is the average -- or what is your understanding, in terms of the time that it would take for an individual to go through the entire appellate process, ensure all of the safeguards, and then finally be sentenced to an execution?

DR. BLECKER: On average, across the country it has taken in excess of a dozen years. It's not uncommon for it to be 15 or 20 years. But on average, I believe it's something around 13 years.

By the way, the proportionality review that you were discussing earlier -- the United States Supreme Court has held -- is not constitutionally mandated. The death penalty may never be a disproportionate penalty. It must serve either attributive or deterrent ends. The proportionality review in which you compare an individual death sentence to others gotten or given in that jurisdiction; or perhaps in the most expansive view of a death -- proportionality review of others not given to death eligible individuals, is a review that this Legislature chooses to undertake on its own. It is not mandated by the United States Constitution.

SENATOR SCUTARI: Clearly, the State of New Jersey has gone out of its way, and in a far more detailed fashion than other states, to ensure that those sentenced to death have every opportunity to prove

innocence or to at least overturn their conviction for a sentence to death. And that is -- obviously takes a long period of time to ferret that out.

Without giving up those safeguards, is there a way to streamline the process without giving up the safeguards?

DR. BLECKER: Only somewhat. I think if you are committed to a just system that rightfully protects defendants against mistakes to a mere certainty, you're going to have to tolerate several years delay between sentence and execution. There is, by the way, a value in giving the sentence itself. That is to say, the sentence -- the death sentence itself operates symbolically as an occasion -- a solemn occasion in which we in society say, through our representatives of the jury, that you deserve to die. Even if it takes us a while, and it will. To answer your question again and reiterate the answer, even if it does take us years to carry out that sentence, what still remains, and what death penalty inmates have told me -- whom I've interviewed in depth and at length over the years -- is that the bite of that moment when the jury faced them and said, unanimously, "You deserve to die," that stays with them. And so there's a value to it, even during the delay.

SENATOR SCUTARI: The proportionality review, which you spoke of-- Is that, in your estimation, a necessary component that New Jersey employs to ensure fairness?

DR. BLECKER: Not to the degree that it does or needs to. The fundamental question of proportionality, which is a deeply held western cultural value -- it goes back to the Old Testament, it goes back to the ancient Greeks, it goes to the Magna Carta, it goes right through, century after century. It's really the relationship of crime to punishment.

Is our response the right and measured response? And in that respect, the United States Supreme Court has said that the Constitution precludes a grossly disproportionate response.

But the so-called *proportionality* reviews that we're talking about measures one person's sentence against another's. And it seems to me that you can retributively argue that as long as every individual who is condemned to death and is executed deserved to die, the fact that other people escaped the justice that they deserve and instead were consigned to a life in prison does not undermine the justice of killing someone who deserves to die. So that part of the proportionality review could, if the Legislature chose to, be eliminated or reduced, at least to preclude looking at people who were not given the death sentence as morally irrelevant.

We try to balance two things. We try to balance fairness and consistency. Consistency requires that we treat like cases alike. Fairness requires that we treat every individual human being as a concrete person worthy of respect and dignity. The problem is that there is a tension between those two. Because every situation is truly unique and infinitely rich. And in order to treat every person as a human being, we have to look at background, etc. So proportionality reviews tend to obscure the real, significant differences, case-by-case, that may occur in the backgrounds of individual defendants. That's the problem, that you're sacrificing fairness for the sake of consistency.

SENATOR SCUTARI: If that revision -- without throwing that completely out -- was made, how much time would that potentially save, in terms of the years that go by?

DR. BLECKER: I don't have the hubris or expertise to give you a concrete number. I don't know.

SENATOR SCUTARI: Senator, knowing now, 25 years later, what you do, and having served on the Commission, would you change anything about the bill that you had drafted back in the '80s?

SENATOR RUSSO: I honestly can't-- This might be a fault, but I honestly have not been able to find anything in it. Maybe that's pride of authorship. I don't know. I try to think to myself (indiscernible) (PA microphone malfunction) I try to think to myself, am I doing the right thing? I thought it last night before I came here today, as I do often. Am I doing the right thing? So far, the bill has actually really worked quite well other than the fact that there have been no executions, and that doesn't break my heart. In the sense that there have been no convictions of people who were later found not to be guilty--

We've talked a lot about the effect on victims. This was a big part, incidentally, in the Commission's hearings. This was a well-orchestrated event, incidentally. A lot of people were brought in from all over the country to tell how terrible -- what they went through as victims. Well, you know, you're going to go through almost the same thing anyway. People aren't going to succumb to life without parole in a submissive manner. They're going to go through appeals. This is going to go on and on. And it is tough on victims. But you know we're not here to feel sympathy so much for victims as we are to do the right thing for law enforcement and the right thing for the public in general.

Because, you know, as soon as-- As the Professor was talking, I was thinking of things like the Lancaster school murder, where the man

mowed down-- If you were to throw out a poll question in New Jersey, which I suggest someone might do in October -- no reflection on either party -- it will be like, 95 percent should get the death penalty if you go in and murder a bunch of children in the way that man did, and that would be a state event.

So proportionality is another issue. We talked about that a lot. There were some suggestions that maybe the death penalty was racist. I would never tolerate that, believe me. And the proportionality study by Judge Baime concluded there was no evidence of that at all in it.

SENATOR SCUTARI: Could you have envisioned, 25 years ago, that no one would have been executed under the law that you drafted?

SENATOR RUSSO: No, not at all. I thought there would be very, very few. That's what I had-- And I said that on the floor of the Senate during debates. I hoped there would be very few. I even hoped maybe there wouldn't be any, which means nobody deserved it. But if somebody deserved it, yes, I thought there would be some by now. I did not think the courts would allow this thing to go this far, this long.

And I think, if I might add, should the Legislature not overturn this bill in view of what the Supreme Court just decided recently, we're going to face executions pretty soon, and then we'll see if it works or not. But I think we'll see that it does.

SENATOR SCUTARI: You had the benefit of listening to the testimony of victims' families. Is it your contention that the victims themselves would have a different view of things than the victims' families did, if the victims could speak -- since they're no longer--

SENATOR RUSSO: If the victim could speak? Gee, I don't know. It's so hard to say.

SENATOR ADLER: Senator, before you answer the question, as sort of a background, the next two panels of witnesses are going to be victims' families. And as you can imagine, victims' families come from different walks of life around the state and bring different perspectives to the notion of capital punishment. We're going to have two panels, one of which will be folks who have lost family members who support the death penalty and oppose the bill that we're considering today, and the other panel will be folks who have lost family members who support the bill and oppose the death penalty.

So that very, very troubled community is understandably divided on moral grounds, on family history grounds, on whatever other grounds. They're going to speak to that issue in a second.

Rather than having Senator Russo speculate about what their family members -- victims might say, I'd rather have those folks speak on their own.

SENATOR RUSSO: Senator Adler, can I just add one point to that?

Be careful. I don't know who is going to testify today. But in the Commission-- If you could hear from every victim -- or every victim's family -- all, indiscriminately, that might be one thing. But people -- some of them are speaking from the heart, some of them may or may not be. I don't want to say too much.

SENATOR ADLER: Senator Scutari, if you want to follow up with Senator Russo.

Thank you, Professor.

SENATOR SCUTARI: I want to reiterate what I think one of your contentions is: is that if the bill is passed in its present form, that will not eradicate the difficulties that people have, because there will be continuous amounts of appeals on this issue anyway.

SENATOR RUSSO: Yes, Senator.

SENATOR SCUTARI: As you said, they're not going to go in voluntarily and not appeal that sentence.

SENATOR RUSSO: Life in prison without parole will not involve as long a process or as many appeals -- because there are certain appeals that are -- like the Federal court's involvement, and so forth. But there will be. And there will be a lot of effect on the same victims' families as there have been on all of us who have been involved on that end of it over the years -- and the people in this room today. So that's not going to end.

SENATOR SCUTARI: Thank you very much.

SENATOR RUSSO: Thank you, Senator.

SENATOR CARDINALE: Thank you, Mr. Chairman.

Senator Russo, you've made a number of allusions to the fact that you believe the -- my words, not yours -- that the Commission was sort of rigged.

SENATOR RUSSO: Was what?

SENATOR CARDINALE: Rigged.

By the time of the appointments, it was a foregone conclusion what the outcome would have been.

What was the process by which the Commission proceeded to decide which avenues to explore and which avenues not to explore?

SENATOR RUSSO: First of all, let me say this: I didn't mean to suggest that any member of that Commission was rigged in the sense of he was going to do something regardless of the evidence of the facts. I meant to say that, for example, if you picked a Commission, and you put Senator Cardinale and myself on it, you've rigged it the same way. We have strong views on this issue before we go into the hearings. Hopefully, we'll keep an open mind. But that's what I meant. Many of the people there had views that -- I knew how they were going to come out. This is not an issue that people just learned about today. These people felt sincerely in the view that they had. And these were real good, decent people, especially the Chairman. But I knew where they stood, because they thought about it for many, many years. And it came from their heart -- not because they did anything improper. And hopefully I was in the same category. I believe in what I said in that dissenting opinion and what I've said today.

SENATOR CARDINALE: My question is: How did they go about deciding which avenues to pursue, which witnesses to call, who not to call, what time to give to one aspect, and what time to give to another? What was the process?

SENATOR RUSSO: Okay. First of all, I should have mentioned that we had the benefit of something that you have here. We had a tremendously supportive staff -- the Judiciary Committee staff that did most of that work, especially Gabe over there. He doesn't like the limelight. But they did that work for us. They dug out what the issues -- for our consideration and allowed us to choose them. They dug out the

witnesses. The Chairman then made the decisions, but we talked about it.

The process was really quite fair, Senator Cardinale, in the sense that the Chairman would allow us to express our views. I'm just saying that the views of many members of the Commission were pretty well engrained before we went in there, including my own. But the Chairman, after discussion -- based upon what the Judiciary Committee's staff brought before us -- would then set up a procedure. I have no complaints or problems with that at all. I thought he tried -- the Chairman, Reverend Howard, tried to do really as fine a job as he could, and he did.

SENATOR CARDINALE: The Professor has indicated that the Commission did not consider fixing the statute, that they looked at two alternatives. Alternative one was to leave things as they are. Alternative two was to abolish the death penalty. They didn't look at anything in between. How was that determination made?

SENATOR RUSSO: I don't know how to answer how. But that frustrated me, too, because I said many times at the hearings that we should be talking about how to make it better, how to make it work. Yes, we did not. Maybe the Commission or the Chairman felt there wasn't any way to improve upon it. I think there was. I think there is. I think the Professor is absolutely right, and it frustrated me, too. But we didn't. All I can say is we didn't.

SENATOR CARDINALE: To remind you of something that's come up here, you also said on the floor that it would be a long time before there would be an execution when you argued in favor of that bill, that it would not -- we would not have executions right away. You were right.

I thank you.

I'd like a question or two for the Professor, if I may.

Have there been similar commissions in other states?

DR. BLECKER: Yes, there have.

SENATOR CARDINALE: And have those commissions in other states looked at a greater variety of options?

DR. BLECKER: In terms of revising the death penalty, the most famous commission actually was in Britain, and it was the most thoughtful and the most complete -- from 1948 to 1953. No one has done a better job than that. The commissions are just-- This is-- New Jersey is really one of the leaders in this regard. It's starting up now. There are moves to make study commissions to constitute them to do this. But there isn't a long history of this yet. There are organizations that have done it. The Constitutional -- I'm sorry, I'm just blanking on the name of it. But there have been groups of recommendations. Illinois did it. And the irony with Governor Ryan is that he had the opportunity to actually enforce and use the commission's recommendations to discriminately, rather than indiscriminately, look at those on death row and segment out those who, under the new, revised proposed standards, wouldn't have deserved it. He didn't do it. He just blanketly and indiscriminately released all those on death row. But the Illinois commission is a leading example. The British commission is the best example.

SENATOR CARDINALE: Your criticism of this Commission is that it did not explore, among other things, all of the options, and particularly left out the option of correcting the existing statute. In Illinois, did they consider the option of correcting their existing statute?

DR. BLECKER: Yes.

SENATOR CARDINALE: They did.

DR. BLECKER: And they proposed.

SENATOR CARDINALE: And would you say from those that you have looked at -- others studying this question-- You've mentioned Britain, you've mentioned Illinois. Is it general practice that the commission look at all of the options where such commissions are formed, or is it more general that they only do what New Jersey did and consider *A* and *B*?

DR. BLECKER: There's not a huge body of history to draw from, but from what I know, the more standard practice is to refine first, to start with what you have, and see whether you can improve it, especially if you're committed to a notion of justice.

SENATOR CARDINALE: Now, Senator Russo said that he thought the process by which the Commission went about calling witnesses and looking at questions was, essentially, satisfactory. You attended many of these meetings?

DR. BLECKER: No, I just attended the one that I testified at. But I reviewed every page, every moment of testimony from it. I reviewed the entire transcript from all of the hearings.

SENATOR CARDINALE: Do you have an opinion as to whether they-- Well, you've expressed your opinion already. That's kind of a redundancy.

DR. BLECKER: Well, I think--

SENATOR CARDINALE: Is it fair to say that you believe the Commission sought to proceed in such a way that the outcome was preordained?

DR. BLECKER: No, I don't mean to-- If I indicated that I thought they didn't allow the various perspectives to be aired, then I misspoke. The Commission responsibly allowed various perspectives to be aired. And the detailed transcripts of the hearings will reflect that. What they then did in their final Commission report was to essentially either understate or ignore whole bodies of -- and deep traditions of perspectives in this great debate. But the record is there. In that respect, I'm not criticizing them. They did allow both sides to make the record. They just simply ignored one side when it came time to issue the report.

SENATOR CARDINALE: Okay.

Thank you very much.

I have no further questions.

SENATOR ADLER: Gentlemen, thank you very much. I know both of you came some distance to be here.

I know, Senator, you're going off to another distance to do something great.

And I know, Professor, you're going to give exams for your law students at NYU.

So thank you both for taking the time to be with us today. I appreciate it.

SENATOR RUSSO: Thank you very much, Mr. Chairman, and members of the Committee.

DR. BLECKER: Thank you.

SENATOR ADLER: As I indicated, Senator Lesniak, some moments ago -- or excuse me, to Senator Scutari, a few moments ago, we have a division of opinion among family members of victims. And I'd like

to have some representative witnesses come forward to tell their perspectives on what we should do, based on their family history. We know that some of the murders that we might hear a little bit about were unbelievably heinous, involving the sorts of evil people that Professor Blecker was talking about moments ago, who really are the worst of the worst in our society. And yet we have a divided opinion among people who lost loved ones based on the worst of the worst.

For the first panel, I'd like to have Marilyn Flax and Sharon Hazard-Johnson. And I would really ask -- the audience has been just terrific up to now -- to show particular regard to the folks coming up now, for the next several minutes, because they have suffered enough having lost loved ones. I hope we'll continue to show the respect for these witnesses that we've shown earlier in the day.

Ms. Flax and Ms. Hazard-Johnson, if you'd come up to the front set of tables.

Ladies, thank you. On behalf of the members of this Committee and the people of New Jersey, we can't imagine what you've already suffered, having lost loved ones. I think we're all familiar, Ms. Flax, with the horror of your family loss. Yours as well, Ms. Hazard-Johnson.

If you could tell us why you think we should not change the statute -- maybe based on your own experience -- but really give us a perspective, as Senator Russo indicated, of what's right for public policy. If you could give us your perspective on what we should do going forward for society, I would really appreciate that so much.

Could you use the microphone? Just push the button on.

Thank you so much.

**MARILYN FLAX:** I wrote something down, which I'd like to read. And it will answer some of the questions that you're asking of me.

For those who don't know me, my name is Marilyn Flax. I'm the widow of Irving Flax.

You would have thought that after 18 years there would be no need for me to stand before you discussing the death penalty. However, my husband's killer, John Martini, knew. For when he was captured, his first words were, "You got me. Let them give me the death penalty. They don't f-in' kill them in New Jersey." How could such an evil, calculating killer think he could escape the most serious of penalties when the death penalty was designed for murderers like himself? After all, he killed at least five others before he took my husband's life. He tried to escape from jail twice. He threatened to kill his own attorney.

You speak of deterrents. If New Jersey had followed through with the penalty, would my husband be alive? Obviously, Martini thought more of his punishment, not his crime.

I have listened about the debate of cost of the death penalty. How dare you put a dollar amount on justice. There is no dollar amount high enough for my husband's life. Has anyone thought of the ramifications of abolishing the law: cost factors, changing of sentences of already convicted prisoners? For example, if a death row inmate now gets life, then what happens to the lifers? Certainly, they should not have the same sentence as most of the brutal murderers. Lifers now will appeal their sentences and will start a mushroom effect throughout the criminal population that are in our prisons right now. We will have more career criminals out on the street. Talk about cost factor -- are we nuts?

I have been abused by a system that should take care -- more about the innocent, not the guilty. I was ignored by ex-Governor Codey when I wrote a heart-wrenching letter to him. No response. I went down to Trenton to meet with Governor Corzine. Me and Sharon Hazard-Johnson had an appointment with him. We were told we would not be meeting with him when we drove all the way to Trenton, that we would meet with his General Counsel instead.

After that meeting, I called several times to set up a meeting with the Governor. My calls were not returned. I went down to speak to a commission started by ex-Governor Christine Todd Whitman to discuss how to trimline the appeals process. I never heard anything about that commission.

My next trip to Trenton was when there was a new commission now studying the death penalty. What a waste of time and raw emotion. There were 20-plus speakers. I and Sharon Hazard-Johnson were the last to speak. I had to listen to people from out-of-state to hear what they thought, religious leaders -- and I thought there was separation between church and State -- special interest group members that don't think there is a shade of gray. By the time it was my turn, I was so disgusted and emotionally burnt out, I said almost nothing. You see, ladies and gentlemen, crime victims don't go out in groves. We're a select few whose killers deserve the death penalty.

I was so angry when I left that day when I realize liberal politicians are running the State. What has occurred is not justice for victims like myself, but a charade of a system. I find those in favor of

abolishing the death penalty guilty of unfair, inhumane treatment to me and other survivors of the most violent crimes.

SENATOR ADLER: Ms. Flax, thank you.

Ms. Hazard-Johnson, if you could--

And thank you. Bringing the portrait of your brutality murdered parents is, for us, a grim but appropriate reminder of a loss you suffered and the lives taken whenever a murder occurs. So I thank you for the symbolism of that portrait. We welcome your testimony.

**S H A R O N H A Z A R D - J O H N S O N:** I also have a written statement that I would like to read.

But to answer your question, what I think you should do with this bill is abolish it today, right here, right now.

I brought my parents today because they are the victims of what happened in my family. I am a victim survivor. The victims are always forgotten. That's why I bring them into this room today. But I also, out of simple respect, want to say the names of other victims: Cheryl Alston, Carol Peniston, Keith Donaghy, Irving Flax, Latasha Goodman, Kristin Huggins, Megan Kanka, Gary Marsh, Edward Potter (phonetic spelling), Irene Schnaps, Teresa Bowman, Michael Eck, Giorgio Gallara, Jeremy Giordano, Maria Marshall, Officers John McLaughlin and John Norcross, Melissa Padilla, Mildred Place, "Dede" Rosenthal, Officers Gary Tadesco and Peter Voto, and Richard and Shirley Hazard, my parents.

I say their names not to say that I'm speaking for them today or their families, but I say their names just to respect them and to remind you that there are victims involved here. These were people who were viciously murdered by people who have no spirit, no gut, no soul, and are sitting on

death row. Most of the murderers of the people whose names I just mentioned are off death row.

When Brian Wakefield, who murdered my parents, got on death row-- Actually, before the trial started, there were 13 people on death row. By the time he got on, he was number 10. Today, he's number nine.

My name is Sharon Hazard-Johnson. My parents were murdered by death-row inmate Brian Wakefield on January 18, 2001, in their home in Pleasantville, New Jersey. During the course of a home invasion robbery by Brian Wakefield, they were savagely beaten, stabbed, and set on fire. Their pet collie, Heidi, was also beaten in the attack.

In March 2004, an Atlantic County jury, after careful consideration of all the aggravating and mitigating factors involved in Wakefield's trial, sentenced Brian Wakefield to death for the murders of my parents. On May 7, 2007 -- just three days ago -- the New Jersey Supreme Court upheld the death sentence and the proportionality of the death sentence of Brian Wakefield.

I urge all the Committee members on this panel to carefully review the New Jersey Supreme Court's decision regarding Brian Wakefield. Because it shows the careful, constitutional consideration they gave to his appeal. It also provides a comprehensive look at New Jersey's capital punishment law and its procedures. I intend to send you all a copy.

I testified before the New Jersey Death Penalty Study Commission, as did murder victim survivor Marilyn Flax, whose husband was kidnapped and murdered by death row inmate John Martini. Other murder victims' family members testified as well. However, Marilyn and I made a rare appearance -- or rare appearances as the only survivors whose

family members' murderers are currently on New Jersey's death row. And in Marilyn's case, her husband's murderer has exhausted all of his appeals.

It is our opinion that the question before this Senate panel -- this Senate Judiciary panel is whether you will stand with the likes of killers such as Brian Wakefield; and John Martini; Jesse Timmendequas, Megan Kanka's killer; Ambrose Harris, who brutally kidnapped, raped, and murdered Kristin Huggins within miles of this chamber; and Donald Loftin, who murdered several people in separate crimes; or whether you will stand with the victims and their survivors, such as myself, Marilyn Flax, the Huggins, the Kankas, and the Marsh families, and others as well, and permit justice and the law to prevail for the sake of every law-abiding citizen of New Jersey and for respect for the laws of our land.

It has been said by so-called *victims' rights advocates* who are against the death penalty that capital punishment only serves to victimize murder victims' family members further due to lengthy appeals and the uncertainty of the process. They claim that because no one has been executed since the death penalty was reinstated in 1982, New Jersey's death penalty is just not working. Well, this is just not true.

But as I sit before this Committee today, I can state that the Hazards, the Flaxs, the Kankas, the Marsh families, and others are being victimized once again. We are being victimized by the actions of this legislative body and the Governor.

In regard to the New Jersey death penalty not working, John Martini -- who kidnapped and murdered Marilyn Flax's husband, Irv -- has currently exhausted all of his appeals, both in the State and Federal courts. Nothing stands in the way of John Martini's execution except the Governor.

We also learned that the Department of Corrections, last year, provided the execution procedures to Governor Corzine's office for him to sign off on. And, to date, no action has been taken.

Accordingly, the death penalty in New Jersey is actually at a point where an actual execution should take place. However, it's the sole action -- or lack thereof at this particular time -- of Governor Corzine and the legislators, who put in place a completely unnecessary moratorium on the death penalty, that prevents capital punishment from working.

Marilyn Flax and I feel further victimized by the fact that the fate of our loved ones and their survivors are not worthy of a meeting with the Governor as did, with all due respect, the Rutgers Women's Basketball Team and Don Imus issues were. In my opinion, this lack of courtesy by the Governor toward Marilyn Flax and I is a clear indication that he just does not care about or want to hear from the families of murder victims whose murderers sit on New Jersey's death row.

During the Death Penalty Study Commission's hearings, I was present when Senator Lesniak, a member of this Committee, spoke against capital punishment, declaring that he was worried as to the execution of an innocent inmate. Firstly, there is no doubt of the guilt or innocence of all nine of New Jersey's remaining death row inmates. Megan Kanka's killer confessed to her murder. Brian Wakefield confessed to the murder of my parents. And the physical evidence in all these cases was overwhelming.

Secondly, during the Commission's hearings, there was no testimony whatsoever that anyone sentenced to death under the current New Jersey death penalty statute is or might be innocent. Barry Scheck, a noted lawyer, also appeared to speak about how innocents were sent to

death row throughout the country, yet Mr. Scheck could not provide one single example of a New Jersey death row inmate being exonerated.

Furthermore, Mr. Scheck failed to mention to the Commission Virginia inmate Roger Coleman, who was executed in 1992. Coleman had been Mr. Scheck's poster child as an innocent individual who he claimed was wrongly executed. As it turned out, in 2006, DNA tests on the crime materials proved that Coleman was indeed guilty of the rape and murder for which he was executed.

Why did Mr. Scheck fail to mention this to the Death Penalty Commission? Any death penalty advocates and alleged victims' rights advocates claim that abolition of the death penalty will stop the endless and costly death penalty appeals, which further victimize crime victims' families. If this is the case, why is there not set forth in this legislation you're proposing by this Committee a limit on appeals for those sentenced to life without parole? In fact, the Death Penalty Commission hearings -- at the Death Penalty Commission hearings, Senator Martin, a member of this Committee, testified that he did not want to limit the appeals for those sentenced to life without parole. Why? Current life inmates in New Jersey repeatedly appeal their sentences. Currently, Thomas Koskovich and Jayson Vreeland, known as the pizza killers from Sussex County, are serving life sentences. They continue to appeal their sentences, and most recently appeared in the Sussex County Court House, more than 13 years after their crime, for motions for new trials. Where is the finality and the end to this endless appeals that the anti-death penalty advocates think about? And where is the cost savings?

Furthermore, I note that there is nothing in the proposed legislation that abolishes Governor Corzine or any further governors' ability to grant clemency or pardon of someone serving a life sentence without parole. Senator Martin specifically spoke up against such a provision at the Death Penalty Study Commission hearings. Accordingly, those of you who advocate abolishing the death penalty and replacing it with life imprisonment without parole are not telling the public the whole story in that your proposed legislation -- in that in your proposed legislation, this current Governor, or any future governor, can and, we all know, will grant clemency or pardon inmates serving under such a sentence. Without such a provision, you are selling the public a false bill of goods.

It has also been said by advocates who propose abolition of the death penalty in New Jersey that the moneys spent on the death penalty can be placed in victims' rights programs. If Senator Turner truly believes the money saved from death penalty litigation should be put in victims' rights programs, why is there no offering of an amendment requiring budget cuts in the State Public Defender's Office, and that those funds would be put into the victims' rights programs? Where are the savings?

The death penalty in New Jersey is currently working. And the only person today who stands in the way of its operation is the Governor. Governor Corzine has taken the course to stand by the likes of John Martini, Brian Wakefield, rather than myself, and Marilyn Flax, and our victims. What is proposed before this Committee, one, does not limit the appeals of those sentenced under life without parole; two, does not abolish clemency and pardon; three, it does not provide for additional victims' rights funding. In fact, the Commission report stated they couldn't, with

any reasonable degree of accuracy, determine any amount of savings. And four, there's no provision for additional punishment of an inmate who commits yet another murder while serving life imprisonment without parole.

You should all remember that Florida serial killer Ted Bundy was escaped from jail when he murdered three young girls. Prisoners do escape. And I am certain that all of you recall the name Joanne Chesimard, who murdered a New Jersey State Trooper, escaped from prison here in New Jersey, and now allegedly works as a terrorist in Cuba.

There are those who say life imprisonment without parole is a greater punishment than the death penalty. If this is true, why do inmates under death sentences continually appeal their sentences?

This week, it's alleged that terrorists here in New Jersey plan to commit murder and mayhem. What are you trying to do to this state and its citizens?

There are those who say that legislators who vote against the death penalty as a moral question should not be challenged. Ironically, many of these same lawmakers who say they should not be criticized for being against capital punishment routinely criticize other lawmakers for being against abortion.

I want to thank, in advance, those members of this Committee who will not vote to abolish the death penalty in New Jersey. I also want to thank Assembly Minority Leader Alex DeCroce. He was the only one who fed back to us and did take time to meet with me for several hours to hear my concerns. He let us know that there is at least one person willing to take their time to hear from victims and listen to victims' family members.

The death penalty kills guilty murderers, people who had a chance at life. Abortion kills innocent people who will never get their chance at life. If you are truly concerned about killing innocent people, you would abolish this bill right here and right now, and get to work to make a real difference in the lives of your citizens.

If the death penalty is broken, fix it, don't get rid of it. What kind of an attitude is that for somebody that's in charge of what happens in the state? "It's broken, get rid of it. Let's not even look into it. Let's not try to fix it. Let's not try to find out what went wrong." What kind of an attitude is that for people who are in charge of the laws of the land?

Abortion kills innocent people. Get rid of it.

And I have one other thing to say. This is not my position. I say execute when it fits the crime; when a vicious person willfully and intentionally murders innocent human beings, people minding their own business, people they don't know, people who don't know them -- execute them. Don't put us through this muck.

And I want to tell all of you that I'm sick and tired of being here. I'm sick and tired of coming out and talking to you, and these commissions, and these false committees -- these committees that are formed as, in my opinion, stall tactics. This has taken more out of my life. My husband is 20 years my senior. He needs me. I don't need to be here. I don't want to be here. I want to go back and have a life.

Kill this bill.

SENATOR ADLER: Ms. Hazard-Johnson and Ms. Flax, thank you. It's enough that you've suffered. But for you to try to do what you think is right for justice for your loved ones, and for your communities, and

for New Jersey-- While many of us have different perspectives on this important issue, the fact that you would take the time to share your own experiences with us is very, very powerful testimony about the character of you, and your love for your husband -- your late husband, your late parents. We very much respect the strength of your passion, the strength of your intellect. You're sharing a bit of your soul and a bit of your pain with us.

Thank you very much for your testimony.

UNIDENTIFIED SPEAKER: If I may just--

SENATOR ADLER: No, no, thanks. We're going to--

I have a certain sequence of folks.

But thank you so much for being here.

UNIDENTIFIED SPEAKER: Only because it's--

SENATOR ADLER: No, no, thank you. Thank you so much though.

UNIDENTIFIED SPEAKER: Only because it's important to--

SENATOR ADLER: Thank you.

UNIDENTIFIED SPEAKER: --supplement the Martini issue.

SENATOR ADLER: Ma'am, thank you.

Our next witnesses, who are also the family members of victims of brutal murders, are Bill Piper, and Vicki Schieber, and James Wells.

Ladies, thank you so much for being here today.

UNIDENTIFIED SPEAKER: The question was asked--

SENATOR ADLER: Thank you.

UNIDENTIFIED SPEAKER: --why an execution hasn't happened.

SENATOR ADLER: Thank you.

UNIDENTIFIED SPEAKER: I can tell you why.

SENATOR ADLER: Thank you, ma'am. I appreciate you being here very much.

Mr. Piper, Mr. Wells, and Ms. Schieber.

UNIDENTIFIED SPEAKER: Mr. Chairman.

SENATOR ADLER: Just a second, Senator.

Mr. Piper -- I'm not sure which is which -- Mr. Piper, Ms. Schieber, and Mr. Wells.

Mr. Piper, if you'd begin, please.

UNIDENTIFIED SPEAKER: Mr. Chairman.

SENATOR ADLER: Yes.

UNIDENTIFIED SPEAKER: I'm confused. Was that woman--

SENATOR ADLER: She wasn't a family member.

UNIDENTIFIED SPEAKER: She was not a family member.

SENATOR ADLER: No, I would not do that to a family member. Oh my goodness.

UNIDENTIFIED SPEAKER: I wanted to make sure--

SENATOR ADLER: I think we know each other well enough.

UNIDENTIFIED SPEAKER: --the point was clarified.

SENATOR ADLER: Thank you for your confusion.

**B I L L P I P E R:** Is this on? (referring to PA microphone) Yes.

Chairman Adler, members of the Committee, thank you for having me here to testify.

My name is Bill Piper. I live in Pennington, New Jersey, in Hopewell Township. I'm here to address the issue of the death penalty

from my perspective as a family member of a murder victim in a case that did result in life without parole sentence in Pennsylvania.

Many times, at hearings similar to this, I've heard speakers asked by committees whether life without parole would have allowed them healthy grief in coming to terms with their loved ones' death. And most of those people said that they imagined it would. I can say -- and unfortunately from personal experience -- that life without parole does exactly what it should for us as victims.

Number one: It removes the perpetrator of crime from the rest of society forever. And, number two, it permits victims' families to come to terms with the tragedy of murder and loss however we're best psychologically able without -- and this is the important thing, I think -- without having politicized, demoralizing questions thrown into the mix on, at times, very, very public levels. It allows grief to be private, which is what it should be.

In 1999, my mother was murdered in Pennsylvania, where life without parole is an option, one that was fortunately taken in 2002. Since then, I've been able to live a pretty normal life because it was decided. I can let sorrow be sorrow and miss my mother, but not that differently from missing my father who died of natural causes, in bed, in 1986. Life without parole works.

Before the near closure of life without parole, things were different. Because of the nature of the crime -- my mother, then 74, was raped and murdered by a probably random nighttime intruder -- the prosecution strongly considered pursuing the death penalty. The next three years were spent traveling, communicating back and forth to Altoona,

Pennsylvania for pretrial hearings, advising the prosecution's request on the desirability of the death penalty, etc., and each time back there hearing more forensic facts about my mother's death, or about the murderer and his limited affect in his near-mental retardation.

Ultimately, about a month before the killer's scheduled trial, the DA told my sister and me that he would pursue whichever course we wanted. As both a long-time opponent of capital punishment, and as a person traumatized by a loved one's murder, I could not condone giving consent to an execution. I spent three years in the emotionally untenable position -- while traumatized by a loved one's murder -- not only being asked to participate in a state execution, but also of being morally obligated to speak out against the execution as a benefactor of the person who raped and murdered my mom. I tell you, I felt violated by having been given both of those responsibilities simultaneously.

That came to an end when my sister, against her wishes, and those of most of my family, assented to accepting the sentence of life without parole. The prosecution laid out quite clearly for the family what could be involved in taking the case to trial and pursuing the death penalty option. It was because it was made clear that life without parole means what it says -- or means what it says in Pennsylvania -- and that the killer would never leave prison, that the sentence was reluctantly accepted.

I think the reason, ultimately, that my sister recommended accepting life without parole was to save my son, who was then 6 -- 3 at the time of his grandmother's murder -- from growing up into his late adolescence -- or perhaps his entire life -- with this shadow of appeals processes hanging over his development.

Unfortunately, it was too late to save my family from the damage already done by the introduction of the death penalty into the process. Even though the death penalty was not ultimately used in the case of my mother's killer, it still wreaked havoc on our lives. We became victims not only by having a beloved family member murdered, but also by having to work with a district attorney's office and other family members on deciding the use of the death penalty, which split our family, with my wife and me being opposed and most of the others for it.

After my mother's death, as you can imagine, my wife and I had become closer to my sister, aunt, uncle, and cousins. We depended on each other and provided for each other real emotional support. And our shared grief brought us together. But then that decision making polarized us in ways that were inexpressibly hurtful to all of us. It put a violent end to a fragile new closeness and drove a wedge between us that has yet to heal. My aunt and uncle have refused contact with me. One of my cousins will send me a Christmas card but doesn't respond to my Christmas card. And my sister has just begun to answer my son's e-mails and has gotten back in touch, but we're unable to speak about this. So my son has lost not only his grandmother, but also his extended family on his father's side.

As murder victims' families, we don't have very many people who can understand what we went through. Most people don't want to talk about it, of course. And it's a very isolating experience to have gone through that. And I think it was too bad that because of the judicial process being what it was, we lost some of the people who could have at least been supportive.

I'm almost done.

Despite this pain, as I said when giving my victim's impact statement at the hearing, I'm not a victim, anymore, of this; because the finality of life without parole has allowed me to grieve more normally. I don't harbor good feelings for the murderer at all. I don't know him. There's only a limitless sorrow over the whole catastrophe, especially the end of my mother's life, who was a kind, nearly innocent woman committed to her family and friends. And I ask that we honor my mother's kindness and mercy by sparing other people this trauma. It's in our hands.

Thank you.

SENATOR GIRGENTI: Thank you very much.

Vicki Schieber.

**VICKI SCHIEBER:** My daughter Shannon was murdered at the age of 23 by the Center City Rapist, in Philadelphia. She was a graduate student at the Wharton School of Business, finishing her final year, when a man pried open her apartment door and viciously raped her and murdered her.

Here in New Jersey, especially in southern New Jersey, you've probably heard a lot about this case due to the frequent press coverage. We would ultimately learn there were four women in that same three- or four-block area where my daughter lived who were sexually assaulted in the 10, 12 months prior to that -- to this crime -- while using the same MO, and another one after she died.

However, in 2002, it was announced that a DNA link had been made to a series of sexual assaults in Fort Collins, Colorado. Troy Graves was arrested on April 23, 2002, and he ultimately pled guilty to assaulting,

raping, and murdering Shannon, and to 13 other sexual assaults in two states.

Losing a loved one to murder is a tragedy of unimaginable proportions. And the effects of the trauma on the wider community extend beyond the initial family. The common assumption is families like mine -- we would be very much supporting the death penalty. Prosecutors said to us, "We will seek the death penalty for your family to help you find justice, and/or we will seek the death penalty in order to have closure and healing for you."

I believe many elected officials like you here today have the best of intentions when you argue the death penalty is necessary for murder victims' families. But I'm here today to tell you these assumptions are wrong. They are not only false, but they are very harmful to victims' families. The death penalty has failed victims' families in virtually every way. And many of us, including those who support the death penalty in theory, have come to support its end. I say this on behalf of many families who have either always opposed the death penalty or have arrived at the position after experiencing years of its damaging consequences.

But let me be very clear that I do not speak for all victims' families. No one can make that claim, because the murder is so horrendous and so particularly personal to the family. But the number of families who have been harmed by this system and are ready to give it up is a growing number around this country. However, the assumption that all, or even most, homicide survivors support the death penalty is absolutely wrong. And the pain created by the system for many of us is very real.

Sometimes this is difficult to understand if you've never dealt with the system of loss of a loved family member to murder. So let me explain the biggest problems briefly. The legal process -- we've heard about already -- is very overwhelming. You're thrust into that complicated web of court proceedings. You have little power other than to sit there, and listen, and wait for a speedy outcome. And the death penalty exacerbates that very process. And finally, the capital appeals go on for decades, and the murderer's name -- and this is what we had particularly difficult problems with -- the murderer's name is splashed across the headlines, while the offended sit helplessly waiting for the next ruling, not knowing if the sentence will ever be applied.

Now, I've been on both sides of this equation. It took nearly four years of agony before my daughter's murderer was found, which is only a fraction of the time of what some of the murder families have to wait for in New Jersey for an execution to occur. My daughter's assailant -- and this is very important -- was apprehended on April 23, 2002. By the end of July of that year, he was in a maximum security prison serving a life without the possibility of parole sentence. That was in only 10 weeks and involved-- It would have been shorter, but there was a hearing sentence in two different states.

I can't imagine what that would have been like if I was still sitting here, nine years later, waiting for his sentence and wondering if it would ever be carried out. Never again will I have to spend emotional energy questioning what punishment will transpire for the man who stole my daughter's life.

No one should affirm, from the opposition of the death penalty by my family, that we don't want the murderers caught, prosecuted, and put in jail for the rest of their lives. We believe Shannon's killer is where he belongs today, and he serves his prison sentence, and we rest assured that he will never again perpetrate this crime on any other families. We have great faith in the security of this prison system.

Some have told us that the pain and the delay could be fixed by making the death penalty cheaper and faster. We talked about that. But Kirk Bloodsworth and over a hundred exonerees are living, breathing examples that that's not a solution. We cannot make the system faster and cheaper for homicide survivors and also protect innocent people from conviction and execution. That's why many of us believe that it's very hard, if not impossible, to fix this system.

While I said earlier I do not speak for all families, I am joined today by many New Jersey citizens who've lost a family member to murder and support replacing the death penalty with life without parole.

I submit this letter you've received today with more than 50 residents' names, of the State of New Jersey, who express support for the legislation today. Many of these families are here today to avow witness to this letter, and I now ask them to stand and come forward with me.

I'd like to conclude with these very courageous people behind me by saying -- especially to those of you who support the death penalty or are ambivalent about it -- that you have an important opportunity here to help create a new, helpful paradigm for the victims of our society. You may continue to believe that murderers should be executed, and there's likely little that I can say to change your mind. But I do ask that you consider the

death penalty is not simply an abstract concept. It is a real-life consequence on the very people it purports to help. And replacing it with life without parole is a better option, regardless of your feelings about capital punishment in the abstract. If that's your goal, as I believe it should be -- as I do for the rest of these victims -- we recommend an end to the death penalty in New Jersey.

Thank you.

SENATOR GIRGENTI: Thank you very much.

And I thank all of you for coming to Trenton today.

Mr. James Wells.

**J A M E S H. W E L L S JR.:** Good evening, Chairman and the Committee members.

My name is James Wells. I'm speaking for both sides of the fence: one, as a recently retired law enforcement officer, and also a victim -- a survivor of a murder victim.

I live in Union, New Jersey. I am the National Chairman of the New Jersey Chapter of the National Association of Black Law Enforcement Officers, which I will refer to as NABLEO. I'm here to share with you NABLEO's position on the death penalty.

I am also the father of a murder victim. My son, Jafari, was shot and killed November 2005. I share my painful reality with you because I want you to know that I speak with the knowledge of what it's like to experience the most terrible losses, the death of a child in a senseless murder. I believe my personal experience more fully informs this testimony.

NABLEO's mission is to establish and secure the enhancement and promotion of ideals and goals of the black law enforcement officers

throughout the country for education, political advancement, and charitable endeavors. As part of their goal, we advocate on issues that directly impact the services of the men and women of color and the communities that they serve.

As law enforcement officers, our primary goal is to protect the public. We all agree that convicting and punishing offenders is critical in achieving that goal. But on one extreme form of punishment, the death penalty, we have different views. Some of us have no moral opposition to the death penalty and believe it may have a place in society. Others oppose it for sincere ethical or moral reasons. We share, however, a belief that the death penalty has failed us.

After careful consideration, NABLEO members have concluded that it should be replaced with the sentence of life without parole. The death penalty is an absurdly expensive and unworkable punishment that saps our financial and human resources, and diverts time, energy, and attention that could instead be invested in real solutions to crime and violence.

Countless millions of dollars have been spent since New Jersey reinstated the death penalty in 1982. One estimate places the figure at more than a quarter-of-a-billion dollars in the pursuit of the death penalty for a handful of murderers. These precious resources could have been used to hire more police officers or to fund other critical needs, such as gun violence prevention programs, drug and mental health programs, youth and family services, and education.

The death penalty is also a distraction from justice. We will never know how many crimes have gone unpunished with perpetrators

remaining at large because of our investment in this failed policy. Most death sentences in this country are never carried out. In New Jersey, 25 years of the death penalty has led to nothing but pain for the families of the victims and decrease of public faith in the criminal justice system. In short, the futile and wasteful mixed message of capital punishment contributes nothing to making New Jersey safer.

Finally, the death penalty risks executing the innocent convicted of crimes they didn't commit. Right here in New Jersey, there have been recent cases of wrongful conviction for serious crimes, such as murder and rape. The serious mistakes made in these cases underscore the reality that with the death penalty, mistakes cannot be undone.

NABLEO members are deeply concerned about violent crime and are committed to the goals of protecting the public and bringing offenders to justice. But the death penalty is not an effective law enforcement tool, in practice. It is a distraction from justice. Life without parole is a serious punishment that would keep our citizens safe from violent offenders.

I would like to end with a personal statement as a parent of a murder victim. As you know, the New Jersey Death Penalty Study Commission recommended that the State replace the death penalty with life without any possibility of parole. More than a dozen victims' families like mine testified before the Commission that the death penalty process compounded their pain by putting them through a long, extended process of trials, reversals, and retrials, and that life without parole would have been a more merciful sentence for them.

I can understand and appreciate their perspective. Having lost my child to murder, I know how hard it is to heal. Words cannot express how hard. Being tied to the criminal justice system, and through it the killer, for decades, is painful, harmful, and cruel to the families.

One person described the death penalty as a false promise, not only because cases go on and on, but also because it cannot bring our loved ones back. As someone whose life has been changed forever because of the cowardly act of murder, I could not agree more with that statement. For the sake of the families of murder victims, please end the false promise of the death penalty.

Thank you.

SENATOR ADLER: Mr. Wells, Ms. Schieber, Mr. Piper, let me express, on behalf of the members of this Committee, and really the people of New Jersey, as I did with the previous family members of murder victims, our thanks that you've managed to share your pain in a way that tries to improve public policy.

For you and the previous two witnesses, it's enough that you lost a family member -- or in one person's case two family members -- so terribly. The fact that you would try to make good on their loss for the benefit of society really speaks volumes of your soul, of the character of each one of you.

So thank you, all three of you, for taking time to be with us today. I really do appreciate it very, very much.

MR. WELLS: Thank you.

SENATOR ADLER: Our final witness for testimony is Bishop John Smith.

Your Excellency, good afternoon.

If you would push the button to turn on the microphone.

Thank you, sir.

**BISHOP JOHN M. SMITH:** Thank you very much, Mr. Chairman, members of the Senate Judiciary Committee, for this opportunity to give testimony.

Two days ago, on Tuesday, May 8, 2007, the New Jersey Board of Catholic Bishops met at Sacred Heart Cathedral Basilica in the city of Newark. During our meeting, the Bishops once again reaffirmed our united opposition to the death penalty. The Bishops -- all the Bishops of the Catholic Church in the State of New Jersey have asked me to represent them in your assembly this afternoon and to speak in favor of Bill S-171, which I understand has had certain amendments.

Today, I bring a very simple message. The death penalty, in our opinion, is not consistent with evolving standards of decency. Because the State of New Jersey has other means to redress the injustices caused by crime, and to effectively prevent crime by rendering the ones who have committed these offenses incapable of doing any more harm, and because we recognize the dignity of all human life, we continually, and consistently, and vigorously oppose the use of the death penalty.

The New Jersey Catholic Bishops spoke to this issue in their statement of February 4, 2005. The United States Catholic Conference of Bishops, representing all the Catholic Bishops of our nation, on Holy Thursday 2005, launched a national campaign to end capital punishment in the United States of America, stating, "The death penalty diminishes all of us. It's use ought to be abandoned, not only for what it does to those who

are executed, but also to what it does to us as a society. We cannot teach respect for life by taking human life.”

We are guided by our belief that every person has an inalienable right to life, because each human being is made in the image and likeness of God, who alone is the absolute Lord of life from its beginning until its natural end.

We acknowledge that the subject of capital punishment is controversial and filled with emotion. All murders are violent and shocking; some are even savage and barbaric. They all stir emotions of revulsion and anger. We grieve with the victims of murder for their brutalization and their loss of life. We commiserate with the family and friends of victims who must suffer with the loss of loved ones throughout their entire lives. We affirm that the State has the duty to punish criminals and to prevent the repetition of crime. We believe that greater efforts must be made to bring the criminal to repentance and to possible rehabilitation. We also believe that our society has sufficiently developed to protect itself and to redress the injustices caused by criminals without resorting to the use of the death penalty. One alternative is life in prison without the possibility of parole.

The catechism of the Catholic Church acknowledges the right of public authorities to impose criminal punishment proportionate to the gravity of the offense if this is the only possible way of effectively defending human lives against unjust aggressors. If, however, nonlethal means are sufficient to defend and protect people’s safety from the aggressor, the authorities will limit themselves to such means, as these are more in keeping

with the concrete conditions of the common good and more in conformity with the dignity of the human person.

We believe that because the State of New Jersey has other means to redress the injustices caused by crime, and to effectively prevent crime by rendering the one who has committed the offense incapable for doing more human harm, and because we recognize the dignity of all human life, we continue to consistently and vigorously oppose the use of capital punishment.

Let me conclude by recognizing the need for the improvement of our criminal justice system and for greater societal commitment to crime prevention and victim assistance. As pastors and teachers we, the Catholic Bishops of the State of New Jersey, implore you not to impose the death penalty in our state.

Senators, the Catholic Bishops of the State of New Jersey ask you to release favorably Senate Bill 717.

Respectfully submitted to you by all the Catholic Bishops of the State of New Jersey.

SENATOR ADLER: Your Excellency, thank you for taking the time to speak to us today and to represent the other Catholic Bishops and the Archbishop. We appreciate very, very much your time and the wisdom of your comments.

Let me start by thanking the members of the public who came here today, many of whom were prepared to testify. And because I think we have enough very clear testimony from people already -- people of faith, people who are survivors whose family members are the victims of homicides, people who have studied this from a constitutional and legal

perspective -- I think we have gotten such a sufficient amount of information that I believe we're prepared to consider Senator Lesniak's bill as described as a substitute bill.

But I thank the people who came here today to testify. I particularly thank people who also provided written testimony. Please know that we have had a chance, during the last many hours, to review your written submissions. And we thank you for taking the time to share your opinions -- that are divergent opinions, but that are sincere, profoundly felt opinions on a question of life and death. I thank the public.

I also thank you for your decorum today, understanding this is an issue that might evoke great passion. The fact that people came here with a seriousness of purpose speaks to their commitment to New Jersey, to their families, to their communities. So I thank you for all that.

I had a chance to confer with Senator Lesniak in the back, and then again just a few minutes ago. He does not want a consideration of any amendments to his bill. He is satisfied with the substitute bill, as described by Ms. Nagle, as the bill he wants considered today.

So, people, I would ask you to restrict your comments as we talk about the bill, and as we have a vote today, to Senator Lesniak's substitute bill for consideration today. You're certainly free to talk about other options, but we are now voting-- If there's a motion and a second, we'll be voting on Senator Lesniak's bill.

Senator Lesniak.

SENATOR LESNIAK: Mr. Chairman, first of all, thank you not only for bringing this issue to the forefront today, but also for your

demeanor and professional way that you've handled such a very sensitive and difficult issue for all of us in this room and throughout the state.

I move the bill.

SENATOR ADLER: Is there a second please?

UNIDENTIFIED SPEAKER: Second.

SENATOR ADLER: Second.

Senator Kyrillos, a point of order.

UNIDENTIFIED SPEAKER: (PA microphone is not on)  
(indiscernible)

SENATOR ADLER: Sure.

SENATOR KYRILLOS: Thank you, Mr. Chairman.

I'm sorry the motion was made. It was made very quickly, so I appreciate this leeway.

This is obviously a very, very difficult subject. And I agree with Senator Lesniak, that you've handled the chairmanship today very well.

And we've heard from a lot of sincere and very heartfelt people on both sides. And this is a question that we all wrestle with, and we don't find an easy answer.

I have heard it said that there is a seeming consensus on this issue, that there's a consensus out there in society, and I just don't agree with that, Mr. Chairman. Perhaps there's a consensus in this room -- majority consensus. Perhaps there was a consensus on the Commission. There may even be a consensus in this Legislature.

But I find it amazing that we hitch our feelings to one Rutgers University public opinion survey, which surprised us in its survey research,

and then portrayed things as if there was a strong will to move forward out there in the State of New Jersey. And I just don't think it's true.

I think that we've heard enough today to know that there are many people who do not object to the death penalty on moral grounds, necessarily, but are hugely frustrated with the state of the law in New Jersey and with the capital punishment process.

I wish I had a chance to read this paper by Professor Blecker of New York Law School entitled: *The Road Not Considered, Revising New Jersey's Death Penalty* -- the third way, as he put it -- not embracing the status quo, not leaping forward in what I consider a very quick fashion, but look at how we can refine the process that we have on the books today. I would like you to consider -- Senator Lesniak to consider -- holding the bill today so that we can look at other options and see if, indeed, there is a different way. Because I have a different view than, I think, many people do.

Now, I have a substitute bill as Senator Lesniak does. My first preference would be to hold all bills today. My bill is very similar, but it allows for the death penalty in three situations. And I know you've said you don't want to have anything else considered today, Senator Lesniak doesn't. You've told me that publicly and privately. And that's fine. You can, at the appropriate time, when we're voting on bills, table this if you wish. But I think that we should allow for the death penalty in the case of a murder of a law enforcement officer. I think we should allow for it in the case of a child killed during the committing of a sex crime. I think it should be allowed when there has been murder by terrorism. That is my view, if we can't just freeze frame this process today.

So I'd like to move my substitute bill as well.

SENATOR ADLER: Senator Martin.

SENATOR MARTIN: You made a comment earlier, Mr. Chairman, about whether we get into the issue, or maybe should not get into the issue, of what is the role of a legislator. Are we all about simply doing what may be a consensus of the public's view at any one point in time, or are we going to assume leadership roles and try to do what we think is right based upon, perhaps, a greater understanding of an issue, having seen and studied a Commission report -- which I think they did an extraordinary job of trying to get as much information available in coming to some particular findings -- and then conducting this hearing today, and then trying to make an informed decision? Or is this alternatively about a delicate system where we simply take a tea leaf reading of what the public's view may be?

In this case, I don't think the public, as strong as their emotions are about this issue, may be as knowledgeable about the process that has to be put into place in New Jersey in order to have a fair and just system in dealing with this extremely difficult issue.

I have some familiarity myself, but I would rely on the Commission, which basically has come to a conclusion born out by 25 years now -- since 1982, when the statute was first put in place -- that it is incredibly difficult to get the system right.

The third rail that Professor -- or the third way that Professor Blecker may have suggested, I think, is unachievable. And, again, I would point to our Supreme Court, which has tried to refine this issue. You heard today from the head of the -- or representative of the State prosecutors, who

basically say that you cannot meet these two goals. Assuming that the death penalty is justifiable -- that in order to allow it to go forward, but yet have sufficient safeguards so that we really do have a fair and just system, may not be possible. And it seemingly has been impossible in New Jersey.

I would suggest to those who may have some questions about how to vote today, or next week, or whenever the Legislature -- the Senate may take this up, that there are-- You could be like me, who has a moral objection to the death penalty. But I think the case has been made strongly that you can, as several of the witnesses said today -- can feel that the death penalty may be warranted, but we cannot create a system that provides enough procedural safeguards. And that results in a travesty for so many, including the victims' families, many of which testified today about this sense -- I don't like the word *closure*, but that's probably the word that describes it. They never achieve finality in trying to have their lives put in place and have rest for their departed loved one as long as they keep having to come back, time after time, proceeding after proceeding. The frustration of the woman who spoke in favor of the death penalty -- even she -- you could sense how difficult this becomes as years go by. And there's just no sense of relief, no sense of peace based upon the system that's in place, and necessary to put in place so, as Senator Russo says, we don't make some mistakes.

I think that we have enough information, as leaders, to be able to move the bill today. I rely most strongly on the Commission's findings. They're specific. If you just give me one minute-- There's six of them that I think are really difficult to say that they're wrong, based upon the information that's provided.

“There is no compelling evidence that the New Jersey death penalty rationally serves a legitimate penological intent. The costs of the death penalty are greater than the costs of life in prison without parole. There’s increasing evidence that the death penalty is inconsistent with evolving standards of decency.” And we just heard that from the Bishop. “Abolition of the death penalty will eliminate the risk of disproportionality in capital sentencing. The penological interest in executing a small number of persons guilty of murder is not sufficiently compelling to justify the risk of making an irreversible mistake.” And finally, as also mentioned by the Bishop, “The alternative of life imprisonment in a maximum security institution without the possibility of parole would sufficiently ensure public safety and address other legitimate social and penological interests, including the interests of the families of murder victims.”

I think that’s so. I think Senator Lesniak, who has been a champion in this, has recognized this. And I think his bill will accomplish that purpose. And so I will be supporting the legislation.

Thank you.

SENATOR ADLER: Thank you, Senator Martin.

Senator Cardinale.

SENATOR CARDINALE: Thank you, Mr. Chairman.

Only in New Jersey could the headlines read “Terrorist attack on Fort Dix foiled,” and Friday read, “Senator poised to abolish the death penalty for terrorism.”

We’ve had quite a hearing. We’ve heard that the appointing authority of this Commission has a position. We’ve heard from a member of the Commission, a former Senate President, that he could tell what the

final outcome was going to be when he saw who had been appointed. We heard from someone who analyzed the report of that Commission. We heard and received written commentary from that individual which is extraordinarily thorough and which takes point-by-point issue with the findings of that Commission. He titles one of his treatises, *The Road Not Taken*.

I don't think every member of the Commission -- of the Committee here has had an opportunity to thoroughly digest those reports. I only first saw them today. I've only had an opportunity to scan them. But I heard his testimony. It is extraordinarily credible testimony. He raised my level of appreciation for law professors. I've generally had a fairly low evaluation of those folks, present company excluded from that remark. (laughter)

You know, we heard a lot of testimony saying that life without a possibility of parole brings more comfort to victims' families. I think that's an illusion. Because we've heard an awful lot of testimony that those can also be appealed. And I appreciate that, for the victims' families, these endless appeals are a very serious emotional drain. They are. There's no way around it. But we cannot short circuit the appeals. Wouldn't it be better for us, even if the Commission didn't do it, to explore the ways that our present law could be improved so that closure is brought about more readily without giving up the safeguards which we have in New Jersey against convicting innocent persons? We've heard a lot of testimony.

No one has suggested that any of the nine folks on death row could prove their innocence -- have a glimmer of a chance of proving their

innocence, have a real glimmer of a chance of proving that they don't deserve the death penalty.

That law was very carefully crafted so that very few people would be convicted -- excuse me, sentenced to death. It's worked. Very few people have been sentenced to death. Those that have been sentenced to death are the most heinous actors.

I'm really troubled by the thought that-- And I'm not an advocate of putting everything up to a public vote. But we had serious questions in the early '90s about the death penalty. They were raised by what seemed to be a trend in our courts. That trend was a trend toward obviating what was the law, abandoning the intent of our law. And so we put this question to the people of the State of New Jersey. And, you know, it wasn't a 60-40, it wasn't a 55-45 vote. It was a three to one vote by the people of the State of New Jersey. Yes, you can take a poll. And if you put the questions differently, I'm sure you can come out with some different solutions, different results. And I think that's what's been done in some instances. But we don't find-- Even in the polling that's been done -- other than by one or two cases where the bias is obvious -- the people of New Jersey still support the death penalty. Maybe not by the same numbers; but we'll only know that if we have a secret ballot.

What would be the harm? We have not passed the time to put it on the ballot for this year. We could put it on the ballot for this year and see if the public agrees with the advocates of abolishing the death penalty. I think that would be a very positive step for us to take on this extraordinarily controversial question.

There are people of good conscience on both sides of this debate. I have the greatest respect for Senator Lesniak. We don't always appear to have the greatest respect for one another, but I think we do. He's very well motivated. I happen to think he's wrong. Why not test this in the court of public opinion? Why not then put that forth to our judiciary? Why not then take that opinion and craft a better bill?

Now, somebody says it's very difficult to do that. I've been accused of trying to make the law simple for many years. But I think there is a simple solution. We only need tinker with the penalty phase of our present law. We needn't make it easier to convict someone of the crime. That phase seems to be working out fine. No one is objecting to that phase of our trial system. But if we tinkered with that-- And I'm not sure I have all the answers. But one of the answers I've heard from others is, "Why don't we raise the standard for imposition of the death penalty?" I think we kind of have tried to do that through the court process. I think the court has tried to raise that standard without changing the statute. Maybe we can do that -- raise that standard so that we can assure everyone that only those who deserve -- and that's the suggestion of the law professor who spoke here -- only those who really deserve the death penalty get it. I think that's fair, it's just.

I have very long been convinced that our system of justice in this state has one-- It's a pretty good system, but it has one very serious flaw. It seeks loopholes rather than seeks justice. We need to reverse that. We need to seek justice. That's what the people of New Jersey deserve. That's what even criminals deserve. They deserve justice.

We've heard that life in prison without parole-- We're not putting all these folks in solitary confinement. I'm sure I'm not the only one in this room who's visited our prisons from time to time. I've seen exercise rooms, I've seen the TV sets, I've seen a lot of things that are, for some of those individuals, perhaps a better life -- with the exception of losing their freedom -- than they enjoyed in other places. Is that really punishment? Is that really the kind of punishment that a child rapist, who kills that child-- Is that the kind of punishment that that person deserves? I don't think so.

I think we need to give our prosecutors another tool, a tool that could be invaluable to protect all the rest of us. If I were a prosecutor -- and I'm not even a lawyer -- but if I were a prosecutor, I would like to have the tool of having captured a terrorist who has caused the death of individuals -- to be able to dangle in front of that fellow the thought that perhaps cooperation, giving information that would save the lives of countless other people who are subject to subsequent terrorist acts -- to have the tool of saying to that individual, "If you cooperate, maybe you will not get the death penalty, maybe you will get something less." We would be taking that tool out of the hands of prosecutors by passing this bill. We shouldn't do that.

I think Senator Kyrillos' suggestion is a very modest and sensible one. We should take some more time to study this issue and see if we can't -- with all due respect to Senator Lesniak and the work he's put into this -- see if we can't come up with a better solution for the people of New Jersey.

Thank you, Mr. Chairman.

SENATOR ADLER: Senator, thank you very much.

We have a motion and a second.

Can we have a roll call vote on the motion on this bill?

MS. NAGLE: Senate Committee sub for S-171 and S-2471, Senator Adler.

SENATOR ADLER: First, let me commend the members of the Committee for the seriousness of their questions, and their comments, and the sincerity of their beliefs -- and particularly the Sponsors' bill, Senator Martin and Senator Lesniak.

I know, Senator Lesniak, you've spent a lot of time on this, and you feel it deeply in your soul. And I admire you for it.

This is a hard question, and it's particularly hard when we see the faces, the portraits of real people who have suffered heinous murders. And I know for them -- for the family members who have gone to court and seen the actual face of evil in the face of the murderer, it must be enormously difficult to contemplate how to go on in their lives. And so I admire you for trying to go on. And I wish I could extend a little bit of my soul to heal your souls a little bit. I don't think the penal system can do that. I think only time can do that. And I wish all of you well with that.

As I look at this issue, and look at New Jersey, and look at other states, and other countries, I'm struck first by the notion of deterrence. And it occurs to me, as I look at other states and other countries, that those states that use capital punishment the most, and those countries that use capital punishment the most, have far higher murder rates. And that strikes me as ironic on one hand, but maybe also telling. As I look at the types of countries that abolished the death penalty over a

number of years-- As much as I think this is the greatest land in the world, I think we can learn from those countries that have abolished the death penalty.

I heard the discussion between Senator Cardinale and Professor Blecker about the very thorough study by Great Britain of capital punishment in that country. The result of that study was that Great Britain abolished capital punishment -- in Great Britain. And murder rates are lower there now than they were when capital punishment was one of the available means of punishment in the United Kingdom. That tells me something.

When I see the sorts of countries that still use capital punishment freely, I don't want America -- I don't want New Jersey, certainly, to be like them. I look at Kazakhstan, and Uzbekistan, and Belarus, Lesotho, Libya. Those are not my role models of justice.

And while we should set our own standard of what justice is, I think we can sometimes learn from our neighbors, from our friends, and from enemies around the world. And I look at those countries that have lower capital murder rates, and none of them have capital punishment. That tells me something.

I took very seriously the words of his Excellency, Bishop Smith, when he talked about evolving standards of decency. For me, a decade ago, 15 years ago, I was certainly strong for capital punishment. I thought it was part of being tough on crime. I thought it was one way to make our society safer. As I think about it today, I no longer believe that. I'm like many New Jersey residents and many American citizens who have moved away from the death penalty, who want predictable, serious, severe punishment

for evil doers, for the people described by Senator Cardinale moments ago, and Senator Kyrillos moments before that. I don't think there's anyone sitting on this panel, anyone in this room that doesn't want just punishment for evil doers. And yet I don't think I, anymore, want New Jersey to be responsible for death. I think that doesn't soothe our soul, I think that pains our soul as a society. And I think ultimately this Legislature has to be keepers of the civic soul. And I don't want our society to engage in death.

And so with great regard for the pain of those who have suffered, I think I'm doing what is right to try to ease the pain for New Jersey and to soothe our soul.

I vote yes.

MS. NAGLE: Senator Girgenti.

SENATOR GIRGENTI: I also have to say that this is probably one of the most difficult decisions I've had to make as a legislator in the years I've been here.

You know, as Chairman of the Law and Public Safety and Veterans' Affairs Committee, I meticulously poured over the New Jersey Death Penalty Study Commission's findings. The conclusions are difficult to refute.

Since it's reinstatement in 1982, capital punishment has not proven to be a viable deterrent. We have not executed anyone since 1963. And the seemingly endless cycle of appeals puts a further burden the taxpayer. Considering our current fiscal climate, this is something we can no longer afford to fund.

New Jersey's a progressive state. We recognize that there are evolving standards of decency and that the death penalty is congruent to our present environment. Therefore, I vote in favor of releasing the bill.

MS. NAGLE: Senator Gill.

SENATOR GILL: I vote in favor of releasing the bill.

On a moral basis, I do not support the death penalty. On an empirical basis of the evidence produced, it shows that the death penalty is not a deterrent. If the death penalty was a deterrent, perhaps we would not have the terrorists at Fort Knox -- Fort Dix -- because we still do have the death penalty in New Jersey. We have the death penalty in New Jersey, but it's not a deterrent, because it has not, in any way, decreased the death toll in cities like the city of Newark.

So I think that not only does the theoretical basis demonstrate that the death penalty does -- is not a deterrent, the actual facts of everyday life in New Jersey shows that it does not.

So the Commission's study is not something that I think would surprise a lot of us who, one, have been paying kind of attention to the way that the statistical data has been moving; and also just to look at the State of New Jersey with the death penalty. And it has not deterred the crime.

I was particularly -- I don't want to say *moved*, but I was particular moved by the Bishop's -- Catholic Bishop's position and how that was articulated, as well as the victims from both sides.

I have never been for the death penalty on moral grounds. That has been confirmed, based upon the statistical and empirical data. And it also has been confirmed by the issue of bringing -- if you could ever bring closure. You may never be able to bring closure, but at least this

process will be swift, predictable punishment, which may -- for those of us who practice criminal law-- And we know that sometimes the clients complain that serving time in prison is worse than a death penalty sentence. And I think -- wasn't it Martin to be executed?

Not you. (laughter)

SENATOR MARTIN: (PA microphone not on) (indiscernible)

SENATOR GILL: Some people may have said it, but it wasn't you.

But I think there was a death penalty -- person who was convicted and sentenced to the death penalty.

UNIDENTIFIED SPEAKER: Martini.

SENATOR GILL: Yes, Martini, who said, "Please give me the death penalty, because the death penalty, in death, is better than serving time in prison for the rest of our lives" -- for the rest of his life.

So it is punitive, but it is-- Life imprisonment is punitive, but the punishment is not barbaric.

So I vote--

And I commend Senator Lesniak for his tenacity and his ability to convince those of -- who may not have been predisposed to this. So I think this bill is a testament to his leadership and his ability to understand the legislative process in bringing people together for a very meaningful public policy issue.

So I commend you.

And I vote yes.

MS. NAGLE: Senator Lesniak.

SENATOR LESNIAK: Thank you, Senator.

I vote yes.

MS. NAGLE: Senator Sarlo.

SENATOR SARLO: Thank you, Mr. Chairman.

I, too, as I sat here today, must admit probably today will be one of the most significant votes that I have taken in the time I've served here in the Legislature in the past six years, and perhaps one of the most significant votes I will ever take as a legislator going forward.

I must admit, as I still sit here now, after hearing some pretty powerful testimony on both sides, I am still torn between a law enforcement tool and a judicial system that has not been effective in bringing closure to some very serious crimes, and those who make a very strong compassionate, moral argument about life.

But Prosecutor DeFazio, I think, did an unbelievable job today in outlining why the death penalty in New Jersey is not working. He talked about deterrence, he talked about the Federal prosecution of those crimes that are related to terrorism -- he talked about the deterrent. And Senator Gill made a very, very important comment about what just happened at Fort Dix. And if it was such a deterrent, why would people continue to try to perform those acts on our military bases?

As a member of the Law and Public Safety Committee, we sit here, month in and month out, grappling with how we deal with gang violence escalating throughout our state, not just in the urban areas, but in the suburban areas. Each and every day, another kid falls victim to gang violence. So it's not a deterrent when it comes to gang violence.

I don't think anybody here could ever be labeled weak on crime. I'm not afraid of being labeled weak on crime. I constantly have

supported bills to upgrade penalties for a whole host of offenses. The easy way for me today would be simply to say I'm abstaining on the bill. But I believe this is too significant of a vote to abstain. I still sit here torn. I'm still not sure how I will vote on the floor of the Senate. But I believe -- and this is no disrespect to my colleagues who are sitting here. We have some of the most influential Senators in our entire caucus sitting here -- some very, very brilliant minds. But I believe that this is a decision that should be made by the Legislature as a whole, which reflects our population as a whole -- a very diverse state. And it would be foolish not for me to send this bill forward to allow the entire Legislature the opportunity to vote on this very, very important issue.

So I sit here torn, not sure where I want to end up on it. But I believe the work that Senator Lesniak has done on this, the work of this Committee, and the excellent hearing we had today deserves that this bill will continue to move forward.

And I go back to Prosecutor DeFazio. He really turned my head this morning with his testimony on this, why we should abolish the death penalty.

So I'm going to vote yes to continue the process and move it forward, and I reserve the right on the floor of the Senate to perhaps go in a different direction. But today I think the right policy decision is to continue to move forward.

MS. NAGLE: Senator Scutari.

SENATOR SCUTARI: First, I want to commend Senator Lesniak for all the hard work he's done in making a bill -- a very strong one -- an excellent bill in its form.

I've struggled with this issue since we first started to talk about it, even to the point when we first talked about the moratorium on the death penalty. I voted in favor of that because I thought at that point in time the death penalty was not working because it had never been done.

One of the things that I keep hearing is the fact that deterrence has not occurred as a result of New Jersey having capital punishment. But perhaps one of those reasons is that we've never utilized it. So it's never had an opportunity to be a deterrent.

There's a large majority of the states in the United States that still have capital punishment. Still, I have been persuaded by the law enforcement community, in terms of the fact that they believe it would be a massively cumbersome -- and that's a quote from today's proceeding -- a "massively cumbersome" endeavor to try and fix our current capital punishment system. But I did receive an answer that said that it was thought to be possible, but just not practical.

Why can't we have a death penalty that ensures that the defendants truly are guilty in a reasonably expedient fashion? Why can we not have a tool for law enforcement to utilize?

Our law should have a measure of punishment in it. I'm still not certain right now if the law, as it stands that Senator Russo had put forward 25 years ago, is that one. New Jersey has been known -- and I'm happy to feel the same way -- that it's a progressive state in that our thoughts do evolve and change over time to reflect the moral values of where we live and our citizenry. These are extraordinarily important issues.

I'm not certain at this time whether or not the death penalty, in its current system, works. I am certain that this is a bill and a topic that

deserves the full discussion of the Senate. I join with Senator Sarlo in my reservation with respect to a positive vote today. And I'm going to reserve my decision on an ultimate outcome of this bill. But for today's purpose, I will vote in the affirmative to release the bill.

MS. NAGLE: Senator Smith left a vote in the affirmative.

Senator Cardinale.

SENATOR CARDINALE: (PA microphone not on)  
(indiscernible)

MS. NAGLE: Senator Kyrillos.

SENATOR KYRILLOS: You know, Mr. Chairman, it surprises me when so many say with such utter confidence that the death penalty is not a deterrent. Obviously it's not a deterrent to all people, because there are a lot of murderers out there, unfortunately. I guess jail time, life imprisonment, is not a deterrent either, because that's where they are now. I'm not sure any of us would want to say, "Let's not throw the bad guys in jail." Of course it's a deterrent to some people. The Professor put it quite right, I think. It flies against human nature to make a sweeping comment and to believe that it does not deter at least some people and therefore save innocent life.

Now, it's a tough issue, as I've mentioned, Mr. Chairman. And I put forward a bill, and people didn't want to consider it today -- not even bother to try to table it today -- a bill that would retain the death penalty for terrorists, and child molester and murderers, and people who kill police officers. But I can assure you that someone -- whether I'm present that day or not -- and I'm quite sure I will be present -- will offer these amendments

on the Senate floor, and so they will come up. Because they're very important questions.

So with great reluctance that this is a very speedy process, seemingly, I vote no.

MS. NAGLE: Senator Martin.

SENATOR MARTIN: Yes.

MS. NAGLE: The substitute is released.

SENATOR ADLER: Ladies and gentlemen, thank you so much for your courtesy throughout this long morning and afternoon.

We are adjourned.

**(CONCLUDED)**