

Testimony of Kathy Garcia before the Maryland Commission on Capital Punishment

August 19, 2008

Thank you, Mr. Civiletti and the other members of the Commission for allowing me to be here today. I will keep my remarks brief and hope that you will ask questions after my comments.

My name is Kathy Garcia. Twenty years ago, after my nephew was murdered, I founded the first and only non-profit in NJ focused on providing specialized services to families of murder victims. I have been spent the last two decades fighting for the rights of crime victims and their survivors.

I have supported the death penalty all my life. I have as much compassion for these perpetrators as they had for their unfortunate victims, and they deserve nothing but harsh punishment for what they did to our loved ones - including execution.

But I have come to learn that the death penalty is not so simple in practice, and that is why I am here today.

Like several of you, I served as a victims' advocate on last year's New Jersey Death Penalty Study Commission, which voted to abolish the death penalty. **While members of the Commission did not totally agree on any other single point during the study process, we were united in our finding that the death penalty is harmful to survivors.** Clearly, these concerns apply as much to Maryland as they do to my own state.

The capital punishment system may have been put in place to serve us survivors, but it actually has been an operational failure. Let me explain why.

First is the length of the process, which is extremely harmful to survivors.

In the wake of any murder, survivors suffer a range of traumatic responses, including the most serious termed, post-traumatic stress disorder. These symptoms are often a result of their exposure to the criminal justice system, which focuses all of its attention on the accused and leaves survivors feeling helpless and shut out from the process. This helplessness is compounded as the family is forced to hear details of the murder in the courtroom and in the media, essentially forcing them to relive the trauma. Despite all this, survivors feel compelled to attend the trial out of love and loyalty to their family member. Many become so focused on the criminal justice process that they ignore their own or their family's needs. It is not uncommon for

survivors to fall apart emotionally and physically after the trial is over and they realize that the only thing that has ended is their connection to the criminal justice system. Their healing has not begun, and their grief continues.

This response is true for all murder cases, not just death penalty cases. But the death penalty exacerbates that pain *tenfold*, because the process drags on for so much longer and in the constant spotlight of the TV cameras.

The courts scrutinize death penalty cases more than any other. There are new legal challenges *always* on the horizon. When a person's life is at stake, defense lawyers will stop at nothing to try and save their client's life. And while the terms "exonerated" and "innocent" have at times been used loosely by some abolitionists, we cannot escape the fact DNA analysis has exonerated truly innocent - not just technically innocent people from "death row".

But the extra care means capital cases take years, or even decades. The criminal justice system is hard enough on survivors. The death penalty turns the survivor's connection to that system into a long-term nightmare that can last decades.

The length of the process is even further exacerbated by the fact that death penalty cases almost never end in the promised result. In my state, we had 60 death sentences but only nine people left on death row. All the other cases were reversed. Every one of those 51 reversals represented a family that had been promised an execution, lived through years of agonizing appeals, and ultimately ended up with a life sentence in the end anyway. Maryland's statistics are no better. You've had over 60 death sentences, 5 executions, and 5 people left on death row. That means about 50 families have lived through the nightmare of believing the system would execute their loved one's killer, only to find out years later that the promise was an empty one.

Surviving families need stability and consistency. They need to know that the punishment received will be carried out. The death penalty fails on both counts. I have met countless families who said they wanted the death penalty when their loved one was killed, and then changed their minds years later because the process was so painful. I know survivors whose entire childhoods were lost waiting for an execution that never came. Regardless of whether or not a survivor supports an execution, years of court dates, appeals, reversals, and exposure to the killer is harmful and traumatic.

I know your commission has already discussed the impact of prosecutors consulting with family members about whether they want the death penalty.

I want to comment on that question as a trauma expert. Such a policy, though well intentioned, is harmful for two reasons.

First, it adds an additional burden on the traumatized family at a time when they are still processing the shock of the murder and the stress of beginning the journey through the criminal justice process. Regardless of how someone feels about the death penalty, it is a weighty and stressful decision. Families may be ambivalent about whether they want the death penalty, but when they are told it is an option, they can feel like they are betraying their loved one to choose less than the highest punishment. Other families who strongly want the death penalty are in no state where they can make a rational decision about the length of the process. I know that many prosecutors do their best to explain to families that it may take years of uncertainty, but before the process has begun there is no way they can really absorb what that means. A family in a state of shock simply can't make a determination of what they will feel like 10 or 15 years later when they are still trapped in the system.

Second, when family members have differing views on capital punishment, the introduction of the possibility of a capital charge can split family members at the very time they need each other most. I know families who still do not speak to each other because of the wedge driven between them by fighting over that choice. The potential of a lifetime of conflict is an unfortunate outgrowth of a system claiming to do its job. If there is an existing split in the family, for instance in the case of a divorced couple that loses a child, disagreements over the death penalty can be even more harmful.

Furthermore, the application of a formula that suggests it has the ability to give weight to certain variables, which can then influence recommendations, is certainly a strategy that will further complicate a system that continues to miss the mark in attempting to do "justice" to victims' rights.

I would like to be very clear that I present my testimony about the harmful impact of the death penalty on survivors not only as an individual family member of a murder victim, but also as an expert trained in traumatic grief. **This is not a question about whether some victims want the death penalty and others don't. It's about what the death penalty *does* to victims, regardless of how they feel.** I have worked for 25 years with thousands of surviving families in the wake of murder, and I have seen the harm firsthand. I have watched too many families go through this over the years to believe that there is any way to make the system work better. I am not alone in my opinion among long-standing victim advocates and trauma experts.

I want to close by pointing out that while well-intentioned people defend capital punishment “for the victims,” the true needs of homicide survivors are often forgotten and ignored. Surviving family members are left to grieve in silence, without access to ongoing services, peer support, or affordable, specialized counseling. Grassroots organizations around the country have sprung up to meet this need, but most of us struggle on a daily basis to remain in existence. It would take a fraction of the millions spent on capital punishment to improve these services. I urge you as a commission to make a strong recommendation to increase funding for services for homicide survivors here in Maryland. As a society, we will continue to fail victims’ families until they have the services they really need to reach what we call a “new normal.” There is no such thing as “closure” for these families. The term “closure” has been tossed around for years; however, if you had the privilege of speaking with hundreds of survivors in private they would tell you what they think of the term “closure” as it is applied to them.

After two decades, I now believe that the death penalty must be ended and replaced with life without parole, a harsh punishment that provides victims with the increased certainty and sense of justice they need.

If you support capital punishment, I ask you to give it another look. I am a strong victims’ advocate and a death penalty supporter. I certainly never imagined I would be speaking out in favor of ending the death penalty. But my real life experience has taught me that as long as the death penalty is on the books in any form, it will continue to harm survivors. For that reason alone, it must be ended.