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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: Senate Bill 637

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Stenographic report of hearing held
in Room 8 East Wing of the Capitol
Building, Harrisburg, Pennsylvania

Thursday,
November 7, 1990
1:00 p.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN
Hon. Kevin Blaum, Subcommittee Chairman on Crime
and Corrections

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jerry Birmelin	Hon. Christopher McNally
Hon. Michael C. Gruitza	Hon. Jeffrey E. Piccola
Hon. David W. Heckler	Hon. Robert D. Reber
Hon. Paul McHale	

Also Present:

William Andring, Chief Counsel
David Krantz, Executive Director
Galina Milahov, Research Analyst
Ken Suter, Republican Counsel
Mary Beth Marschik, Republican Research Analyst
Katherine Manucci, Staff

Reported by:
Ann-Marie P. Sweeney, Reporter

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+ 14 attachments
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1 **CHAIRMAN CALTAGIRONE:** I'd like to open
2 up today's hearing dealing with lethal injections,
3 Senate Bill 637. I'd like to make some brief remarks
4 for the record.

5 Legislatures across the nation have
6 responded to the public perception that in certain
7 severe and repeated cases of heinous wrongdoing the
8 only appropriate, responsible law is to call for the
9 death penalty. In general, the public is sheltered
10 from the realities of execution by the physical
11 separation of prison walls and through the semantic
12 veil of naming the procedure but not describing the
13 details of death by hanging, electrocution, or the gas
14 chamber. And there is strong evidence that there would
15 not be the public support for capital punishment if
16 details of these executions were readily available.

17 The merits of capital punishment have
18 long been debated and the United States Supreme Court
19 has made several rulings regarding the death penalty.
20 The primary argument against the death penalty is a
21 concern of the U.S. Bill of Rights, Eighth Amendment,
22 regarding cruel and unusual punishment. In the
23 maturing moral environment of human sensibilities in
24 which we now live, there is much concern that barbarous
25 methods of execution be eliminated. We must first and

1 foremost recognize human dignity and the intrinsic
2 worth of persons. American law has traditionally
3 shunned as repugnant any form of torture culminating in
4 death; however, it must be noted that the death penalty
5 has been exacted in the United States ever since
6 colonial times.

7 In 1972, the Supreme Court ruled that the
8 infliction of capital punishment was unconstitutional
9 in consideration of the Eighth Amendment whose State
10 statutes allowed unrestrained discretion in imposing
11 the death penalty. Their findings indicated that the
12 resulting death penalties were arbitrarily inflicted,
13 therefore cruel and unusual. Their ruling did not find
14 the institution of capital punishment unconstitutional.

15 In 1976, the court ruled that capital
16 punishment did not necessarily violate the Eighth
17 Amendment. The fact that many States had newly enacted
18 capital punishment statutes was upheld as an indication
19 of contemporary standards of decency.

20 Legislative judgment regarding capital
21 punishment was considered to be a reflection of
22 contemporary moral standards and necessary as a
23 deterrent to crime. Capital punishment is the ultimate
24 sentence. It is understood that it is the retribution
25 for a crime which is not punishable by any other method

1 and for which there is no rehabilitative recourse.
2 The question today is not one of constitutionality of
3 capital punishment but of whether death by lethal
4 injection should be adopted as an alternative to death
5 by electrocution. It is the legislature's duty to
6 insure that punishments required by law are not
7 inequitably prescribed.

8 The creation of the Pennsylvania
9 Sentencing Commission in 1978 mandated the creation of
10 guidelines for sentencing which every judge statewide
11 must consider when sentencing. To the extent that a
12 person chose to commit his criminal act, the law
13 respects his personal choice by punishing him; however,
14 his human dignity must never be violated. The
15 preservation of human dignity, even in the execution,
16 must ultimately be concerned with the way in which one
17 dies and with respect for bodily integrity. Therefore,
18 less violent executions are consistent with the notion
19 of human dignity. Mere extinguishing of life without
20 humiliation, severe physical or psychological tortures
21 is the goal of capital punishment.

22 State legislatures are currently
23 undergoing changes in their capital punishment laws.
24 Lethal injection is considered to be less painful, the
25 least humiliating, and by far the least deformity of

1 the body than any other means of execution currently
2 available. Our State law regarding capital punishment
3 and offenses for which it is prescribed currently
4 parallels Federal law.

5 The debate regarding the death penalty
6 will inevitably continue on moral, religious, and
7 philosophical grounds; however, that is not our
8 mission.

9 And with that, I'd like to have the
10 members of the panel, both staff and members present,
11 introduce themselves for the record, and I'd like to
12 start to my left.

13 REPRESENTATIVE REBER: Thank you, Mr.
14 Chairman.

15 Representative Bob Reber from Montgomery
16 County.

17 MR. ANDRING: Bill Andring, Majority
18 Counsel to the committee.

19 MR. SUTER: Ken Suter, Minority Counsel.

20 REPRESENTATIVE BIRMELIN: Representative
21 Birmelin, Wayne County.

22 MS. MILAHOV: Galina Milahov, Research
23 Analyst to the Judiciary Committee.

24 MR. KRANTZ: Mr. David Krantz, Executive
25 Director to the House Judiciary Committee.

1 **CHAIRMAN CALTAGIRONE:** Thank you, and
2 with that I'd like to start off with the Honorable
3 Stewart J. Greenleaf, the prime sponsor, State Senator,
4 of Senate Bill 637.

5 **SENATOR GREENLEAF:** Good morning. Thank
6 you, Mr. Chairman Caltagirone and members of the
7 Judiciary Committee, for convening this hearing on the
8 legislation to replace the electric chair with lethal
9 injection as a means of capital punishment in
10 Pennsylvania.

11 Currently, there are 118 condemned
12 inmates in the Commonwealth and the warrant has been
13 signed for the execution of one of them on December the
14 4th. My feeling simply is that as long as we are a
15 death penalty State, we should provide the most humane
16 method available of carrying out the death penalty,
17 lethal injection.

18 Since 1977, 20 of the 36 States that have
19 capital punishment statutes have adopted lethal
20 injection as a replacement for or option to
21 electrocution, the gas chamber, and the firing squad
22 and hanging. Pennsylvania's Senate voted 38 to 10 to
23 make the Commonwealth the 21st State which provides for
24 death sentences to be carried out by lethal injection,
25 and my hope is that this committee and the House of

1 Representatives will consider Senate Bill 637 and agree
2 by a similarly decisive margin.

3 Lethal injection is considered to be a
4 quick and relatively painless mode of death, as
5 evidenced by the number of the States that have adopted
6 it, by the expert opinion citing it as a more humane
7 means than electrocution, and by the fact that
8 condemned prisoners and States which offer a choice
9 between lethal injection and another method of
10 execution have opted for the injection. Additionally,
11 we have the experience of States which have carried out
12 death sentences in this manner.

13 Lethal injection involves the intravenous
14 administration of a deadly dose of fast-acting
15 barbiturate in combination with a paralytic agent.
16 Toxicologists say that the process induces
17 unconsciousness within seconds and causes death within
18 30 seconds to 3 minutes. Contrasting this relatively
19 peaceful mode of execution with some of the more
20 gruesome aspects of electrocution, the common sense
21 conclusion is lethal injection is preferable.

22 Since 1982, at least 52 executions by
23 this method have been carried out in North Carolina,
24 Nevada, Texas and Utah. In North Carolina, where the
25 condemned is offered a choice between the gas chamber

1 and injection, and in Utah, where the choice is between
2 injection and the firing squad, all the condemned thus
3 far have chosen the intravenous method.

4 From a legal standpoint, the question of
5 whether prisoners condemned under one method of
6 execution may be executed under a new method has been
7 answered affirmatively by the Federal courts. In
8 Malloy vs. South Carolina in 1977, the court upheld
9 that State's change from hanging to electrocution. In
10 another case in 1978, the court upheld the change in
11 Texas from electrocution to lethal injection. The
12 court also said that lethal injection did not
13 constitute cruel and unusual punishment, even noting
14 that some of the odious features of electrocution were
15 abated with lethal injection.

16 Lethal injection appears to be
17 controversial only when it is part of the larger debate
18 on capital punishment. Ironically, some of the
19 strongest objections to a conversion to lethal
20 injection in Pennsylvania come from opponents to the
21 death penalty. They see injection as the easy way out
22 for society. They claim that the appearance of a
23 sanitized, painless execution method may lead to many
24 executions in a State where nearly three decades have
25 passed without any.

1 The argument that a more humane method of
2 execution will encourage executions is really beside
3 the point in a State that has a death penalty statute
4 and has a majority of citizens in support of capital
5 punishment. The issue before us today is not whether
6 death sentences should be carried out but rather how
7 they should be carried out. My belief is that they
8 should be carried out in the most painless and least
9 stressful method that technology can provide. Lethal
10 injection is that method, and I think that we should
11 act now to authorize its use.

12 I'd like to thank the committee, again,
13 the committee Chairman and the committee members for
14 considering this proposal and your request to have me
15 here today, and I'd be happy to answer any questions if
16 any of the members would have any.

17 CHAIRMAN CALTAGIRONE: Thank you,
18 Senator.

19 And one of the reasons why we really
20 wanted to have the hearing on this subject matter was
21 when we have the opportunity Friday to hopefully vote
22 the bill out for action next week that we'll be able to
23 utilize testimony that we've gleaned from the hearing
24 here today on the floor of debate that will follow.

25 SENATOR GREENLEAF: Let me say that

1 certainly this is not a pleasant subject to deal with,
2 but we as both in the Senate and the House who serve on
3 the Judiciary Committees and both those committees, I
4 think it is our responsibility to try to deal with this
5 issue, and it's an issue that many States have
6 addressed for some years now, and as technology
7 improves and increases, I think that it's the
8 appropriate thing for us to do. If there is such a
9 thing as a humane way of executing someone, that
10 certainly this is the most painless and the, I think,
11 the one that Pennsylvania should opt for. And I think
12 that we already have had a vote on this nationwide, and
13 that is the condemned. They've decided unanimously
14 that those who have had the option to choose between
15 other forms of execution have clearly and unanimously
16 chosen this form of execution.

17 CHAIRMAN CALTAGIRONE: Are there any
18 questions?

19 Representative Reber.

20 REPRESENTATIVE REBER: Thank you, Mr.
21 Chairman.

22 BY REPRESENTATIVE REBER: (Of Senator Greenleaf)

23 Q. Senator Greenleaf, from my own personal
24 perspective, I've always been one of the few members of
25 this committee that tends to be opposed to making major

1 changes in the law in procedure as well as substance,
2 and that thought when the bill was called for
3 consideration and I had an opportunity to review it, I
4 have already prepared and drafted an amendment that
5 will take Pennsylvania to the choice situation, in
6 other words, providing for lethal injection but
7 obviously continuing the electrocution on our statute
8 because of the, for lack of a better way of putting it,
9 the stare decisis aspect of it, if you will, if we can
10 use that type of phraseology.

11 My question, though, to you is, has this
12 been addressed by the Senate either in committee or on
13 the floor when this bill was deliberated, and could you
14 impart some of the thoughts from that body on that
15 particular concept being employed?

16 A. It wasn't discussed on the Senate floor,
17 but it was discussed by myself and other members of my
18 staff and in general discussion in the committee. The
19 reason we opted to not to provide for that option, as
20 some other States have, is that we feel that in a
21 practical sense, no one would opt for electrocution, as
22 has been seen by the previous practice that those
23 States that -- a lot of States don't have the option,
24 but those States that do have the option, the condemned
25 has, in my understanding, hasn't chosen to go back to

1 the old method.

2 Then we looked at the legal ramifications
3 of that, and what we were able to determine was that it
4 really didn't matter constitutionally whether you
5 continue to provide for that old method or the new
6 method, that constitutionally you could do either, and
7 so we thought it was preferable to just have the one
8 option rather than having the condemned exercise that
9 option when in fact we know now from past experience
10 they're going to choose the lethal injection.

11 Q. In those three States that do employ the
12 choice method - Montana, North Carolina and Utah - it's
13 hanging, gas chamber, and firing squad, so we don't
14 have the choice of lethal injection or execution.

15 A. Electrocution.

16 Q. Electrocution, I'm sorry. And that is
17 your most recent information as to the status quo in
18 those States, is that correct? We don't have a choice
19 where there's electrocution as a choice?

20 A. I don't believe so.

21 Q. I'm not up to date. Okay.

22 Like I said, I have prepared the
23 amendment. I certainly agree 100 percent with where
24 you're going with this. I guess my only concern was,
25 one, this institution, this General Assembly, has over

1 the past 10 years that I've been here, accelerated over
2 the past 5, 6 years, in rapidly tampering and changing
3 things long ingrained in our juris prudence and our
4 criminal justice system, many of which were obviously
5 needed, and I'm not suggesting that this is not needed,
6 but I do think a dialogue to that extent is implicit in
7 the debate.

8 And secondarily and more concerning is, I
9 don't want to see us do something that in some way,
10 shape, or form could be a new case that goes to the
11 Supreme Court that would render us from the usage of
12 this particular type of penalty, and I guess in the
13 back of my mind I'm thinking if we don't tamper with
14 the status quo but yet take the status quo and be
15 progressive in nature and still maintaining it, we
16 might subject ourselves to a better argument, if an
17 attack is made by someone who has a sentence imposed
18 under the new statute.

19 It's those thoughts that I have and it's
20 that reasoning obviously behind it, and I wanted to
21 publicly state that today while you were taking your
22 valuable time to appear before the committee and elicit
23 some of your comments and let the members of the
24 committee be aware of that particular argument in my
25 mind that I at least think ought to be made.

1 A. I appreciate the gentleman's concern on
2 that and I agree, sometimes we can make changes that
3 are just for the purpose of changes and we'd be better
4 off sometimes not tampering with statutory language. I
5 think that in this situation I have tried to provide
6 the Chair and the committee with some information that
7 we have gathered and the one provision in regard to
8 constitutionality, we've cited those two cases in my
9 statement that I referred to, and the court upheld the
10 switch in Texas from electrocution to lethal injection,
11 stating that only the mode of imposing the penalty was
12 changed and that some of the odious features, as I
13 mentioned before, of the method of electrocution were
14 abated, which would seem to me that we already have a
15 United States Supreme Court case that says that a State
16 can change from electrocution to lethal injection and
17 we're okay. I don't think it matters if also you leave
18 an option. If it's okay to do it straight without
19 having an option, I don't think there's any problems
20 with having an option. I think it's cleaner to go the
21 other way, but I think we're okay either way.

22 Q. I'm familiar with the case and I agree
23 with your analysis. I guess I've just become very
24 reactionary to the legislative process as it tampers
25 with ingrained principles in our law, and this

1 certainly falls into that.

2 A. Sure.

3 Q. And especially one as mindboggling as
4 dealing with this subject as it is, so I raised the
5 question at least so people cannot say that the Senate
6 and the House were remiss in not attempting to explore
7 and deliberate and discuss the various considerations.

8 Thank you. I'm sorry.

9 CHAIRMAN CALTAGIRONE: Dave.

10 BY MR. KRANTZ: (Of Senator Greenleaf)

11 Q. Senator, in your deliberation of 637, did
12 you have much response from the public as to pro and
13 con?

14 A. No, not really. The only opposition from
15 basically -- well, actually, there was two forms of
16 opposition. I guess one was that there were people
17 that wanted to make it as painful and as torturous as
18 possible, you know, until it's their relative that
19 happens to be executed, then it's a little bit
20 different, I think I remember. But I would suspect
21 that those people are in the minority.

22 The other form of opposition would come
23 from those people who are opposed to the death penalty
24 generally, and not because they don't think that lethal
25 injection, I think, is a more humane method, it's just

1 that they think that their chances of repealing capital
2 punishment would be diminished if we adopted a more
3 humane method of execution. Although I think some have
4 argued that -- mentioning one case, I think it was in
5 Texas where it took them a long time to find a vein,
6 and that sort of thing, but I think they are the
7 exceptions and not the rule, and that was when they
8 first started that process, number one. And number
9 two, in other forms of execution they've had
10 difficulties as well and we're not going to be able to
11 avoid that. But I think that they are the two areas of
12 both opposition coming from different angles.

13 Q. Thank you.

14 CHAIRMAN CALTAGIRONE: Are there any
15 other questions?

16 (No response.)

17 CHAIRMAN CALTAGIRONE: Thank you,
18 Senator.

19 SENATOR GREENLEAF: Thank you very much.

20 CHAIRMAN CALTAGIRONE: Thank you for
21 giving us your time.

22 We will next hear from Lawrence Egbert,
23 Doctor of Anesthesiology of the University of Texas.
24 If you would please come forward.

25 And for the record, if you would just

1 state who you are.

2 DR. EGBERT: Okay. My name is Lawrence
3 Egbert, and I'm from Dallas, Texas. I'm a physician
4 and I am a professor of anesthesiology, and when the
5 Senator was talking about difficulties starting
6 intravenous in Texas, I teach people how to start
7 intravenouses. That's one of my jobs.

8 I've taught anesthesiology at the
9 University of Texas Southwestern Medical School since
10 1982 and practice anesthesiology at the Parkland
11 Memorial Hospital in Dallas since that time. I
12 received my training here in Pennsylvania at the U.S.
13 Naval Hospital in Philadelphia, and at the Hospital of
14 the University of Pennsylvania in the '50's. Between
15 the '50's and these years I have taught at Harvard
16 Medical School, at the American University of Beirut in
17 Lebanon, and also at the Johns Hopkins University.
18 I've been asked to make this report to you all by the
19 American Civil Liberties Union.

20 In 1982, Charles Brooks, Jr., received an
21 anesthetic at the Texas Department of Corrections. The
22 press refers to this and anesthetic as a "lethal
23 injection." I put quotes around that because the
24 difference between what they did at the prison and what
25 we do every day was essentially zero as far as doing

1 something. What we do is then make sure that the
2 patient is taken care of. So the difference is the
3 caring of the patient afterwards. If you have to have
4 an anesthetic and have to have an operation, you want
5 the anesthetic and you will receive pentothal, also
6 known as thiopental, and you'll received a drug related
7 to curare which is called pavulon. We use pavulon in
8 Texas, and also that was recommended originally in
9 Oklahoma. The doses that are administered in any of
10 the States that I know of are not lethal when you have
11 an anesthesiologist taking care of them. So they are
12 not lethal doses. What you have is not an
13 anesthesiologist taking care of them.

14 So the key difference that I will deal
15 with for you all is that the prisoners receive these
16 drugs and do not have an anesthesiologist taking care
17 of them, and what I will say and in several different
18 ways is that physicians are key to this. This is a
19 medical procedure. What we do in every hospital in
20 this country or in the world practically use pentothal
21 and a drug related to pavulon, and so that what we do
22 is crucial to what you want physicians to do. The
23 question really is, do you want physicians related to
24 lethal injections? And as you may gather, I would
25 rather physicians not be related to this.

1 I'll start out with how the State learned
2 how to do this, and this was in the State of Oklahoma
3 where they decided that the electric chair, repairing
4 their chair was too expensive. It was going to cost
5 \$64,000, that was the estimated bill, and they decided
6 that was too expensive and somebody made a joke, the
7 medical examiner in the State of Oklahoma made a joke
8 that it would be cheaper if they used pentothal. So
9 pentothal is cheap, pentothal is cheaper than \$64,000
10 repairing your electric chair.

11 So what they did, the first thing they
12 did was to consult with a fairly good friend of mine by
13 the name of Stan Deutsch, who was the chairman of their
14 anesthesiology department, and Stan taught him how to
15 do it. So he taught him the doses, he taught him how
16 to give it, and he also added the idea that the Senator
17 presented to you in that it was more humane. So this
18 idea of being humane was a crucial idea that he thought
19 was a useful idea, and as a physician, you kind of like
20 your physicians to be that way.

21 The thing that's different, and it was
22 interesting last month in Illinois is that Illinois,
23 they had arranged for a dose that was only 300
24 milligrams of pentothal instead of the 2,000 milligrams
25 that the State of Texas uses, and it was a physician's

1 group who came out of the woodwork and said this dose
2 of pentothal as distinct from the pavulon would leave a
3 fair number of prisoners awake but getting paralyzed
4 and would die by slow asphyxiation, which would be the
5 ultimate of torture, to be paralyzed and to gradually
6 stop breathing. This has happened in Texas. Virtually
7 guaranteed. We see people every now and then who get
8 the pavulon by mistake first before the pentothal and
9 they stop breathing before they go to sleep. And this
10 is -- I had a friend of mine this happened to and he
11 considered this the ultimate of obscenity as far as
12 suffering was concerned. This dose was changed in
13 Illinois to 900 milligrams, and it was changed because
14 physicians participated in the argument. The
15 physicians said this was wrong, and they said it was
16 wrong on the grounds of humanity.

17 To go back to the first execution using
18 an anesthetic, and with your permission, I'm going to
19 continue calling it an anesthetic because that's
20 precisely what it is. The first execution was under
21 the supervision of Ralph Gray, M.D., who was then the
22 Medical Director of the Texas Department of
23 Corrections. As medical director, Dr. Gray was in
24 charge of the technicians who worked there, who started
25 the intravenous, who actually injected the drugs. Dr.

1 Gray was in charge of ordering the pentothal and the
2 pavulon. Dr. Gray was in charge of its storing and
3 distribution, whether for surgical patients or for
4 executions. Dr. Gray also pronounced the prisoner
5 dead, Charles Brooks dead, and several others after
6 Charles Brooks, Jr.

7 Since the objective of this anesthetic is
8 death, it would seem that this is a very powerful use
9 of the physician, to say you have achieved, the State
10 of Texas has achieved its objectives. So you're going
11 to want to have physicians around there to say that the
12 objective has been accomplished, and therefore,
13 physicians are going to participate in this.

14 The most interesting variant of this was
15 in Alabama last October, about a little over a year
16 ago, when a physician said to the hidden person out
17 back, the executioner, "You need to give some more
18 electricity." In other words, the prisoner was not
19 dead. The objective was death, the physician
20 recognized that the objective had not been achieved and
21 recommended a bigger dose. Well, ladies and gentlemen,
22 I do that every day of the week. I'll tell the doctors
23 in training, you've got to give a bigger dose. You're
24 not giving enough to get the patient to the proper
25 state that we want the patient to be in, and this is

1 very much what doctors do all the time. They jockey
2 around with the dose to give a bigger dose or a smaller
3 dose. So again, in this way a physician was
4 participating.

5 Physicians have been involved in every
6 stage of the execution process except one, but one of
7 the things I was most interested in Stan Deutsch's
8 suggestion about humaneness, the Senator just mentioned
9 the idea that it was more humane and he very correctly
10 mentioned that the prisoners, given their druthers,
11 prefer the anesthetic. The -- I guess I've given a lot
12 of lectures on this subject mostly to medical or church
13 people and I have yet to meet my second person who has
14 ever been to visit death row and who has ever done
15 something nice for a criminal on death row. I don't
16 know how many of you all spend much time on death row
17 doing something nice to be humane, but I would suggest
18 that if do, you're unique in being humane to these
19 prisoners because no one wants to be humane. They're
20 nasty, nasty people. And so the idea of being humane
21 to them is a paradox. Therefore, why be humane to them
22 after they've been cooped up in a little cell for an
23 average of 10 years in Texas it is, and I suspect it's
24 about the same here. So they've been cooped up in a
25 little cell for 10 years, and then somebody wants to be

1 humane for them for 30 seconds, and that's about what
2 the difference between electrocution and anesthetic is
3 in terms of times, being humane. The waiting is the
4 same, the cooping up is the same, the ritual is
5 identical for every stage of it, except for the last 30
6 seconds.

7 Finally, I would suggest that the reason
8 we imported this technique into Texas from Oklahoma,
9 Texans are not really accustomed to importing things
10 from Oklahoma, and so we tend to think of it ought to
11 be the other way around, but the reason was that our
12 State legislator had been to see an electrocution and
13 he was so upset he threw up. It is hideous beyond
14 belief to see an electrocution, and so he made no bones
15 about this. The anesthetic is for the observers, and
16 the anesthetic, the peacefulness of it, the quiet of
17 it, if you go to an operating room and see somebody
18 quietly go to sleep, it is a very peaceful, tranquil
19 thing. There's no fuss, there's no muss, there's no
20 problem, and the observers have a very pleasant sight
21 as compared to a hanging, as compared to a firing squad
22 when bullets tear the person apart, as compared to a
23 guillotine. All these things are gross, and they're
24 ugly and disgusting. So that the observers are treated
25 in a humane way, and that would somehow legitimize it

1 in a certain way.

2 The other thing I guess I would say about
3 the observers is that there are lots of people who like
4 to see things like this. You can always find people.
5 Huge crowds go to football games where people mangle
6 each other, so that you can always find a crowd to
7 gather at an execution. Apparently historically that's
8 always been true that executions attract crowds of
9 people who enjoy not the humaneness but the horror of
10 it.

11 I mentioned, and I'll go back to the idea
12 that a physician has not -- we have not done in
13 participation of physicians but it has been recommended
14 by a physician, and this was a suggestion of Dr. Jack
15 Kevorkian about 10 years ago, he recommended in an
16 article, "The Nobler Execution," that we put the
17 prisoner to sleep at the prisoner's request, we take
18 the prisoner to a nearby university research center and
19 with them under very careful anesthetic, with
20 professional anesthetists taking care of them, we do
21 various experimental procedures on them to learn
22 certain things that you just don't learn except by
23 trial and error, and to have a controlled experiment
24 would be an excellent way to achieve this information.
25 It has two good things that you might want to look into

1 because you have excellent universities in this State
2 would be the possibility of putting them to sleep,
3 taking them say to Hershey or the Hospital of the
4 University of Pennsylvania asleep with their airway
5 maintained and obtain valid research from them.

6 The good thing about this is that the prisoner has a
7 chance to sort of ask for forgiveness, to atone, for
8 the horrible thing that the prisoner had done
9 previously. And Dr. Kevorkian mentioned this clearly.

10 And the second good thing obviously that
11 would come from this is that the research that was
12 obtained from the prisoner would be presumably valid
13 for care of the rest of us who would stay alive. The
14 State would maintain security, of course, and then when
15 the research was done, the State would then have
16 somebody else come in and essentially discontinue the
17 maintenance of life that was done to maintain the
18 opportunity for research.

19 I put this in, although this has not been
20 done, it has been very carefully suggested, very
21 thoroughly suggested by Dr. Kevorkian, I put it in to
22 remind you of probably why I am as tense about this
23 subject as I am. Dr. Kevorkian is the same Dr.
24 Kevorkian who near Detroit a few months ago gave
25 virtually identical drugs, pentothal, and in this case

1 potassium, to a woman with Alzheimer's Disease who
2 wanted to die. He did it in a truck outside of the
3 town and he made Newsweek and that sort of magazine,
4 and he did a euthanasia, as requested by her. He did a
5 social good by her definition, and the legality of it
6 is still going to be stirring the country up.

7 There are a lot of pros and cons about
8 organized euthanasia and there are a lot of pros and
9 cons about what he did for Mrs. Adkins. What I resent
10 bitterly is a physician, as a practicing physician, is
11 that he associated a wonderful thing by Janet Adkins'
12 standards, done by an individual request for an
13 individual objective, in other words, she wanted her
14 life to be terminated, as distinct from doing something
15 with the same drugs, the same technique, and the same
16 guy who is suggesting research for the State to execute
17 somebody who is not wanted by the State. It takes only
18 one little tiny jump of the imagination to remember the
19 German doctors who were doing very similar things.
20 They were doing things to help individuals be
21 euthanized. They moved from there to unwanted people,
22 they moved from there to lots of unwanted people for
23 the good of the State, and physicians were incredibly
24 involved and thoroughly involved with that, as they are
25 with this kind of execution.

1 did not get up the same energy to say that we who
2 inject things quite well and who are skillful in
3 injecting and we who know the pharmacology of pentothal
4 basically said only to society that this has frightened
5 a lot of patients. A lot of people say, and I've had
6 patients say to me, "That's pentothal you're going to
7 give me?" And when I answered "Yes," and he says,
8 "Isn't that the stuff they give at Huntsville, at the
9 Texas Department of Corrections?" And I said, "Yes."
10 And he said, "Oh, my God, isn't that great to know?"
11 Because he is then getting the same drug that is going
12 to go for the next execution.

13 The AMA has said our profession should
14 not be linked with the profession of executions, with
15 executor, so we should not be executors. Therefore,
16 there is a huge choice of ways to execute people if you
17 choose to do so, but having anesthesiologists
18 participate is not, in my view, a very good idea.

19 I would say one thing, as a citizen of
20 Texas, we in Dallas and those people who live in
21 Houston are aware that we have one of the highest
22 murder rates in the country, we have consistently had
23 one of the highest murder rates, and I'm not talking as
24 a physician now but as a Texan, and we are also the
25 biggest user of anesthetics. We have the most

1 experience of using anesthetics for executions. So if
2 you think using anesthetics for execution deters
3 crime, Texas is a good place to very carefully not look
4 at in terms of data.

5 Also, I would suggest with the idea of
6 humaneness is that to do something humane is hardly a
7 way to deter some other person. What you want is a
8 little torture if you want to deter other people. You
9 do not want a pleasant way to die if you want to deter
10 the future criminal. The problem, of course, then also
11 that Pennsylvania has, as well as Texas, but we in the
12 south as southerners epitomize it, I suppose, and that
13 is our criminals tend to be poor, our criminals on
14 death row, that is, tend to be black, our criminals
15 tend to have murdered people who are white, and so here
16 you are asking physicians to participate in something
17 that is as grossly racist as the process of execution
18 in the United States; is grossly racist, and that's
19 been all the way to the Supreme Court. What I resent
20 is that a physician participate in something that
21 grossly advances the evil of racism. It reminds me
22 again when I was a child the most civilized nation in
23 the world, one of the most civilized nations of the
24 world participated in executions, so I would suggest
25 doing something that involves your physicians, that

1 involves your physicians from step one to the last step
2 of the execution would be better avoided. As a matter
3 of fact, I would suggest that it probably would be
4 better to not execute people at all. That's the line
5 from the Civil Liberties Union.

6 CHAIRMAN CALTAGIRONE: Thank you, Doctor.
7 Would you stand for some questions?

8 DR. EGBERT: Oh, sure.

9 CHAIRMAN CALTAGIRONE: Are there
10 questions from any of the members?

11 (No response.)

12 CHAIRMAN CALTAGIRONE: Thank you, Doctor.
13 We have several members that have joined
14 us since we opened. If they would care to introduce
15 themselves for the record, starting with Jeff.

16 REPRESENTATIVE PICCOLA: Jeff Piccola,
17 Dauphin County.

18 REPRESENTATIVE MCHALE: Paul McHale,
19 Lehigh County.

20 REPRESENTATIVE BLAUM: Kevin Blaum, city
21 of Wilkes-Barre.

22 REPRESENTATIVE McNALLY: Chris McNally,
23 Allegheny County.

24 CHAIRMAN CALTAGIRONE: Mary Jo Bonner,
25 M.D., Chairman of the Bio-Ethics Committee of the

1 Pennsylvania Medical Society.

2 She's not here yet. Okay. We'll move
3 next to Pat Schulder. If you would please identify
4 yourself for the record and present your testimony.

5 MS. SCHULDER: Okay. My name is Patricia
6 Schulder, and I'm a member of the Board of Directors of
7 the Pennsylvania Prison Society, and we're one of the
8 organizations that Senator Greenleaf referred to. We
9 are absolutely against the death penalty, where it
10 follows also against the use of lethal injection. I'd
11 just like to read from our position.

12 Senate Bill 637 proposes the use of
13 lethal injection in lieu of electrocution in capital
14 cases in Pennsylvania. Supportive arguments suggest
15 that lethal injection is a more humane method of
16 carrying out the death. Its our position that there is
17 no humane method of imposing the death penalty. We
18 remain opposed to capital punishment. Our belief is
19 the State should not avenge one death by killing
20 another person.

21 In the prepared testimony you'll see some
22 references to lethal injections and some of the horror
23 stories. I think Dr. Egbert has totally covered the
24 problems with that. However, we'd like to join with
25 him in asking you to review the Hippocratic Oath. It

1 states, "I will prescribe the regime for the good of my
2 patients according to my ability and my judgment and
3 never do harm to anyone." This suggests that doctors
4 should not participate in killing. If they have sworn
5 to preserve life, how can they actively participate in
6 the execution of individuals?

7 Back in the early 1950's, the British
8 Royal Commission on Capital Punishment considered the
9 use of drugs for executions, but they rejected the
10 idea. Their conclusion was no medical personnel should
11 be involved in the taking of life. In the early
12 1980's, you had a host of other medical professionals
13 issue statements. I'd like to read one. It's from the
14 Secretary General of the World Medical Association.
15 The press release stated that "regardless of the method
16 of capital punishment a state imposes, no physician
17 should be required to be an active participant.
18 Physicians are dedicated to preserving life...."

19 The bill, you know, that you have here
20 mentions nothing really about the administration but it
21 does require the certification of death by a physician.
22 No, you know. Lethal injection is a sanitizing, and as
23 the doctor pointed out, it makes it better for the
24 observer. Sometimes. There have been gross stories of
25 instances in Texas where it wasn't so sanitary.

1 Just one point about Senator Greenleaf's
2 mention of the referendum taken by death row inmates in
3 the three States. I was not aware of that. I am aware
4 of a survey taken by the Southern Jail Coalition, which
5 was done of Florida inmates, and they did not favor
6 lethal injection, and their theme was killing is
7 killing.

8 Execution is the issue, not the form of
9 it. A more aesthetic, less objectionable method is not
10 the solution to the State's dilemma of killing.

11 Okay. You ought to be, we believe, the
12 Pennsylvania Prison Society believes you really ought
13 to be going into some of the other issues. Should the
14 mentally retarded be executed? Should juveniles be
15 executed here in Pennsylvania? Interestingly, both
16 candidates for Governor, and Governor Casey continues,
17 say they're not in favor of executing the mentally
18 retarded. We hope something moves on that bill then.

19 Okay. The only real deterrent, again, as
20 has been pointed out, of capital punishment is for the
21 individual who is killed by the State. We urge you to
22 oppose Senate Bill 637. We also wish you would go
23 further and question capital punishment as well.

24 Okay. Thank you very much.

25 CHAIRMAN CALTAGIRONE: Thank you.

1 Are there any questions from any of the
2 members?

3 Paul.

4 BY REPRESENTATIVE McHALE: (Of Ms. Schulder)

5 Q. I understand your argument that the death
6 penalty should be abolished. If, however, for the sake
7 of analysis you knew to an absolute certainty that the
8 death penalty would not be abolished, based on that
9 assumption, based on that premise, would you support
10 Senate Bill 637?

11 A. We could never accept that premise. You
12 know, we have a greater respect for the moving of the
13 Commonwealth in the direction of Judeo-Christian
14 principles, which prohibit revenge. And someone
15 earlier said revenge was an accepted reason for capital
16 punishment. Retribution, rather.

17 Q. Let me ask the question in a perhaps
18 slightly different way, and I won't belabor it beyond
19 this. If a member of this committee respectfully
20 disagreed with your conclusion and instead came to the
21 conclusion that the death penalty is likely to remain
22 with us, in that context, how should a member of this
23 committee vote with regard to 637? I understand very
24 clearly your argument and your effort to persuade
25 public policy that the death penalty should be

1 If Dr. Bonner isn't here yet, we'll then
2 move to Tom Schmidt, who will be the replacement for
3 Karl Baker.

4 MR. SCHMIDT: Thank you, Mr. Chairman and
5 members of the committee. My name is Thomas Schmidt,
6 I'm an attorney practicing in Harrisburg and appearing
7 on behalf of the American Civil Liberties Union. I am
8 tempted, and it may serve the committee's desire to
9 proceed expeditiously through this hearing, not to
10 testify at length because much of what I have prepared
11 to say is similar to themes expressed by Dr. Egbert and
12 by Pat Schulder, who just spoke, but let me touch on
13 two or three of them.

14 To be sure, the ACLU's position as an
15 opponent of the death penalty is clear to the members
16 of the committee. It is not the ACLU's desire to
17 promote the use of the electric chair. What the
18 committee is confronting is a paradox, and that is how
19 to make more humane an inhumane procedure, which is the
20 execution by the State of someone. Its the ACLU's
21 position, as Pat Schulder just said, that to discuss
22 whether some procedure to accomplish that inhumane end
23 is more humane than another procedure is to be asking
24 the wrong question, and that's the real problem with
25 Senate Bill 637 is that it asks the wrong question and

1 comes up with an answer that doesn't confront the
2 fundamental problem, should we or should we not have
3 death penalty legislation or a death penalty statute in
4 Pennsylvania?

5 A member of the committee I think asked
6 the properly difficult question, which is, how does a
7 member of this committee or the legislature who does
8 not have the votes to abolish the death penalty in
9 Pennsylvania respond to the very compelling stories of
10 how gruesome an electrocution can be, how gruesome
11 other means of execution can be? How does that member
12 respond to those stories, those details, those
13 paragraphs, when presented with what appears to be an
14 opportunity to solve at least the gruesomeness of an
15 execution if we're going to go ahead and have
16 executions? Pat Schulder said, and I would say, that
17 you don't solve that problem by voting for Senate Bill
18 637. And let me make it clear that I'm not expressing
19 that position for the ACLU out of some, I can't think
20 of a good word for it, but it's not a desire to force
21 the public to gag on executions by keeping an inhumane
22 procedure in place. It is not the ACLU's view, for
23 instance, that we should be televising executions
24 because if we could just sacrifice one human on
25 television to the electric chair in Pennsylvania, that

1 would persuade everybody to change their mind about
2 capital punishment. That's not why the ACLU opposes
3 Senate Bill 637. It is not to produce that kind of
4 revulsion among the public.

5 The ACLU's position, if I can express it,
6 is perhaps too subtle, perhaps it sounds too subtle,
7 but it is this: We have some thousands of years of
8 civilization progressed, in evolution might be terms
9 that we can't always apply to things that have happened
10 over the course of those centuries, but one thing has
11 changed, and that is that we have, as a society, less
12 and less frequently imposed the ultimate sanction of
13 death for criminal behavior. What used to be punished
14 by executions is no longer punished by executions, and
15 there is obviously, even in a society where many people
16 favor the death penalty, there is also some resistance
17 to imposing the death penalty, and it is at least
18 debatable that we are moving to the point where that
19 will no longer be acceptable.

20 Part of that civilization, part of our
21 history in the western world has been a maxim that I
22 will now repeat that has come up twice already, and
23 that is the Hippocratic Oath that a physician should do
24 no harm to a patient. That is not just a rule that
25 applies to physicians, it is a rule or an oath that I

1 think we have tried to ingrain in our entire approach
2 to human life as an organized society - not to do harm.
3 Physicians perhaps are paradigm of a personal
4 relationship between two individuals. This seems like
5 it's off the point, but that's one of the reasons why
6 as an organized society we've resisted notions like the
7 corporate practice of medicine and we've approached
8 that kind of concept very gradually, because of the
9 very personal nature of the physician-patient
10 relationship. The State is practicing medicine, if you
11 will, in imposing a lethal injection formula, and what
12 we know and what we have known for thousands of years
13 from the Hippocratic Oath to the present is that that's
14 a violation of a physician's oath. The physician has
15 the power to heal, cannot use that power to kill.

16 And I think that's ultimately the answer
17 to the Representative's question, which is that we
18 cannot, as a society, violate that prescription, not
19 because that solves the problem of the death penalty,
20 but at least let us stop from taking a step that
21 appears to solve the problem by violating something
22 that we know and have known for thousands of years, and
23 that is that we should not use the tools of healing to
24 kill or to harm other people. It's a good rule, it has
25 guided the physician-patient relationship for years,

1 and it should guide this committee, even those of you
2 who feel compelled to find something less gruesome than
3 the electric chair should say I wish that there were a
4 solution to the problem of the death penalty, but to
5 take what appears to be a remedial step that actually
6 violates a good, bright line rule is not a step that
7 should be taken. That's not a vote for the electric
8 chair; that's not a vote that solves the problem of
9 having a death penalty in Pennsylvania, but it is a
10 refusal to vote for a deception and a violation of
11 other equally valid and important social values which
12 include not using medical skills, medical technology,
13 to do harm to other human beings.

14 Thank you.

15 CHAIRMAN CALTAGIRONE: Thank you.

16 Are there any questions?

17 Representative McHale.

18 BY REPRESENTATIVE McHALE: (Of Mr. Schmidt)

19 Q. Let me try the same question, if I may.
20 I've been here for four terms and I've
21 seen no indication of a likelihood in the General
22 Assembly that capital punishment will be abolished.
23 The democratic process, with a small "D" would seem to,
24 at this point, accept the continued existence of
25 capital punishment, at least in certain circumstances.

1 So if it does not appear that capital punishment is
2 about to be abolished in the foreseeable future, with
3 that as a premise, a premise that was rejected by the
4 previous witness, with that as a premise, how should we
5 vote on Senate Bill 637? If the death penalty is going
6 to be around, if your argument is not going to prevail
7 in the near future at least with regard to abolishing
8 capital punishment, if we are to have it, like it or
9 not, how should we vote on 637?

10 A. Let me say, and I've tried to wrestle
11 with answering that question in my statement, which
12 departed from what I had prepared, and let me just say
13 that I urge the members to vote against 637, and the
14 reason is that on the one hand we are confronted with a
15 known value, which I've tried to say is expressed in
16 the Hippocratic Oath to do no harm. On the other hand,
17 we are confronted with a practical situation which
18 includes a number of factors: 118 people on death row,
19 a death penalty statute that is still being challenged
20 in the State and Federal courts, no executions have yet
21 taken place, a perfectly legitimate political
22 prediction that there will not be any step taken to
23 abolish the death penalty in the near future, and yet
24 that prospect is still out there as at least something
25 that might occur. It's worth saying that at this point

1 there are cases that are at the very threshold of
2 judicial review of the death penalty statute in
3 Pennsylvania.

4 So to answer the question then, I think
5 you vote no because you have a known thing, which is an
6 important value, and you have a series of unknowns that
7 are taking place and will take place in the judicial
8 and legislative branches and the executive branch,
9 perhaps, and I think a vote against 637 is a
10 conscientious vote not to appear to be solving the
11 wrong problem at the present time. It's not meant to
12 be sophistry, it's meant to answer a question about a
13 specific vote on a specific bill.

14 Q. I'm afraid it comes close. I think your
15 opening paragraph recognizes the difficulty of your
16 argument, because if we accept the position that the
17 death penalty is likely to be part of our legal
18 structure for some time to come, in fact, disclaimers
19 to the contrary, a vote against SB 637 really is
20 tantamount to an endorsement of the electric chair.
21 That may be a conclusion that you find regrettable, it
22 may be a conclusion that you struggle in good faith to
23 avoid, but I think it's a conclusion that is valid. If
24 we're to have the death penalty and we reject 637, that
25 means the electric chair is the likely means of

1 execution.

2 A. I recognize that, I'm trying not to be
3 cute, I recognize I'm walking a very narrow path, but
4 my point is this, that at this moment in this session
5 of the legislature you're confronted with a decision
6 whether or not to vote on 637, and what I'm trying to
7 do is answer your question by stepping back from a
8 theoretical argument about its merits to say that at
9 this time on this bill presented this session, given
10 the status of the death penalty in Pennsylvania, I
11 would urge the members to vote no. At this point, as a
12 practical matter, I believe, frankly, that the issue is
13 academic, and that's part of my reason for answering
14 your question the way I did.

15 And I want to be understood on this, I am
16 not at all trying to say that the dilemma of a member
17 of this committee about how to vote on this issue is an
18 acute dilemma. I'm not trying to belittle that. I'm
19 just saying that I believe practically one should not
20 be beguiled by the notion that this is a humane
21 solution to a problem, because practically one can vote
22 no at this time.

23 REPRESENTATIVE McHALE: Well, thank you,
24 Mr. Chairman.

25 I'd simply say that while I disagree with

1 your position, I think it's highly principled and I
2 respect it. Nevertheless, in light of the continuing
3 likelihood that the death penalty is going to be with
4 us, I'm afraid that your premise and the premise of the
5 previous witness based on a belief that the political
6 process will abolish the death penalty is erroneous,
7 and that most of us have to operate on a different
8 premise, and that is that the death penalty is likely
9 to be with us for some time to come.

10 Thank you, Mr. Chairman.

11 CHAIRMAN CALTAGIRONE: Thank you.

12 Yes, Mr. McNally.

13 BY REPRESENTATIVE McNALLY: (Of Mr. Schmidt)

14 Q. Let me see if maybe I understand your
15 position maybe a little bit differently than Mr.
16 McHale.

17 Let me begin by saying that now I suspect
18 that there are at least some occasions when an
19 execution or killing a convict might be necessary to
20 maintain the order, maintain some social order, but
21 given that, you know, the question is then, you know,
22 how is it to be done? And at least in my way of
23 thinking, there isn't any humane way of killing a
24 person. You know, whether it's a convict in a death
25 chamber or any other circumstance, a killing that seems

1 to me is by definition inhumane. And if that's the
2 case, science can do many wonderful things, it can make
3 our life easier, make it more comfortable and more
4 aesthetic, but maybe there are some things that science
5 ought not to make cleaner or more sanitary, that
6 something that's truly inhumane ought to be -- should
7 not be euphemized and ought to be presented to the
8 public in its barest and most essential appearance, and
9 I think the word that you used is that killing by
10 lethal injection is a deception, makes it appear
11 humane, you know, gives the observers at least the idea
12 that this is a humane way of killing, and that that in
13 fact isn't really the case. Would you agree with that?

14 A. I do. I agree with that.

15 Q. And so that if we were, you know, so that
16 if a member of the House who believed that the death
17 penalty was an appropriate law to be enacted in this
18 State and simply had to decide how that death penalty
19 was to be administered, in the interest of honesty to
20 the public, in the interest of calling a spade a spade
21 and making it clear to the public what is being done,
22 it should be done, you know, we shouldn't give any
23 thought to trying to make it more sanitary or aesthetic
24 or, you know, in some sense humane. That's your
25 position?

1 A. Well, that's a difficult -- I understand
2 the position, and perhaps I can answer whether I agree
3 with it or not by referring to an essay that I read
4 last night trying to prepare for coming to this hearing
5 by Albert Camau, who wrote a short essay called
6 "Reflections on the Guillotine," which does not tell
7 someone how to vote on this issue but does describe by
8 starting the story of his father, who was a mild,
9 middle-classed person who felt it was his civic duty to
10 attend an execution and was so horrified that when he
11 came home he was very disquieted by it and eventually
12 vomited and it changed him, and it changed Camau to, as
13 he reports, in his perception of that whole process.

14 His solution was make the public watch, make the public
15 learn and they will know why they don't want to
16 authorize those kinds of executions.

17 I wanted to make it clear, and perhaps I
18 didn't, that while I believe that is a very effective
19 moral tool for testing ourselves about what we think
20 about the death penalty and what we think about means
21 of execution, it is not the ACLU's position that the
22 public should be forced to gag on the process in order
23 to persuade them to be against the death penalty. My
24 statement referred, and not glibly, to the need for all
25 of us to have some moral imagination about what makes

1 the death penalty inhumane, and it's inhumane not
2 because people's eyes pop or their flesh lets off smoke
3 or you can smell them or any other particularly awful
4 thing happens, but because it is inhumane for society
5 to put someone to death.

6 I think perhaps we are, to use the same
7 word, a little bit anesthetized by being shielded from
8 the executions. As the Chairman said, they happen
9 behind high walls and closed doors, people don't know
10 about it, and it makes it difficult to really engage
11 people in a debate that has any real flesh and blood
12 substance to it. But I think that's the special burden
13 of the legislature to realize what the flesh and blood
14 substance of this issue is, and that's why I recognize
15 the difficulties that are presented by this bill. I
16 think the solution, as a practical legislative matter,
17 is to vote against it at this time.

18 CHAIRMAN CALTAGIRONE: Thank you.

19 MR. SCHMIDT: Thank you.

20 CHAIRMAN CALTAGIRONE: Dr. Bonner. And
21 if there's anybody else that's with you, Doctor, that
22 would like to come up to testify, please come forward.

23 DR. BONNER: Thank you, Mr. Chairman and
24 members of the committee.

25 I have a brief prepared statement but

1 also wish to set the tone under which that statement
2 was written. I am a physician, I practice in Reading,
3 Pennsylvania. I am an internist. I've had the
4 privilege of serving for several years on the
5 Pennsylvania Bio-Ethics Commission, and as such it's
6 been a rather learning experience for myself. Prior to
7 that I taught at the University of Pennsylvania. I
8 also have a degree in molecular biology. And I was a
9 little bit apprehensive, actually, in coming here
10 today. This is my first experience. I sat down
11 wanting to write a brief paper for you to review with
12 the idea of requesting you to not request physicians to
13 participate in an execution. I wanted to choose words
14 to explain my feelings, and I found myself drifting
15 back in time as to why I became a physician, what I
16 have done during the time I have been a physician, and
17 what I would like to do with my future. That took
18 until about 3:00 o'clock in the morning and I had
19 nothing on the paper, so I thought I had better be
20 busy. I wrote a few words. If you have any questions
21 about them, I should be happy to try to explain my
22 words.

23 I have written down here, good afternoon,
24 my name is Mary Jo Bonner, and I appreciate the
25 opportunity to come before you today as a physician and

1 as Chairman of the Pennsylvania Bio-Ethics Commission.
2 I wish to state my views on physician participation in
3 executions. I ask that physicians not participate in
4 an execution. The role of the physician is to be a
5 caregiver, to act as an intermediary for the patient.
6 As such, the physician is trusted to care for the
7 patient. To be an executioner is not in the role of a
8 physician.

9 To execute by lethal injection, one, an
10 intravenous access is needed; two, pre-execution
11 tranquilizers usually are administered; three, a
12 paralytic agent and lethal dose of a short-acting
13 barbiturate is given; four, pulse and respirations are
14 monitored; and finally, five, pronouncement of death is
15 made.

16 None of these steps should involve a
17 physician, except perhaps for the pronouncement of
18 death. In fact, physician involvement may be in direct
19 contradiction to a regulation promulgated by the State
20 Board of Medicine, which defines as unethical or
21 immoral conduct, quote, "possessing, using, prescribing
22 for use or distributing a controlled substance or a
23 legend drug in any way other than an acceptable medical
24 purpose," unquote.

25 When we stand to take our oath as

1 physicians, we are actually dedicating our lives and
2 our life's works of the treating of the sick with the
3 hope of improving their lives. We try to maintain
4 health in those that are not ill, and when an illness
5 extends beyond our art and science, and it frequently
6 does, to at least give comfort to the patient. Please
7 do not, by either breath or by pen, strip us of that
8 role of caregiver. Instead, I actually ask you and I
9 challenge you to help us to be the very best caregivers
10 we possibly can be to all of the citizens of our great
11 Commonwealth of Pennsylvania. For this reason and for
12 these reasons, we can accept Senate Bill 637 as long as
13 it is not amended to require physician involvement in
14 making the lethal injection and in doing anything
15 beyond involving the physician perhaps in a
16 pronouncement of death.

17 I thank you for this opportunity.

18 CHAIRMAN CALTAGIRONE: Thank you, Dr.
19 Bonner.

20 Representative McNally.

21 BY REPRESENTATIVE McNALLY: (Of Dr. Bonner)

22 Q. Doctor, is opposition to Senate Bill 637
23 the position of the Pennsylvania Medical Society?

24 A. No. As you will read on page 2, down at
25 the bottom, "we can accept Senate Bill 637 as long as

1 it is not amended to require physician involvement
2 beyond making a pronouncement of death," and actually,
3 I believe in the State of Pennsylvania physician
4 involvement in death pronouncement is not even
5 necessary.

6 Q. Who would then perform the other four
7 steps?

8 A. You are asking myself?

9 Q. Yes.

10 A. Any of the other four steps could be done
11 by any person who is trained in doing any of the other
12 four steps.

13 Q. I mean, might we have the Pennsylvania
14 Nurses Association saying they don't want nurses to do
15 it?

16 A. I would hope that you involve no
17 caregiver in any of those steps. That's my plea, and
18 that is how I would wish to be understood as a
19 representative of the Pennsylvania Medical Society.
20 None of those steps requires any professional health
21 care giver. Any of those steps can be taught to any
22 person.

23 Q. Then my other question is, would you say
24 that you'd like to have this bill amended in such a way
25 as to prohibit a health care giver to be involved in

1 any of these steps? I mean, what if we had a health
2 care giver who is sort of a killer for hire, like Dr.
3 Jack Kevorkjan?

4 A. That would be most kind of you if you
5 would write that in. I would deeply appreciate it. Do
6 I have your support?

7 Q. I would support that.

8 A. I very much deeply appreciate if I could
9 get each committee member's support. That would be
10 something that I never -- well, I should expect,
11 actually, I won't embarrass you by saying I didn't
12 expect that when I walked in the door, I really didn't
13 think of that in my mind, but if I could ask for you to
14 write that in, I think you are making a statement on
15 what health care giving is in the Commonwealth of
16 Pennsylvania, and I think you are making a first great
17 step forward in perhaps binding all of us together to
18 share in the health care of the State of Pennsylvania,
19 and I would volunteer that if in any other way I can
20 help you to do things of that sort, I and my commission
21 stand ready.

22 CHAIRMAN CALTAGIRONE: Representative
23 McHale.

24 BY REPRESENTATIVE McHALE: (Of Dr. Bonner)

25 Q. Doctor, I think you heard previous

1 witnesses testify in opposition to the bill.

2 A. Unfortunately, I was working today and I
3 got down right while the last gentleman was speaking,
4 so I did not hear the context of the other persons'
5 presentations.

6 Q. Without being unfair to the earlier
7 witnesses, and I think accurately stating the gist of
8 their testimonies, the argument that was presented by
9 previous witnesses expressed general opposition to the
10 death penalty and based on that belief urged opposition
11 to any extension of the death penalty, even an
12 extension that might appear, from their perspective, on
13 the surface to perhaps be more humane. Basically, what
14 they said was that they are against the death penalty
15 under all circumstances and that that fundamental issue
16 is the one that has to be confronted, not can we make a
17 process to which they object more humane.

18 For that reason, when I asked them how
19 would you vote on the bill, the answer in every case
20 was, I would vote no. What I'm asking you now is,
21 because I am very interested in the perspective of
22 someone who comes from the field of bio-ethics, if we
23 were to adopt an amendment offered perhaps by
24 Representative McNally that would make it absolutely
25 clear that the role of the caregiver, the physician,

1 would be limited to a certification of death, with that
2 amendment, which is compatible, I think, with the
3 current language of the bill, if that amendment were
4 adopted and you were a member of this committee, how
5 thereafter would you vote on Senate Bill 637?

6 A. I would vote for it.

7 REPRESENTATIVE McHALE: Thank you, Mr.
8 Chairman.

9 CHAIRMAN CALTAGIRONE: Thank you, Doctor.

10 DR. BONNER: Thank you very much.

11 CHAIRMAN CALTAGIRONE: We will next hear
12 from Michael D. Marino and Gary Tennis.

13 MR. MARINO: Good afternoon. My name is
14 Michael D. Marino.

15 MR. TENNIS: I'm Gary Tennis.

16 MR. MARINO: I'm the District Attorney
17 from Montgomery County. I've been asked by the
18 District Attorneys Association to appear before you.

19 The District Attorneys Association has no
20 position concerning this bill that's before you. It is
21 the position of our organization that we do not have
22 the expertise in this matter and believe that it's a
23 legislative function and you folks, I believe, are
24 attempting to delve into that problem right now.

25 The main reason that I'm here is not to

1 tell you my personal opinion. My personal opinion is
2 that anything that makes the death penalty more humane
3 as far as its implementation I am personally for, but
4 that is not the position of the association. I am here
5 as an advocate of the death penalty. You've heard in
6 various ways a general theme here, I think, is a very
7 subtle argument of the imposition to the death penalty,
8 and I have heard the statements here today and many
9 other places, and if I may, I'd just like to read a
10 brief statement that appeared in a 1972 case by Justice
11 Stewart of the Supreme Court of the United States.

12 It states as follows: "The instinct for
13 retribution is part of the nature of man, and
14 channeling that instinct in the administration of
15 criminal justice serves an important purpose in
16 promoting the stability of a society governed by law.
17 When people begin to believe that organized society is
18 unwilling or unable to impose on criminal offenders the
19 punishment they deserve, then they are sowing the seeds
20 of anarchy, self-help, vigilante justice, and lynch
21 law." That's from Ferman vs. Georgia, 1982, Justice
22 Stewart, his opinion.

23 Ladies and gentlemen, the imposition of
24 the death penalty is taken very seriously by our
25 society. It's taken very seriously by our

1 organization. In each one of the cases that we go
2 through, meaning the district attorneys, that decision,
3 to seek the death penalty, is a very weighty one, and I
4 would just like to convey to you that with a jury, that
5 is a solemn, striking obligation. I've been involved
6 in three death penalty cases. I assure you that that
7 is not taken lightly, that that jury in most instances
8 it has taken our office on an average of approximately
9 one week to pick a jury of 12. We go through literally
10 hundreds of jurors. To say that the death penalty or
11 even the seeking of it is handled in a cavalier manner
12 is just the furthest thing from the truth.

13 I make these statements just for the
14 balance of your consideration, in view of what you've
15 heard here today. I have nothing further to add.

16 CHAIRMAN CALTAGIRONE: Gary?

17 MR. TENNIS: I have nothing further to
18 add.

19 CHAIRMAN CALTAGIRONE: Questions?

20 Chris.

21 REPRESENTATIVE McNALLY: Mr. Chairman,
22 not in response to the testimony, I wanted to ask, I
23 think I would be interested in offering an amendment
24 that I discussed with the previous witness.
25 Unfortunately, I have another engagement in Pittsburgh

1 on Friday when we're supposed to consider this bill. I
2 don't know if the committee would consider postponing
3 consideration of Senate Bill 637 until, say, Monday?

4 CHAIRMAN CALTAGIRONE: I would add this,
5 if we are not able to get a quorum present for the
6 Friday meeting to report any of these bills out, or
7 even if we are able, we could call a meeting off the
8 floor possibly on Monday when we come back into session
9 for the possibility of amending any of these bills, if
10 you would care to do so.

11 REPRESENTATIVE McNALLY: Okay. Thank you
12 very much.

13 CHAIRMAN CALTAGIRONE: Representative
14 McHale.

15 BY REPRESENTATIVE McHALE: (Of Mr. Marino)

16 Q. Good afternoon, Mr. Marino.

17 A. Good afternoon.

18 Q. Mr. Marino, as you may have detected from
19 questions that I presented to previous witnesses, the
20 death penalty, for me, raises some very difficult
21 questions about laws and ethics. I have, in limited
22 circumstances, supported the death penalty, and I
23 continue to support it again in response to a limited
24 number of heinous crimes. That sanction is one that I
25 think is appropriate in law when used under very

1 specific circumstances. So that as kind of a
2 disclaimer, let me ask a question during which I do not
3 intend to imply the answer. These are the kinds of
4 questions that I wrestle with.

5 First question is, do you believe that
6 the death penalty can serve as a deterrent? That in
7 fact, particularly in the case of premeditated homicide
8 being considered by a criminal, that the existence of
9 the death penalty might, in fact, avoid a death?

10 A. I absolutely do. What we cannot measure
11 is the criminal that has that gun to the victim's head,
12 and when he does not pull the trigger because he
13 realizes that he could die for that act. If we were
14 able to do that, I think we would put to rest a lot of
15 these arguments. But I can only tell you in my own
16 mind that our whole criminal system has a punitive
17 aspect to it, and it's my personal opinion that if we
18 did not have punitive sanctions in this society, there
19 would be anarchy and people do not -- I'm not saying
20 all people, many people do not respond and abide by the
21 law because it's the right thing to do, they respond
22 because they know they're going to get whacked if they
23 step out of line. I think that's a basic premise in my
24 life. It would seem to me that that follows over to
25 other criminals who realize that they're going to be

1 punished, and this is the most severe, the greatest
2 sanction of all. So I cannot give you statistics, I
3 can only give you my own personal logic that we deal
4 with criminals on a daily basis, and it's my opinion
5 that they are deterred. It can't give you statistics
6 on that.

7 Q. Frankly, I think we both know that
8 statistics could be presented very effectively on both
9 sides of the issue. That's what makes it so difficult
10 to resolve. I tend to agree with you. I believe that
11 the death penalty is a deterrent. I recognize that
12 there are many other citizens who disagree with that
13 position, but I believe, based on my own instinctive
14 judgment, that with regard to a certain specific type
15 of crime, the existence of a death penalty can, in
16 fact, save an innocent life. That's why I have
17 supported the death penalty.

18 But now with that premise in mind where
19 you and I agree, let me raise an issue that I'm glad
20 I'm asking the question, not providing the answer.

21 If in fact one of the basic reasons for
22 supporting the death penalty is deterrence, is that
23 compatible with your statement earlier in your
24 testimony that you support the more humane imposition
25 of the death penalty? Are those two principles that

1 cross purposes? If the death penalty is more humane,
2 does it simultaneously become less of a deterrent?

3 A. Well, I think if you made it a public
4 execution it probably would be more of a deterrent, but
5 death is still death in that sense, and if they realize
6 that they would die, I believe that that is a
7 deterrent. I think you can make it a more horrendous
8 deterrent. I'm not advocating that at all, and I don't
9 think anybody in this room is. How horrible do you
10 want to make it? I think the fact that they would know
11 that they would die as a result of their conduct,
12 that's sufficient. And I'm not suggesting that the
13 deterrent be made to such a degree that it's revolting.
14 I think death in any fashion. I think we're all a
15 loser when we are compelled to put a person to death.
16 I don't think there's any prosecutor in this State that
17 relishes that idea. I certainly know I am not one, and
18 I think my brothers are the same way. I think it's a
19 necessary function of our government, and to make the
20 deterrent worse than it is, I don't think that's
21 necessary.

22 Q. I think that's a well-stated answer, much
23 better than I would have done had I been sitting there
24 trying to answer the question rather than ask it.

25 Is it your personal position then, and I

1 guess I'm groping to see if there is a position taken
2 by the DA's Association that death itself should be the
3 deterrent and that consistent with that fact all means
4 achievable for a more humane death should be
5 accomplished?

6 A. I cannot speak for the association. I
7 will speak for myself, and I think you're absolutely
8 correct, yes.

9 Q. I had a question mark on the end of that
10 sentence, so I didn't mean to imply a position, but I
11 wanted to make sure that I understood your position and
12 I think it's well-stated.

13 REPRESENTATIVE McHALE: Thank you, Mr.
14 Chairman.

15 CHAIRMAN CALTAGIRONE: Representative
16 Reber.

17 REPRESENTATIVE REBER: Thank you, Mr.
18 Chairman.

19 BY REPRESENTATIVE REBER: (Of Mr. Marino)

20 Q. The dialogue, Mike, that was just going
21 on tickles the concern that I expressed at the outset
22 to Senator Greenleaf when he was here, and it's that
23 offshoot that I think now has to be talked about. In
24 light of what I've been hearing about the concerns of
25 the Medical Society, the medical profession, if you

1 will, and I am becoming more and more concerned as I
2 sit here and listen whether we are potentially opening
3 up new avenues of argument on appeals to frustrate the
4 imposition of the penalty because of the manner in
5 which it is being done, because of the manner of the
6 implementation and the resistance of the physicians or
7 people that should be doing it to the point where it
8 becomes more inhumane than what has, to some extent,
9 been the argument heretofore on electrocution. And I'm
10 just wondering if from your perspective about where
11 this may take us in a procedural quagmire to the extent
12 that we now, again, for other reasons do not see the
13 imposition and the finality of the sentencing process
14 that has caused a big stir with a lot of people over
15 the years, and it comes back to my original statement,
16 I don't know if you were present or not, but I have
17 been more and more reluctant as the years have gone on
18 to see this General Assembly moving in the directions
19 that it is in tampering with long-established
20 principles of law and things of that nature, whether it
21 be in the criminal justice system or otherwise, and
22 here we go again. Your thoughts?

23 A. I am certainly not for one to put any
24 more roadblocks in the way of the imposition of the
25 death penalty. I think they are enormous and sometimes

1 they're so frustrating that we sometimes wonder what
2 we're doing by seeking this death penalty. But that
3 aside, I don't think there is anything in society to
4 want a death penalty that is swift, certain, and
5 painless. I think that that can be compatible with a
6 civilized society, and I think if you advocate that,
7 you are advocating justice in the sense that you want
8 it done quickly, you want it done painlessly. I don't
9 think there's anything wrong with that. Yes, people
10 can make something out of that, but I think that
11 premise in itself, and I think that's what you're
12 wrestling with, where you're trying to affect this
13 unpleasantness, which it is, and we agree with it. No
14 district attorney wants to take life. But the point
15 is, it's an absolute necessity, and if you advocate it
16 being swift and certain and painless, there's nothing
17 wrong with that. That's being a decent human being, I
18 think.

19 Q. I guess I have some reservation that it
20 can be implemented swift and painless when in fact I'm
21 hearing requests for the type of people that at least
22 in my mind are best equipped to give you the benefit of
23 the doubt that it's going to be swift and painless are
24 asking to be removed from the process.

25 A. I think that's human nature. I think no

1 one wants to do it, particularly doctors. They're
2 charged to heal people, and they certainly don't want
3 to be involved in taking a life, and I understand that.
4 But if everybody takes that position, then where are
5 we? I can understand them. I think they're saying,
6 you can do it, but don't ask us to do it.

7 Q. Thank you, Mike.

8 A. Thank you.

9 CHAIRMAN CALTAGIRONE: Thank you.

10 The last testifier will be Commissioner
11 Lehman.

12 COMMISSIONER LEHMAN: Chairman
13 Caltagirone, members of the House Judiciary Committee,
14 thank you for permitting me the opportunity to testify
15 today. Shortly after I arrived here in Pennsylvania I
16 was pleased to learn that in fact there had already
17 been some interest in and some discussion about
18 changing the method of execution here in Pennsylvania
19 from electrocution to lethal injection. An execution
20 is a traumatic event for everyone involved, certainly
21 for the condemned, who's being prepared for the
22 process, for the condemned person's family, for the
23 participating staff and the witnesses to an execution.
24 My obligation as Commissioner and that of my staff is
25 to insure that the law is carried out and carried out

1 in a safe and hopefully as humane as possible way.

2 Currently, there are 20 States that use
3 lethal injections as their method of execution. Most
4 arguments in favor of lethal injection come from the
5 notion that the process is more humane, it's less
6 violent a form of execution than the other methods,
7 it's more consistent with the perceived notion of human
8 dignity than the other methods. In fact, if you look
9 historically, electrocution in fact was an alternative
10 form for hanging and for shooting, the basis being that
11 it was more humane a process and method of execution
12 than those two. With the introduction of new
13 technology, lethal injection is in fact becoming a
14 preferred method around the nation.

15 I think the move from the current method
16 here in Pennsylvania to lethal injection is an
17 appropriate one for two reasons: Death through
18 electrocution, first, because it is perceived as more
19 violent, does create more anxiety on the part certainly
20 of the inmate who is preparing to be executed, and the
21 staff who have to carry it out. It is a traumatic
22 event. The increased anxiety creates a greater chance
23 of panic on the part of the inmate, it in fact creates
24 a greater chance of error on the part of staff in
25 carrying out the procedures.

1 Secondly, electrocution involves, of
2 course, the use of a lethal electrical current, which
3 if there was a problem, if there was a problem with the
4 equipment, could place staff at risk, and certainly is
5 a concern that I would have in terms of representing
6 staff in the Department of Corrections.

7 On the other hand, lethal injection
8 offers what is perceived as a more humane way to die.
9 I think everybody that testified at least that I've
10 heard has in fact posited the fact that it's perceived
11 as a more humane way to die. They receive an
12 intravenous injection of sufficient quantities of
13 ultrafast-acting barbiturates followed by a chemical
14 paralytic agent. The effect of the combination of
15 those two being unconsciousness and death resulting
16 shortly thereafter.

17 Because the injection is intravenous and
18 not intramuscular, problems occasionally do develop.
19 Three problems have arisen in terms of use of lethal
20 injection since 1985, all occurring in the State of
21 Texas. The location of a suitable vein, weak dosage of
22 barbiturates, and faulty tubing have all caused
23 problems. Notwithstanding that experience, the
24 consensus in terms of the staff and inmates alike is a
25 preference for the use of lethal injection as a method

1 as opposed to electrocution. Lethal injection is more
2 bearable, it's less traumatic for those involved,
3 including the staff of the Department of Corrections
4 and the witnesses who are there carrying out their
5 legal duties. It is less traumatic because it does not
6 involve disfigurement, and if carried out properly does
7 not involve pain.

8 Last but not least, if problems do occur
9 in the process of lethal injection, it is not likely to
10 place staff at risk. Today there are 118 inmates on
11 death row in Pennsylvania. We, in the Department of
12 Corrections, are prepared to carry out your mandate
13 relative to this sanction. We would, however, ask that
14 you allow us to move to a more humane and safe means of
15 carrying out that responsibility. I would ask that you
16 support the passage of Senate Bill 637, and certainly
17 would entertain any questions at this time.

18 CHAIRMAN CALTAGIRONE: Representative
19 Piccola.

20 REPRESENTATIVE PICCOLA: Thank you, Mr.
21 Chairman.

22 BY REPRESENTATIVE PICCOLA: (Of Comm. Lehman)

23 Q. Commissioner Lehman, what was the method
24 of execution in the State of Washington, if there was
25 one? I'm not even sure if they have the death penalty

1 in Washington.

2 A. Yes, they did. Unfortunately, it created
3 problems. They had a process where the inmate was
4 allowed to choose between hanging and lethal injection,
5 and the problem with that was by allowing the choice,
6 what they did is extended a right to the inmate that I
7 think is problematic, and in fact resulted in and can
8 result in undue challenges to the penalty, to the death
9 penalty, and in fact is in the process of litigation
10 because the inmate argues that it's cruel and unusual
11 to leave the choice to the inmate than if you don't.
12 So it was a problem in terms of creating avenues of
13 appeal on the part of the inmate.

14 It was also a problem because it's costly
15 because what it meant to the Department of Corrections
16 if you had to prepare for two separate and distinct
17 processes in terms of carrying out that method of
18 execution. My understanding of the case law is there
19 is no cases in which the court has found that the
20 method of execution is a constitutional issue or raises
21 to the level of constitutional issue, but when a State
22 in fact extends that right in the form of giving the
23 inmate a choice, then I think you're asking for
24 additional delays in the process.

25 Q. And I assume there were no actual

1 executions in Washington?

2 A. Yes. In fact--

3 Q. With lethal injection?

4 A. No, there was not. And that's directly
5 attributable to the fact that part of the appeal
6 process dealt with the choice of method.

7 Q. So when was the last execution?

8 A. 1963.

9 Q. And was that what, hanging?

10 A. And that was hanging, yes.

11 Q. I don't know if you have this
12 information, but do not some States use the gas chamber
13 as a method of execution?

14 A. Yes, and I'm not sure how many, but yes,
15 there are.

16 Q. Was that, if you know, and perhaps you
17 don't, was that a method of execution designed to be
18 so-called more humane than execution by electrocution,
19 or was that some other intermediary step? How did that
20 come about?

21 A. Frankly, Representative, I'm not sure
22 which came first, but I'm sure that the gas chamber was
23 instituted as a means more humane than hanging or
24 shooting. In fact, gas is probably, from my -- from
25 what I know from reading in terms of experience,

1 probably more unsafe than electrocution likely because
2 it requires an absolute seal of the chamber, and if you
3 don't adhere adequate to that, then you've got
4 problems.

5 Q. Thank you, Mr. Chairman.

6 CHAIRMAN CALTAGIRONE: Representative
7 McHale.

8 BY REPRESENTATIVE McHALE: (Of Comm. Lehman)

9 Q. Commissioner, I have a copy of 637 in
10 front of me that's been marked up by pen, so I'm not
11 quite sure what's been amended and what hasn't, so let
12 me ask a general question but a significant question..
13 In your opinion, should lethal injection be the
14 exclusive form of capital punishment in Pennsylvania?

15 A. Yes. I think it would be a mistake to
16 create a process that in fact extended the right to an
17 inmate or an interest on the part of the inmate in
18 terms of a choice. I think that the State ought to
19 determine what the method is and leave it at that.

20 Q. And so your recommendation then to the
21 committee is to abolish the electric chair and in its
22 place substitute death by lethal injection as the sole
23 form of capital punishment in Pennsylvania?

24 A. That's correct. Yes.

25 REPRESENTATIVE McHALE: Thank you, Mr.

1 Chairman.

2 CHAIRMAN CALTAGIRONE: Chief Counsel Bill
3 Andring.

4 BY MR. ANDRING: (Of Conn. Lehman)

5 Q. Just one question. Is there any
6 necessity for the utilization of medical professionals
7 in the carrying out of an execution by lethal
8 injection?

9 A. Some other -- I'm aware that basically
10 what happens in many other States is that health
11 trained staff who are not currently practicing in
12 health care have been involved in the process, and I
13 think that the previous testimony was correct, that I
14 don't think that you need a licensed health care
15 provider. You do need somebody who is adequately
16 trained and proficient in the skills required in the
17 process. So I don't know that you need that.

18 I'm bound to comment, though, on the
19 prior testimony, and I understand the concern in terms
20 of the doctor in terms of requiring physicians to be
21 involved when their role in fact is care and treatment.
22 On the other hand, I get a little defensive when I hear
23 that because I don't know that many people that went
24 into the corrections field went into the business with
25 the notion that their job was to execute people, or

1 that it is something they liked to do or want to do.
2 It is something that we do because we are mandated to
3 do by the law of the Commonwealth, and we will do it.
4 It's not something that I would perceive as something
5 necessarily that the statute should eliminate an
6 individual from in fact participating in the process,
7 regardless of what their training is, if they chose to
8 do so. We do not force staff to do it, we ask people
9 to volunteer in the process, and that includes
10 custodial staff. And I think that choice ought to be
11 up to the individual, no matter what their particular
12 training or role in life is.

13 Q. Would you then be opposed to an absolute
14 prohibition on a licensed medical professional
15 participating in any extent in an execution, be it
16 administering the drugs or that type of thing?

17 A. I can't really say that I'm strongly
18 opposed. I think it's unnecessary. I certainly
19 wouldn't oppose that in terms of trying to get the
20 bill, 637, passed. I mean, if that was a requirement,
21 then I would not oppose it.

22 Q. Thank you.

23 CHAIRMAN CALTAGIRONE: Thank you,
24 Commissioner.

25 This will conclude the hearing on Senate

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Bill 637. Thank you.

(Whereupon, the proceedings were
concluded at 2:50 p.m.)

1 I hereby certify that the proceedings
2 and evidence are contained fully and accurately in the
3 notes taken by me during the hearing of the within
4 cause, and that this is a true and correct transcript
5 of the same.

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APPENDIX

28

7 November 1990

My name is Lawrence D. Egbert. I am a physician and a professor of anesthesiology and have taught anesthesiology at the University of Texas Southwestern Medical School in Dallas and practiced at the Parkland Memorial Hospital since 1982. I received my training in Pennsylvania at the U.S. Naval Hospital, Philadelphia and at the Hospital of the University of Pennsylvania in the 1950s. Between the fifties and 1982, I have taught at Harvard Medical School and at The Johns Hopkins University and was chairman of the Department of Anesthesiology at the American University of Beirut in Lebanon. I have been asked to make this report by the American Civil Liberties Union.

In 1982, Charles Brooks, junior, received an anesthetic in the Texas Department of Corrections. The press referred to his anesthetic as a "lethal injection". However, the anesthetic which you will receive in case you need an operation will include the same drugs that Charles Brooks received probably, that is, thiopental, also known as pentothal, and pancuronium marketed as pavulon. The doses administered are not lethal when we take care of patients. They are lethal when prisoners receive them and are NOT taken care of. The key difference I will deal with here is the presence of physicians and technicians who are supervised by physicians for it is physicians and nurses who make the anesthetic safe and it physician involvement in executions which challenges society. Do you want your doctors administering lethal injections? I will demonstrate to you that physicians are inextricably involved. My question to you is, SHOULD we be involved?

How has the state learned how to execute criminals using anesthetics? This was first accomplished in Oklahoma when a state senator asked the then-chairman of the Department of Anesthesiology at the University of Oklahoma, Stanley Deutsch, MD, PhD, how this should be done. He replied with a formal consultation and taught them how. An intravenous injection is started. In Texas, the intravenous tubing is injected with pentothal 2000 milligrams (mg) followed by pavulon 100mg followed by potassium. The pentothal puts the criminal or the hospital patient to sleep and makes them comfortable. The pavulon relaxes most of the muscles of the body; the muscles of respiration stop. Respiratory arrest is a side-effect which we anesthetists take care of. Respiratory arrest is the effect DESIRED by the state of Texas. Dr. Deutsch's prescription suggested very similar doses. In Illinois, in September, the original plan was to administer only 300 mg. of pentothal which would have left about 20% of criminals awake while they became paralyzed with the pancuronium. This was changed to 900 mg after physicians criticized the dosage. The point is that physicians are involved even in the evaluation of the quality of the execution.

The first execution using an anesthetic, that of Charles Brooks, junior, was supervised directly by Ralph Gray, M.D., then medical director for the Texas Department of Corrections. As medical director, Dr. Gray was responsible for the buying and storing of these anesthetics, their distribution, and their injection, whether for anesthesia for surgical patients or for executions. Dr. Gray supervised the placement of the intravenous tubing. Technicians under his supervision injected the drugs. Finally, he pronounced Charles Brooks, junior, dead. This direct connection of physician with execution was stopped in Texas when the Texas Medical Association followed the opinion of the American Medical Association insisting that physicians should NOT participate except to pronounce the prisoner dead. Keep in mind, however, that, since death is the objective of this anesthetic, when Dr. Gray once ordered more anesthetic to be injected because the prisoner was not dead, even the pronouncement of death is direct involvement in the process of doctors acting as executioners for the state.

Thus, physicians have been involved in every stage of the execution process except one and even that has been recommended by a physician as something society should institute. Dr. Jack Kevorkian, in an article with the title, "The Nobler Execution", published in Ararat in the summer of 1961 recommended that prisoners be allowed to receive their anesthetic under professional direction, then be transferred anesthetized to a research center where a research project would be carried out upon them. Security would be maintained, of course, and, when the research was accomplished, the anesthetic support therapy would be discontinued just as is now done for executions. The advantages that are relevant to our thinking are two: one, the prisoner is voluntarily permitted to make an altruistic decision to aid society and, two, society would gain by that decision from the research accomplished. I include this not only because Dr. Kevorkian is a physician but because he is the same physician who performed the intravenous injection and set up the pentothal and potassium for the euthanasia for Janet Adkins. Physicians may argue for or against active euthanasia but the arguments are made obscene when the voluntary decision of a person suffering from an incurable disease is technically recommended by the same persons as are assisting with the coerced execution using the same technics.

The professional organization for anesthesiologists chose neither to condemn or applaud the use of anesthetics for executions. The president of the American Society of Anesthesiologists in 1984, H. Ketcham Morrell, M.D., merely wrote the Director of the Office of Drug Research & Review of the Food & Drug Administration that "the use of anesthetic drugs for executions creates in patients profound fears of drugs in common clinical use." The crucial question of our responsibility for the use of anesthetic drugs by other people was not addressed. You will address this. Should physicians or other people use medical drugs to kill people at the behest of the

State of Pennsylvania? At the present time, no other people administer narcotics or sedatives without the supervision of a physician except for street people illegally. Illinois has physicians doing this. Texas has people whose skills are unknown to the public under the supervision of the warden perform these anesthetics.

The medical profession is involved thru the pharmaceutical industry. The Abbott pharmaceutical company in North Chicago manufactures pentothal. They know that pentothal is used for executions and that this is NOT on their list of recommended uses for pentothal. They do NOT approve of this. They have not, as far as I know, officially protested such use of their drug, merely pointing out that other companies also manufacture pentothal. The Organon pharmaceutical company manufactures pavulon. They also know that their product is being used for executions, do NOT approve of this use of their drug, and have not officially protested this use.

My comments thus far have been those of an anesthetist. However, a remarkable conflict of interest in the matter of executions has been faced by the psychiatrists. If a criminal is psychotic, executions are not performed in the United States. Thus, the psychiatrist will diagnose the criminal psychotic and thereby prevent an execution, or diagnose sanity and therefore able to understand and suffer the execution. The American Psychiatric Association "strongly opposes any participation by psychiatrists in capital punishment." American Medical Association trustee, Nancy Dickey, M.D. has deplored lethal injection as tying a medical procedure to state organized executions. "The two should in no way be linked." I agree.

As a citizen of Texas, let me remind you that the cities of Houston and Dallas have very high rates of murder and other violent crimes. No one has ever demonstrated that lethal injection or any other type of execution of criminals has deterred other people from committing crimes. As a matter of fact, states which do not execute criminals usually have lower murder rates. States which have stopped executing criminals have not suddenly had higher murder rates or vice versa. Even if there were a deterrant effect (which no one has succeeded in demonstrating), using the more "pleasant" form of killing would certainly not add to any theoretical deterrant effect since it is obviously less agonizing than hanging, firing squad or electrocution. You have not executed anyone since 1962. You will have clear evidence by now that executions do NOT DETER crime and that in other states in the United States, executions historically have been performed on black criminals more often than on white criminals who committed a similar crime. My recommendation is that physicians should not participate which is so blatantly racist. I grew up

during a time when physicians in one of the most advanced civilized nations in the world were actively narcotizing people for a supposed good of the state. German physicians were roundly condemned for their participation in this work. So also should physicians in the United States be condemned for such participation. Since most civilized nations in the world nowadays condemn executions per se, would it not be better if U.S. physicians recommended that the health of the State of Pennsylvania would be better if the state did NOT execute people at all?

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THE PENNSYLVANIA PRISON SOCIETY

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Testimony on SB 637

Lethal Injection

Before the

Pennsylvania House Judiciary Committee

Pat Schuler
Pennsylvania Prison Society
November 7, 1990



My name is Pat Schulder and I am a member of the Pennsylvania Prison Society Board of Directors. I am also a member of the Harrisburg Chapter of the Pennsylvania Coalition to Abolish the Penalty of Death. I appreciate the opportunity to present testimony today to the House Judiciary Committee on the issue of lethal injection.

The Pennsylvania Prison Society is firmly opposed to the use of lethal injection. As stated in the society's policy position:

"SB 637 proposes the use of lethal injection in lieu of electrocution in capital cases in Pennsylvania. Supportive arguments suggest that lethal injection is a more humane method of carrying out the death. It is our position that there is no humane method of imposing the death penalty.

Regardless of the method of execution, the Pennsylvania Prison Society remains opposed to capital punishment. Our position is that the state should not avenge one death by causing another.

The Pennsylvania Prison Society abhors any form of the death penalty."

We firmly believe there is no humane method of state sanctioned murder. Examples of cases of lethal injection going awry are numerous and indicate that it is not, a quick, painless death. Botched executions have been in the press including cases in Texas (the second state to use lethal injection following Oklahoma), Florida and Alabama. Gruesome stories are also reported on electrocutions around the nation.

In Texas in 1983, James Autry was strapped to a gurney while saline (the first step in execution by lethal injection) was administered in his veins even though there had been a stay

of his execution. The final lethal dose in March 1984 took 15 minutes while Mr. Antry was conscious, moving about and complaining of pain. In another Texas case, Raymond Landry waited 40 minutes while strapped to a gurney as the executioners hunted for a vein to administer the lethal drug after the needle popped out the first time. Until a vein was found, the lethal dose of potassium chloride sprayed in the room on the witnesses. If another vein was not found, the executioner and medical personnel would have had to make an incision to administer the needle. This is a major problem in that many drug users have none-usable veins.

In addition to the painful nature of these executions, one must question the participation of the physician in any capacity during an execution.

The Oath of Hippocrates taken by physicians states "I will prescribe regimen for the good of my patients according to my ability and my judgement and never do harm to anyone." Doesn't this suggest that doctors should not participate in killing? If they have sworn to preserve life, how can they actively participate in the execution of individuals?

In the early 1980's, the United Nations General Assembly, the World Medical Association, the American Psychiatric Association and the American Medical Association took positions against the participation of physicians following the introduc-

tion of lethal injection. On September 11, 1981, the Secretary General of the World Medical Association, Dr. Andre Wyman, issued a press release stating that "regardless of the method of capital punishment a state imposes, no physician should be required to be an active participant. Physicians are dedicated to preserving life...Acting as executioner is not the practice of medicine and physician services are not required to carry out capital punishment even if the methodology utilized pharmacologic agents or equipment that might otherwise be used in the practice of medicine." In addition, The British Royal Commission on Capital Punishment considered the use of drugs for executions but rejected this idea in the early 1950's. They concluded that no medical personnel could participate in taking a life.

The statutes currently existing in other states do not require a physician to personally administer the lethal drugs. Most however, provide, that the execution be carried out by "medically trained" technicians attached to state corrections departments. Irregardless, the physician must write the prescription and supervise the technician who inserts the catheter. Physicians, then, are directly involved in the execution procedure.

The electric chair was developed in 1888 as a more humane method of execution than hanging. One-hundred years later, we are looking at lethal injection as the more humane method. One must question whether or not it really is more humane. It may

be more humane for the witnesses who view the execution, but residents on Florida's death row, when asked if they would prefer to die in an electric chair or under a "painless" needle responded that "killing is killing." It did not make a difference to them at all.

Execution is the issue not the form of it. A more aesthetic, less objectionable method is not the solution to the state's dilemma of killing. The administration of the death penalty is fraught with problems and questions. Should the mentally retarded be executed, or should juveniles be executed? What if, as in the case of Neil Ferber, evidence later shows the person on death row to be innocent; why does the race of the victim figure so significantly in who gets the death penalty?

The death penalty serves no penological purpose. The myth of its deterrent value is a ruse for tough on crime and law and order stands of public officials. The only real deterrent, perhaps, is for the one individual faced with the execution, not the public at large. It is expensive and barbaric, and is arbitrarily applied. Let's use the energy we are now expending to talk about how to help victims' families, and how to end the cycle of violence and revenge instead of discussing how to kill. These questions are more troubling and more critical than the method of execution.

We urge you to oppose SB 637, which provides for lethal injection, but also to go further and question capital punishment as well.

Thomas Schmidt 3pg

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
HOUSE JUDICIARY COMMITTEE

Testimony on Behalf of
the American Civil Liberties Union of Pennsylvania
on Senate Bill 637
November 7, 1990

The American Civil Liberties Union does not have a stake in the means that are used to execute people in Pennsylvania. Most certainly, the ACLU is not appearing this morning to argue for the retention of the electric chair. Rather, the ACLU appears to reiterate its opposition to the death penalty and its belief that the adoption of lethal injection as a more "humane" method of execution only avoids the fundamental legal and moral issues.

Everyone on this committee is familiar with the recent history of the death penalty in the United States, which can be said to begin in the mid-1960's, when executions had virtually halted. With the Supreme Court's decision in Gregg v. Georgia in 1976, states have been free to design death penalty statutes. While a dozen states in the midwest and northeast have either declined to adopt post-Gregg death penalty statutes or have specifically abolished the death penalty, some 37 states now have death penalty statutes, Pennsylvania among them. More than 2,000 people are on "death row" today, more than 100 of them in Pennsylvania.

No executions have been conducted in Pennsylvania for more than 20 years and, because legal challenges to the death penalty are in early stages, no executions are likely within the next several years. In that sense, a public debate about the

means of execution appears academic. Yet, that debate should lead us to consider once again whether a death penalty ought to be sanctioned at all in this Commonwealth. My appearance here today is a modest expression of a persistent hope that debate on the death penalty will continue until it is outlawed.

Lethal injection statutes, like that proposed in senate bill 673, are presumed to offer a more humane means of execution, implicitly arguing that prior "more humane" means of execution, from the guillotine through the electric chair, have imposed considerable individual suffering. The medical and legal literature is full of the gruesome details of botched executions and, one may presume, senate bill 637 is meant to prevent such occurrences. The smell of burning flesh, or the sight of a man writhing on a gurney as prison officials struggle to reinsert the needle while avoiding the spray of lethal chemicals, have caused many to see the imposition of the death penalty as a state-sanctioned barbarity. Compelling as those images are, we must have the moral imagination to perceive that the execution itself is indefensible.

I hope that your consideration of senate bill 637 prompts you to consider that more fundamental question. When in 1980 the American Medical Association adopted a resolution stating that "a physician, as a member of a profession dedicated to the preservation of life when there is hope of doing so, should not be a participant in a legally authorized execution," it honored the oath taken by physicians for thousands of years: to do no harm. The vision of a just and compassionate human society

embodied in that oath should bind all of us. The penalty of death is a perversion of that vision. Viewed from this perspective, changing the technology of executions is only a tawdry deception.

Thank you for inviting the ACLU to offer this limited testimony on senate bill 637.

2pt

**TESTIMONY OF JOSEPH D. LEHMAN
PENNSYLVANIA COMMISSIONER OF CORRECTIONS
BEFORE THE
HOUSE JUDICIARY COMMITTEE
REGARDING
SENATE BILL 637 (LETHAL INJECTION)
NOVEMBER 7, 1990
HARRISBURG, PENNSYLVANIA.**

CHAIRMAN CALTAGIRONE, MEMBERS OF THE HOUSE JUDICIARY COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY.

SHORTLY AFTER I ASSUMED MY DUTIES AS COMMISSIONER OF CORRECTIONS, I WAS PLEASED TO LEARN THAT THERE WAS ALREADY INTEREST IN PENNSYLVANIA IN CHANGING THE METHOD OF EXECUTION FROM ELECTROCUTION TO LETHAL INJECTION.

AN EXECUTION IS A TRAUMATIC EVENT FOR EVERYONE INVOLVED - FOR THE CONDEMNED, HIS FAMILY, FOR PARTICIPATING STAFF AND FOR THE WITNESSES TO THE EXECUTION. MY OBLIGATION AS COMMISSIONER IS TO ENSURE NOT ONLY THAT THE LAW IS CARRIED OUT, BUT THAT IT IS DONE IN A SAFE AND HUMANE WAY.

CURRENTLY 20 STATES USE LETHAL INJECTION AS THEIR METHOD OF EXECUTION. THE ARGUMENTS MOST FREQUENTLY USED TO SUPPORT LETHAL INJECTION IS THAT IT IS MORE HUMANE, THAT IT IS A LESS VIOLENT FORM OF EXECUTION AND IS MORE CONSISTENT WITH THE NOTION OF HUMAN DIGNITY THAN OTHER METHODS.

ELECTROCUTION WAS INTRODUCED INITIALLY AS A MORE HUMANE ALTERNATIVE TO HANGING OR SHOOTING. WITH THE INTRODUCTION TO NEW TECHNOLOGY, LETHAL INJECTION IS QUICKLY BECOMING THE PREFERRED METHOD OF EXECUTION. I BELIEVE THE CHANGE IS APPROPRIATE FOR TWO REASONS

FIRST, DEATH THROUGH ELECTROCUTION, BECAUSE IT IS PERCEIVED AS MORE VIOLENT, DOES CREATE MORE ANXIETY ON THE PART OF THE INMATE TO BE EXECUTED AND THE STAFF HAVING TO CARRY IT OUT. THE INCREASED ANXIETY CREATES A GREATER CHANCE OF PANIC ON THE PART OF THE INMATE AND ERROR IN CARRYING OUT THE PROCEDURES.

SECONDLY, ELECTROCUTION INVOLVES THE USE OF A LETHAL ELECTRICAL CURRENT, WHICH IF THERE WAS A PROBLEM, IF SOMETHING WERE TO GO WRONG WITH THE EQUIPMENT, STAFF COULD BE PLACED AT RISK.

ON THE OTHER HAND, LETHAL INJECTION OFFERS THE CONDEMNED A MORE DIGNIFIED AND HUMANE WAY TO DIE. THEY RECEIVE AN INTRAVENOUS INJECTION OF SUFFICIENT QUANTITIES OF AN ULTRA FAST ACTING BARBITUATE FOLLOWED BY A CHEMICAL PARALYTIC AGENT. THE EFFECT OF THE COMBINATION BEING UNCONSCIOUSNESS AND DEATH SHORTLY THEREAFTER.

BECAUSE THE INJECTION IS INTRAVENOUS AND NOT INTRAMUSCULAR, PROBLEMS MAY OCCASIONALLY DEVELOP. THREE PROBLEMS HAVE ARISEN SINCE 1985 WITH LETHAL INJECTION, ALL IN TEXAS: LOCATION OF A SUITABLE VEIN, WEAK DOSAGE OF THE BARBITUATE AND FAULTY TUBING HAVE ALL CAUSED PROBLEMS. BUT THE CONSENSUS OF OPINION IS THAT THOSE CONDEMNED TO DEATH GREATLY PREFER LETHAL INJECTION OVER OTHER FORMS OF EXECUTION BECAUSE IT ALLOWS THEM TO MAINTAIN WHATEVER DIGNITY THEY HAVE LEFT. IT ALSO IS MUCH MORE BEARABLE, LESS TRAUMATIC, FOR THOSE INVOLVED, INCLUDING STAFF AND WITNESSES, KNOWING THAT DISFIGUREMENT IS NOT INVOLVED AND IF CARRIED OUT PROPERLY PAIN IS NOT ASSOCIATED WITH THE PROCESS. LAST BUT NOT LEAST, PROBLEMS IF THEY DO OCCUR, ARE NOT LIKELY TO PLACE STAFF AT RISK.

TODAY THERE ARE 118 INMATES ON DEATH ROW IN PENNSYLVANIA. WE IN THE DEPARTMENT OF CORRECTIONS ARE PREPARED TO CARRY OUT YOUR WISHES. WE WOULD, HOWEVER, ASK THAT YOU ALLOW US TO MOVE TO A MORE HUMANE AND SAFE MEANS OF CARRYING OUT THIS RESPONSIBILITY.

I WOULD ASK THAT YOU SUPPORT THE PASSAGE OF SENATE BILL 637.

AT THIS TIME I WOULD BE MORE THAN WILLING TO RESPOND TO ANY QUESTIONS THIS COMMITTEE MIGHT HAVE.

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PENNSYLVANIA MEDICAL SOCIETY
TESTIMONY ON SENATE BILL 637
HOUSE JUDICIARY COMMITTEE
HONORABLE THOMAS R. CALTAGIRONE, CHAIRMAN
NOVEMBER 7, 1990

GOOD AFTERNOON, MY NAME IS DR. MARY JO BONNER. I APPRECIATE THE OPPORTUNITY TO COME BEFORE YOU TODAY AS A PHYSICIAN AND AS CHAIRMAN OF THE PENNSYLVANIA MEDICAL SOCIETY'S BIOETHICS COMMISSION TO STATE MY VIEWS ON PHYSICIAN PARTICIPATION IN EXECUTIONS. I ASK THAT PHYSICIANS NOT PARTICIPATE IN AN EXECUTION. THE ROLE OF THE PHYSICIAN IS TO BE A CAREGIVER, TO ACT AS INTERMEDIARY FOR THE PATIENT. AS SUCH THE PHYSICIAN IS TRUSTED TO CARE FOR THE PATIENT. TO BE AN EXECUTIONER IS NOT THE ROLE OF THE PHYSICIAN.

TO EXECUTE BY LETHAL INJECTION:

1. AN INTRAVENOUS ACCESS IS NEEDED;
2. PRE-EXECUTION TRANQUILIZERS ARE USUALLY GIVEN;
3. A PARALYTIC AGENT AND LETHAL DOSE OF SHORT-ACTING BARBITURATE ARE GIVEN;
4. PULSE AND RESPIRATIONS ARE MONITORED; AND
5. PRONOUNCEMENT OF DEATH IS MADE.

NONE OF THESE STEPS SHOULD INVOLVE A PHYSICIAN EXCEPT FOR THE PRONOUNCEMENT OF DEATH. IN FACT, PHYSICIAN INVOLVEMENT MAY BE IN DIRECT CONTRADICTION TO A REGULATION PROMULGATED BY THE STATE BOARD OF MEDICINE WHICH DEFINES AS UNETHICAL OR IMMORAL CONDUCT "POSSESSING, USING, PRESCRIBING FOR USE OR DISTRIBUTING A CONTROLLED SUBSTANCE OR A LEGEND DRUG IN A WAY OTHER THAN FOR AN ACCEPTABLE MEDICAL PURPOSE."

WHEN WE STAND TO TAKE OUR OATH AS PHYSICIANS, WE ARE DEDICATING OURSELVES TO A LIFE'S WORK OF TREATING THE SICK WITH THE HOPE OF IMPROVING THEIR LIVES. WE TRY TO MAINTAIN HEALTH IN THOSE NOT ILL AND WHEN AN ILLNESS EXTENDS BEYOND OUR ART AND SCIENCE, TO AT LEAST GIVE COMFORT. PLEASE DO NOT BY LEGISLATIVE BREATH OR PEN STRIP US OF OUR ROLE IN SOCIETY. INSTEAD, I ASK YOU: I CHALLENGE YOU TO ASSIST US TO BE FOREVER CARING FOR ALL OF THE CITIZENS OF OUR GREAT COMMONWEALTH OF PENNSYLVANIA. FOR ALL THESE REASONS, WE CAN ACCEPT SENATE BILL 637 AS LONG AS IT IS NOT AMENDED TO REQUIRE PHYSICIAN INVOLVEMENT BEYOND MAKING A PRONOUNCEMENT OF DEATH.

THANK YOU FOR THE OPPORTUNITY TO SPEAK TODAY, AND I WOULD BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

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