

California Commission on the Fair Administration of Justice
Testimony March 28, 2008

Good morning members of the Commission and members of the public. I am Judy Kerr. I am the victim liaison and spokesperson for [California Crime Victims for Alternatives to the Death Penalty](#) referred to as CCV. I am also a registered nurse who has worked in the east bay for the past 28 years. Much of my work as a nurse has involved working with families and children whose lives have been profoundly affected by violence. I am speaking before you today to share with you my story and the stories of other CCV members. I will also address to you my concerns and observations about the impact of the death penalty on all murder victim survivors. It is important to recognize that murder victim family members' positions on the death penalty range from full support to absolute opposition. While I will not attempt to speak for all families who have suffered the horrors of violence I can and will continue to work on finding a common resolution that we can all live with. Finally, I will close my comments today by reviewing some alternatives to the death penalty that I hope you will consider as you finalize your recommendations.

When I spoke to you during the public comments period of the Sacramento hearings in January I shared with you some of the details of my brother Bob's murder. Bob was brutally murdered in 2003 and his killer still remains at large. You were given the [CCV booklet](#) which tells my story and the story of 13 other

CCV members. Today I would like to share with you some stories that are not in the booklet. These are personal stories that illustrate my experience.

The first story I'd like to tell you is of a four year old boy who I cared about 10 years ago when I worked in a pediatric rehabilitation unit in Oakland. This boy, Deontre, had been shot through the neck and was paralyzed. Deontre's mother was killed by the same bullet lodged in his spine. The bullet had been fired from a gun held by his father. Deontre's father was in prison for the crime which effectively left this child without parents but which also left him with someone alive to call his Daddy. I was assigned to care for Deontre for about 4 months. My job was to clean out the bullet wound on his neck, to help him adjust to his disability, and mostly to help him be four years old going on five. Caring for children is a special practice that has its own joys. One of my favorite memories of caring for Deontre was leaning over his head to reach something on the other side of his bed and having him look up at me with simple sincerity and concern and say "you have boogers in your nose". I remember thanking him for that piece of information as it was not something I was aware of prior to his insightful observation.

The other insight that Deontre left me was an abiding awareness that the execution of his father would serve no purpose other than to extend his already unimaginable pain and injury. I cared for this child and others like him years before my brother was murdered. The experience of seeing, feeling, and

touching a life that has been changed forever by violence formed and still guides my opposition to the death penalty.

The next story I'd like to share with is the story of another person in my life who profoundly shaped my opposition to executions. Vera Polakova is my partner's mother. She escaped Czechoslovakia in 1938. She survived the Holocaust by leaving her country and leaving family. Vera's mother and sister were killed by what can accurately be called state sanctioned murder. Vera died in 2003 a few months before Bob was murdered. I remember hearing Vera talk about her sister and about her mother and how they had perished. It is not my purpose today to compare the Holocaust with state sponsored execution in California because that comparison is as politically flawed as it is inaccurate. But, the horror that Vera described in recounting her story echoed precisely the horror I felt at 10pm when I answered the phone to be told by the medical examiner that my brother's beaten and lifeless body had been found beside the road. I remember the pain in Vera's eyes when she told me her story. It is the same pain that I have felt and that I have heard from murder victim family members and from family members of the executed. It is the pain of surviving a violent and intentional taking of another life. It is the same pain. It is the same pain that I have seen in the eyes of family members of the executed. Violent death causes pain whether it is random violence, intentional planned violence or whether it is violence executed in the name of justice. The emotional pain does not change.

A few months ago I had an opportunity to talk before the Kiwanis club in San Mateo. At that meeting there were equal numbers of death penalty supporters and opponents. One death penalty supporter in particular affected me. He was a gentleman who was first introduced to me as a 93 year old founding member of that club. I later learned that he was a retired Superior Court Judge in San Mateo County. The judge raised some compelling points in the discussion about the death penalty and I quickly realized that my oratorical skills were far inferior to his. Any attempt to debate the points with him was not promising to end in my favor so I did the best I could to move the discussion to another level and to finish my comments before the good judge stole the show. I enjoyed the exchange and told the former judge as much after the meeting. But it was after these friendly formalities that his comments took a darkly troublesome turn. The judge recounted to me in graphic and horrifying detail the story of two death penalty cases that he had heard during his tenure in San Mateo County. These convictions were over 30 years old but his recollection of the detail was chilling, precise, and recounted with disturbing urgency.

I've thought a lot about the urgency of his story in the past months. I have concluded that it is the sentence of death by execution and not the murder itself that ties this judge to the horror of these homicides. It seems that this almost ritualistic remembering and recounting the excruciating details of a capital murder case is a technique used to rationalize execution. I have to wonder if we haunt ourselves with the details of these cases because when we sentence these men

to execution we anchor our souls to their crimes for the rest of our time on earth. I have to wonder if we are branding violence into the futures of our next generations by killing their fathers.

How telling and ironic that, to my ear, the horrific details of the capital cases I heard from the judge were no different than the horrific details of the murders I have heard from families whose cases have not been determined death eligible under our complex and baffling California statutes.

The last story I'd like to share with you is my profound sense of compassion and responsibility toward murder victim family members who support the death penalty. While I personally oppose the death penalty absolutely, I also fully understand the pain and suffering of death penalty proponents and their need for the perpetrator to be caught and held accountable. I hope that whatever recommendations this commission makes will include those concerns. Like me they are asking for justice that does not take decades to complete, for a sense of safety that includes getting murderers off the street, and for a sense that the life of their loved one has been respected by the criminal justice system that is meant to serve them, not exclusively, but to serve them as members of society as a whole.

Finally, in what time I have left before you today I would like to explain what, for me, represents an alternative to our current system. As I shared with you earlier, a suspect in my brother's murder has been neither identified nor apprehended. I have not been through a trial nor do I know if his case will be death eligible. What I do know is that since the death penalty was reinstated in 1977 there have been over 575,000 homicides in the US and well over 30,000 murders in California. Those are big numbers but even more shocking is that over one third of those murders remain unsolved by police. So, there are hundreds of thousands of murder victim family members, who, like me, have no sense of safety that their family member's killer is off the streets. Alameda County currently reports a homicide clearance rate of just 26%. That means 3 out of 4 murderers are not arrested and most likely continue to walk the streets. Life without the possibility of parole is an alternative to capital punishment that both addresses our need for public safety and allows us to redirect precious monies currently being used on capital trials to solving cold cases.

Two years ago California temporarily stopped executing people. Yet, as of today, more people than ever are dying on death row. Since the California's last execution in January 2006, ten men on death row have died of natural causes or suicide. We've carried out only 13 executions in the last 30 years. In all, 59 people have died of natural causes or suicide while waiting for the state to kill them. That's more than 4 times the number that have been executed.

My deepest despair with these numbers is that there is no meaningful distinction between the people we sentence to die by execution and those we sentence to die in prison. The details of the judge's capital cases that we talked about earlier are truly no different from the details of non-capital cases from different counties. The reality is that people who commit similar crimes get different punishments based on their location, the quality of their lawyer, or the local political climate. Defendants are sentenced to die by execution because the county they live in doesn't provide their lawyers enough money to hire experts or because the prosecutor's office just happens to aggressively pursue death. There are 58 different counties in California and there are 58 different death penalties. In some counties there is an established reputation for aggressive identification of death eligible charges and in other counties the death penalty has already been abandoned.

Testimony previously heard by this commission indicates that sentencing people to grow old and die naturally in prison costs far less than trying to execute them. Californians pay more than \$117 million each year to maintain a death penalty system that is functionally equivalent to death in prison. Over 20 years, the state would save more than \$2.34 billion if we actually sentenced everyone on death row to death in prison. These figures don't even include the costs of trials. Each death penalty trial costs a county three times more than a trial seeking death in prison. There is no way to make death by execution any cheaper, and if we are going to try to fix it, it's going to cost a whole lot more, as this Commission has

already heard. Many who are surprised by the information about the cost of the death penalty and the extraordinary cost of needed reforms find their minds more open to alternatives solutions for even the worst crimes.

California Crime Victims for Alternatives to the Death Penalty speaks for murder victim survivors in California who know that its time to stop executions and simply sentence people to permanent imprisonment. It is a well established fact that most prisoners sentenced to death in California actually meet the same fate as prisoners sentenced to what is called “life without the possibility of parole”. The sentences have different names, but the end result is almost always the same: the prisoner dies in a level four prison away from any freedom or comfort of life on the outside. The Commission has heard about the many problems with California’s death penalty and the many expensive reforms needed. But there is one choice that preserves justice. There is one alternative that leaves room for the inherent fallibility of our best human efforts in criminal justice. It is a choice that can be found in a careful hearing of the voices from family members of murder victims. It is the option to replace the death penalty with permanent incarceration for the worst offenders.

I would like to thank you for hearing my comments and the comments of other murder victim survivors and commend you for undertaking this important and honorable work.