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### Parole Interview Transcript/Decision - FUSL000069 (2009-03-10)

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ORIGINAL

STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
DIVISION OF PAROLE

-----  
In the Matter

of

██████████ ██████████

DIN # ██████████

NYSID # ██████████  
-----

TRANSCRIPT OF PROCEEDINGS at a hearing held in the above-entitled matter by the State of New York Executive Department, Division of Parole, on the 10th day of March, 2009 at Woodbourne Correctional Facility, New York.

BEFORE:

COMMISSIONER JAMES B. FERGUSON  
COMMISSIONER G. KEVIN LUDLOW  
COMMISSIONER JOSEPH P. CRANGLE

PRESENT:

LOU ALVARADO, SPO  
RENEE SOMERS, APA  
MICHAEL KELLY, FPO I  
PATRICIA JOHNSON, FPO II

DIVISION OF PAROLE  
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**APPEALS UNIT**

( [REDACTED] [REDACTED] [REDACTED] )  
1 INTERVIEW BY COMMISSIONER Ludlow:

2 Q Good afternoon, sir.

3 A Good afternoon.

4 Q You are [REDACTED] [REDACTED]

5 A Yes, sir.

6 Q I'm Commissioner Ludlow. With me is  
7 Commissioner Ferguson.

8 COMMISSIONER FERGUSON: Good afternoon  
9 sir.

10 Q And Commissioner Crangle.

11 COMMISSIONER CRANGLE: Hello.

12 A How are you?

13 Q Mr. [REDACTED] I believe this is your  
14 fifth appearance before the Board of Parole, is that  
15 correct, sir?

16 A Yes, it is.

17 Q You're now 62 years old, is that correct?

18 A Yes, sir.

19 Q You were found guilty by verdict to each  
20 of the following crimes, murder second, manslaughter  
21 second, grand larceny second, burglary second,  
22 criminal possession of a weapon third and possession  
23 of burglar tools, is that all correct, sir?

24 A Yes, sir.

25 Q Controlling sentence is 25 to life. Mr.

( [REDACTED] [REDACTED] [REDACTED] )  
1 [REDACTED] do you have any appeals pending or do you  
2 anticipate filing any appeals?

3 A Yes.

4 Q Then I especially call your attention,  
5 sir, to the fact that we are taking a stenographic  
6 record of the interview. Every word we discuss is  
7 being reduced to a written transcript. It's  
8 possible that that transcript could find its way to  
9 public forums. We caution you about what you may  
10 say regarding the terms and circumstances of these  
11 crimes so as not to limit, impede or jeopardize any  
12 pending appeal you have or any future opportunity  
13 for an appeal you may have. You may decline to  
14 discuss the terms and circumstances of these crimes,  
15 we will not hold that against you. Do you  
16 understand that, sir?

17 A Yes, sir.

18 Q Okay, sir. These are your only felonies  
19 of record. I believe you have four prior  
20 misdemeanors, unauthorized use of a motor vehicle  
21 going way back to 1964 in [REDACTED], also unlawful use  
22 of a motor vehicle in '64 again, unlawful entry '67,  
23 petit larceny '71, is that correct, sir?

24 A Yes, sir. I believe the unlawful entry  
25 was a criminal trespass.

( [REDACTED] [REDACTED] [REDACTED] )  
1 Q That's a misdemeanor, sir?

2 A I believe so.

3 Q I believe so.

4 A And the unlawful use of motor vehicle was  
5 the same, exact same case, it was docketed twice.

6 Q Right, okay. So what is it then, three  
7 misdemeanors?

8 A Yes, sir.

9 Q Okay, sir. You've been in an  
10 exceptionally long period of time, sir, by my  
11 calculation almost 33 years.

12 A Going on 34.

13 Q It's a long period of time, we recognize.  
14 We do not have the sentencing minutes, although the  
15 staff has made a diligent effort to obtain them. We  
16 have written to the [REDACTED] County court system. We  
17 have correspondence on file received June 9th, 2008  
18 advising us and I quote from a letter of [REDACTED]  
19 [REDACTED], chief court reporter to the effect and I  
20 quote "the court reporter who stenographically  
21 recorded the minutes is no longer working in county  
22 court and not living in the State of [REDACTED]. A  
23 search of our archives reveals that the stenographic  
24 notes are not available and therefore the minutes  
25 are not able to be furnished". However, you were

( [REDACTED] [REDACTED] [REDACTED] )  
1 presumably at sentencing a long time ago. Do you  
2 recollect if there's anything stated there that we  
3 should know about today as we contemplate parole for  
4 you, sir?

5 A The only thing I remember he commented on  
6 the fact that I utilized my time constructively, got  
7 involved with programs. However, at the time I  
8 guess he felt that the first sentence imposed, I had  
9 a reversal in 1981, and I guess he followed the  
10 recommendations of the first sentencing court and  
11 gave me the 25 to life.

12 Q Given the nature of the underlying offense  
13 we are required to have a mental status report on  
14 file and we are in compliance with that. You were  
15 seen by the office of mental health October 16,  
16 2008. Do you recall that, sir?

17 A Yes.

18 Q You were examined by a Miss [REDACTED].  
19 The conclusion of Miss [REDACTED] is to the effect  
20 that there are no overt signs of mental illness. If  
21 you were to be released there are no precautions  
22 from a mental health standpoint. Do you agree with  
23 that report, sir?

24 A Certainly do, sir.

25 Q Is that current and accurate as of today

( [REDACTED] [REDACTED] [REDACTED] )  
1 in your opinion?

2 A Yes.

3 Q We have some information on file I'd like  
4 to read to you to see if it's factually correct in  
5 your opinion. This is a very important decision  
6 this Panel is about to render, we want to be certain  
7 that it's based on accurate and thorough  
8 information. The file states [REDACTED] 1975 at  
9 approximately 2:30 a.m. Police Officer [REDACTED]  
10 [REDACTED] responded to [REDACTED] [REDACTED]  
11 [REDACTED] to investigate a reported burglary in  
12 progress. He observed the defendant exiting the  
13 store and attempted to apprehend him ordering him to  
14 place his hands up against a wall. The defendant  
15 refused to comply and pulled out a gun. He quickly  
16 turned and fired one shot into the chest of Officer  
17 [REDACTED] at pointblank range. He then fled the scene  
18 and was apprehended a short time later hiding  
19 nearby. Officer [REDACTED] battled for his life for a  
20 little more than one month. He remained in a  
21 comatose condition and at one point had to have his  
22 right leg amputated. He finally succumbed to his  
23 injuries and died on [REDACTED], 1975. Are those  
24 facts accurate, Mr. [REDACTED] as far as you know?

25 A As far as what's written. I have no

( [REDACTED] [REDACTED] [REDACTED] )

1 independent knowledge of the actual activity of the  
2 night of the crime. I was on prescribed medication.  
3 In fact, more recently I just found out that of the  
4 28 pills that were in the prescription bottle that I  
5 filled on Saturday I had taken 21 of them in less  
6 than a 24 hour period of time. So my recollection  
7 of the crime itself is nonexistent. I have no  
8 independent recollection of the crime. However, I  
9 read 20,000 pages of transcript and believe me I  
10 didn't believe I did this in the beginning, it  
11 wasn't until after I kept on reading the minutes,  
12 the transcripts and the evidence that I finally  
13 accepted the fact that I did this. For about seven,  
14 eight years I didn't believe I did it. I went to  
15 trial believing I was innocent.

16 Q Who is [REDACTED] ?

17 A At the time she was my common law wife who  
18 eventually became my codefendant.

19 Q What was her role in this crime?

20 A I have no idea. She was there, I was  
21 there, that's all I remember.

22 Q We discussed your criminal record, sir.  
23 As we indicated at the beginning of the interview  
24 you've been in over 33 years. More recently you've  
25 been involved with work in the gymnasium on special



( [REDACTED] [REDACTED] [REDACTED] )  
1 assignment. Would it be fair to say, Mr. [REDACTED]  
2 that you've completed all recommended therapeutic  
3 programming and vocational programming?

4 A That and then some.

5 Q Is there anything in particular with  
6 regard to that programming that you would like to  
7 highlight for the panel?

8 A As far as the program I've taken or the  
9 ones I've --

10 Q Any programs you wish to expound upon for  
11 the benefit of the panel?

12 A Well, the only notable exception to the  
13 therapeutic programs that I took and vocational  
14 programs and substance abuse programs, alternatives  
15 to violence programs, aggression replacement  
16 training programs and things like that I did all of  
17 those.

18 Q AVP?

19 A AVP, ARC -- excuse me, ART, aggression  
20 replacement training which I was a facilitator, one  
21 of the first five in the state. More notably I  
22 started, after my second trial and I got convicted  
23 and I came back into the system, I had a chance  
24 meeting with then [REDACTED] (phonetic spelling)  
25 who was the crime victims chairman. We did a panel

( [REDACTED] [REDACTED] [REDACTED] )

1 discussion in Attica Correctional Facility and I met  
2 him there, he was in my group and he kept on  
3 expounding the rights of victims and I kept on  
4 complaining that I was the victim, I still believe I  
5 was the victim. And it was at that meeting that I  
6 had an epiphany that I realized that I wasn't the  
7 victim. And from 1983 up until '96 it took me 13  
8 years to get the first victims awareness program  
9 started. I spent 13 years getting that, to bring  
10 victims into the facility to share their experience  
11 so the guys can see what their impact was on other  
12 people's lives, so hopefully they can change their  
13 attitude, stop blaming everybody else, stop blaming  
14 society, stop blaming society, stop blaming no  
15 father at home. And I had that program running for  
16 about a year or so until I came here.

17 Q In the beginning you referenced back in  
18 time that you were taking, I believe, 28 prescribed  
19 medications?

20 A No, I had filled, I came up from [REDACTED]  
21 on a weekend and I went to a pharmacy in [REDACTED],  
22 [REDACTED] and I filled a couple of prescriptions, one  
23 was for Nargesic Forte which is one week  
24 prescription, it was 28 pills. Another one was for  
25 Darvon, one for Valium I think and I forgot the

( [REDACTED] [REDACTED] [REDACTED] )  
1 other one.

2 Q Pain killers?

3 A I was under a doctor's care for a year  
4 prior to the crime. In 1974 I was in [REDACTED]  
5 getting migraines headaches, I was getting  
6 blackouts, personality change, depression, [REDACTED]  
7 hyperactive. I was getting a lot of things, so I  
8 went to a doctor, and he prescribed medication that  
9 wasn't working. He gave me another one, but he  
10 never stopped me on the other one. You know, he  
11 didn't state don't take this and don't take this  
12 one. So I had these three different prescribed  
13 medications that I was taking one was Mellaril, by  
14 the way. And when I came up to [REDACTED] I only had  
15 a little bit left from my prior medication, I went  
16 to the pharmacy and I filled those. And the one  
17 that I vividly remember taking was Nargesic Forte.  
18 It was a week only, I can only give you a week and  
19 that was 28 pills. And it wasn't less than a day  
20 later the crime happened that there were only seven  
21 pills left in the jar. So that means I had to take  
22 21.

23 Q So you're inferring that you overdosed on  
24 the prescriptive medication?

25 A Well, it certainly affected my ability to

( [REDACTED] [REDACTED] [REDACTED] )  
1 form any, any conscious effort to do something. I  
2 was totally --

3 Q Go ahead, I didn't mean to interrupt.

4 A I was totally irrational, as a matter of  
5 fact. If you read any of the letters from  
6 especially the detective that knows me for 50 years  
7 I saw him the night before the crime, he wrote  
8 affidavits to the court indicating that I was  
9 totally out of, you know, for lack of a better term,  
10 I was out of it. A couple other affidavits to the  
11 court that stated that I had visited those people  
12 the night before the crime and that I was on  
13 medication.

14 Q Did you present that in your case when you  
15 went to trial?

16 A Well, the trial -- exactly that's why I  
17 got manslaughter. The only reason I got 25 to life  
18 on this crime is because a felony murder carries 25  
19 to life. I got convicted of manslaughter under the  
20 first count of killing [REDACTED] and I got convicted  
21 of manslaughter on the intentional murder. There  
22 was no intent or in this case mitigating factors,  
23 which the jury believed was the fact that I was  
24 under medication. And my second trial they came  
25 back with manslaughter in the second degree. The

( [REDACTED] [REDACTED] [REDACTED] )

1 controlling case here was the felony murder which  
2 was 25 to life. And the DA told the jury that you  
3 don't have to find attempted <sup>INTENT IN</sup> felony murder or you  
4 don't even have to believe he pulled the trigger.  
5 And subsequent to that I guess the jury found that  
6 they didn't know the difference between manslaughter  
7 and felony murder, and they came back with the  
8 felony murder. As far as the evidence at trial,  
9 yes, there was evidence that --

10 Q So you're saying, if I'm getting this  
11 clearly, that the murder second verdict was a  
12 by-product of the manslaughter?

13 A The manslaughter was a less accrued <sup>er included</sup>  
14 offense, the murder under the first count. Back  
15 then it was 12527 was the murder of a police  
16 officer. I'm sure as a former prosecutor you know  
17 exactly what I'm talking about. Sorry, Mr.  
18 Ferguson. They came back with a less included  
19 offense under 12527 and the intentional 12525. But  
20 when it came down to the third count which was  
21 felony murder they found me guilty of the felony  
22 murder. But they also, they found me guilty of  
23 manslaughter first degree and less included offense.

24 COMMISSIONER FERGUSON: What you are  
25 saying, they didn't outright find you guilty of

( [REDACTED] [REDACTED] [REDACTED] )  
1 murder, they found you guilty of manslaughter  
2 and then the felony murder in relation to the  
3 death during the commission of a felony.

4 Q That's what I meant to ask. That's where  
5 my question was going just what he stated.

6 A And my second trial they came back under  
7 the manslaughter first degree they found me guilty  
8 of manslaughter second. But what they did was, and  
9 the prosecutor, I'm sure you know this, they put the  
10 felony murder at the second count, they put the  
11 manslaughter as the top count which shouldn't have  
12 been.

13 COMMISSIONER FERGUSON: I mean it  
14 certainly would have the appearance of an  
15 inconsistent verdict, but I'm sure that you had  
16 all of that, those issues addressed on appeal.

17 THE INTERPRETER: Right up to the Second  
18 Circuit Court of Appeals. They ruled on another  
19 issue, they didn't rule on that.

20 COMMISSIONER FERGUSON: Just in terms of  
21 the medication, you know, you're saying that you  
22 surmised that you took this medication because  
23 it was gone. I mean prior to taking it all one  
24 would assume that you were in a sober condition,  
25 if it's the medication that resulted in your

( [REDACTED] [REDACTED] [REDACTED] )  
1           intoxication and blackouts. So why don't you  
2           remember beforehand taking all of this  
3           medication?

4           A       Well, because I came up from [REDACTED] with  
5           three different medications. The only thing I  
6           remember was the two nights before. My mother  
7           worked at [REDACTED] in between [REDACTED] and [REDACTED].  
8           The only thing I actually remember was sitting at  
9           the counter and taking the medication and she said  
10          to my codefendant at the time, my common law wife,  
11          she said to [REDACTED], how long has he been doing that  
12          because I never used drugs in my life. She said how  
13          long has been doing that? And she told my mother  
14          that he had been getting headaches and popping them  
15          like whatever and that's the only thing I remember  
16          that night until a couple of days later when I went  
17          to the county jail and they told me what I was there  
18          for.

19                    COMMISSIONER FERGUSON: Why did you have a  
20          gun?

21          A       I was in [REDACTED], I had dual residency. I  
22          lived in [REDACTED] and to me my life, I was driving  
23          back and forth from [REDACTED]. I had a legitimate  
24          business. I also was a fence. I grew up with a lot  
25          of people that were into the airport. I worked at

( [REDACTED] [REDACTED] [REDACTED]  
1 the airport. Hijacking.

2 COMMISSIONER FERGUSON: You are saying  
3 this was a legal weapon?

4 A It was legally bought.

5 COMMISSIONER FERGUSON: I'm sorry?

6 A It was legally bought. I mean the DA --

7 COMMISSIONER FERGUSON: Were you licensed  
8 in [REDACTED] to have it?

9 THE INTERPRETER: No. But traveling back  
10 and forth to [REDACTED] eight, ten times a month I  
11 always had it with me.

12 COMMISSIONER FERGUSON: But I mean each  
13 state that you drive-through you're subject to a  
14 felony count of criminal possession of a weapon?

15 THE INTERPRETER: I wasn't thinking about  
16 that at the time.

17 Q You were 29 then?

18 A Yes.

19 A I can't change any of that.

20 Q What kind of work do you do in [REDACTED]?

21 A Well, I was, I had a construction company.

22 I had [REDACTED] in [REDACTED]  
23 and I was in [REDACTED] and I was contracting to build  
24 tennis courts in [REDACTED]. And I come up to [REDACTED]  
25 to get some money the people owed me.



( [REDACTED] [REDACTED] [REDACTED]

1 COMMISSIONER FERGUSON: People owe you for  
2 what?

3 A Excuse me?

4 COMMISSIONER FERGUSON: What did people  
5 owe you money for?

6 Q Work?

7 A They owed me money for work. For  
8 construction work, electrical work.

9 COMMISSIONER FERGUSON: Because you were  
10 doing that work up here, too?

11 A Yeah.

12 Q You mentioned the airport. What was that  
13 about?

14 A I used to work in the airport in 1969, '70  
15 and I made a lot of connections at the airport. So  
16 every time they got stolen stuff they would bring it  
17 to me and --

18 Q That was [REDACTED]?

19 A Excuse me.

20 Q [REDACTED]?

21 A It was [REDACTED]? No, I'm talking  
22 about [REDACTED], [REDACTED].

23 Q [REDACTED]?

24 A Yeah.

25 COMMISSIONER FERGUSON: Were you saying

( [REDACTED] [REDACTED] [REDACTED] )  
1 COMMISSIONER FERGUSON: I'm sorry?

2 A Night of the crime. I don't know.

3 COMMISSIONER FERGUSON: You were caught  
4 right leaving the scene of the crime?

5 A The night.

6 COMMISSIONER FERGUSON: You don't have any  
7 doubt at this point that you were involved in  
8 this?

9 A No, I accept, you know. I mean '83, '84,  
10 I started to realize that they accepted it and I  
11 stopped blaming everybody and took responsibility  
12 back then.

13 COMMISSIONER FERGUSON: When was your last  
14 retrial?

15 A My retrial was '82, '81.

16 COMMISSIONER FERGUSON: So why if you had  
17 accepted responsibility and you realized you  
18 murdered or killed a police officer, why would  
19 you continue to go through all of this appellate  
20 process and try to get a verdict that found you  
21 guilty for what you truly did do?

22 A I'm glad you asked that. Because I  
23 believed in my heart as everybody else does I did  
24 not intend to do this. And that after reading much  
25 of the law, reading about responsibility I accepted

( [REDACTED] [REDACTED] [REDACTED] )  
1 responsibility for what I did but I said because of  
2 being under prescribed medication and did not, would  
3 not be able to form the requisite form to do the  
4 crime that I am responsible but I'm not completely  
5 responsible.

6 COMMISSIONER FERGUSON: Well, no one --

7 A Legally that I was, so I said let me argue  
8 that.

9 COMMISSIONER FERGUSON: In terms of the  
10 element of intent --

11 A And that was my basis for appeal. And I  
12 mean you can get this, it's all public record  
13 anyway, that I went to the district court and that  
14 was it. And the reason they came, and they allowed  
15 this statement in, confession, they allowed in the  
16 first time I got a reversal on that. Ordered a new  
17 trial. And they put it back in under 6050. The  
18 psychiatrist can testify as to state of mind and I  
19 objected to that because he can formulate an opinion  
20 but he can't utilize inadmissible evidence. And  
21 what happened was they let that in and they said it  
22 was harmless error this time because my codefendant  
23 testified and the guilt was overwhelming instead of,  
24 so.

25 COMMISSIONER FERGUSON: And what did she

1 say in terms of your intoxication and state of  
2 mind?

3 A Well, her testimony, well everybody gets  
4 headaches. That's what she said. She said yeah, he  
5 got headaches and stuff like that.

6 COMMISSIONER FERGUSON: But in the end you  
7 know you were voluntarily intoxicated on these  
8 medications. No one informed you it was an  
9 accidental overdose. You took such a  
10 significant quantity of these drugs that, you  
11 know, you voluntarily placed yourself, and I'm  
12 sure you understand it doesn't matter to the  
13 dead officer or his family, you know, he's dead,  
14 whether you meant to be on drugs, whether you  
15 weren't on drugs, whether you remember what you  
16 did, whether you don't remember what you did, to  
17 them it doesn't matter, so.

18 A That's right.

19 COMMISSIONER FERGUSON: That's why I was  
20 curious in terms of what your wife had to say  
21 about, or why did you do this. Was she involved  
22 in the criminal lifestyle?

23 A Well, I mean she was with me when I --

24 COMMISSIONER FERGUSON: No, but I mean --

25 A I facilitated exchanges from one person

( [REDACTED] [REDACTED] [REDACTED] )

1 for another, material and stuff like that but you  
2 raised a good point about the voluntary  
3 intoxication. First of all, I never took drugs in  
4 my life, that's number one. Second of all during my  
5 first trial my defense attorney ordered a battery of  
6 tests, including an encephalogram and you name it.  
7 When they gave me medication, they gave me Secenol  
8 to put me out to take a particular test or whatever  
9 it was and it didn't work. And they gave me more,  
10 it didn't work. They gave me 1,200 milligrams of  
11 liquid Chlorohydrate I didn't bat an eye. They went  
12 all the way up to 3,000 milligrams of liquid  
13 Chlorohydrate and they couldn't get me to sleep.  
14 Testifying as the doctor he did say that represents  
15 the extremely high tolerance for drugs. And what  
16 I'm assuming is that because my tolerance level was  
17 high in order for me to feel any relief from the  
18 medication that I would take because every time I  
19 was getting a headache I would just take another  
20 pill. I didn't stop and say well, I took one 12  
21 hours ago, you know. I just took it -- every time I  
22 felt a headache I took another pill, I took another  
23 pill and the consequences of this is I just went off  
24 the, I took so much that I was gone.

25 Q Did you have a physical disorder in your

( [REDACTED] [REDACTED] [REDACTED] )  
1 brain that caused the headaches?

2 A Well, the only thing that came up  
3 significant was something about ossification of some  
4 sort between the lobes, the hemispheres of the  
5 brain, that was about the only thing. And when I  
6 was a kid I used to have seizures, and I don't know  
7 what they were. They were just boom, I was out  
8 cold. I remember, now we are talking 35 years, 34  
9 years ago, so with medical technology advances you  
10 might come up with something new.

11 COMMISSIONER CRANGLE: So the seizures  
12 just stopped?

13 A Well, actually they stopped when I was  
14 about 13, around that.

15 COMMISSIONER CRANGLE: You just grew out  
16 of it?

17 A I had it from about eight to nine, eight,  
18 nine, ten, around that area. Like a couple of years  
19 I had them. I used to just get like faint and then,  
20 I don't mean seizures where you're erratic in your  
21 movement, just where I passed right out. And I was  
22 in [REDACTED], get up in the morning and say  
23 prayers with 30 other guys and before prayers were  
24 over I was out. I just went out in a park. I was  
25 11 years old, I got off a bench and I just boom,

( [REDACTED] [REDACTED] [REDACTED] )  
1 went out, face dive. So I mean there was something  
2 wrong back then, but. They stopped when I was about  
3 12.

4 COMMISSIONER CRANGLE: Thanks.

5 Q When was your last disciplinary ticket?

6 A Approximately 1980.

7 Q So for the last --

8 A 29 years.

9 Q -- 29 years you have not received any  
10 ticket?

11 A No.

12 Q It's much to your credit.

13 A I don't think it means much though.

14 Q I'm sorry?

15 A I said I don't think it would mean much  
16 here.

17 Q Why do you say that?

18 A Actually -- again, I'm sorry, I don't want  
19 to interrupt you.

20 Q You have corresponded with [REDACTED]  
21 [REDACTED] in [REDACTED] [REDACTED], and they will assist you  
22 if you're on parole, is that correct?

23 A Yes.

24 Q Where is [REDACTED] [REDACTED]?

25 A It's over by [REDACTED] some place going

( [REDACTED] [REDACTED] [REDACTED]  
1 towards [REDACTED]. [REDACTED].

2 Q They will assist you?

3 A I got involved with them in 1985. Became  
4 a Zen Buddhist. Actually I started practicing Zen  
5 Buddhist. I am still a Catholic, but I am a Zen.

6 Q This will be a residential arrangement for  
7 you?

8 A Right.

9 Q And have you discussed any work options  
10 with them? Do you know what those options might be?

11 A Well, I'm sure they set the litany of  
12 responsibilities that I would have starting from 5  
13 o'clock in the morning to get up. Includes  
14 caretaking, the garden, housework, the maintenance,  
15 whatever it is that they have. Computer stuff I  
16 guess.

17 Q We have a variety of letters on file. I  
18 certainly want to acknowledge them. We appreciate  
19 the time that third parties take to share their  
20 thoughts with us. I have a letter from [REDACTED]

21 [REDACTED], [REDACTED] --

22 A [REDACTED].

23 Q From the [REDACTED], a letter of support, he  
24 owns [REDACTED]. He's been a friend of yours  
25 for over 35 years. He guarantees employment for you



( [REDACTED] [REDACTED] [REDACTED] )  
1 at [REDACTED]. Center for Law and Justice  
2 Dr. [REDACTED] [REDACTED], Ph.D., letter of support  
3 received February 25th. [REDACTED] from  
4 [REDACTED].

5 A It's an interesting line in that letter.  
6 He doesn't know much about rehabilitation but if I'm  
7 that it doesn't exist.

8 Q Yes, specifically he says I don't know  
9 about rehabilitation but if this guy is not then it  
10 doesn't exist, correct. He has done that from some  
11 place deep within and has made the best of a bad  
12 situation. [REDACTED] (phonetic spelling),  
13 [REDACTED]. Who is Mr [REDACTED] to you?

14 A Zen Buddhist.

15 Q We appreciate those letters. Mr.  
16 [REDACTED] anything additional that we should cover  
17 while the record is still open that is important to  
18 you?

19 A I know it's important, did you ever read  
20 Mr. [REDACTED]'s letter, former [REDACTED]  
21 detective?

22 Q I'm looking for that. How long ago was  
23 that received, do you know?

24 A It's awhile back.

25 Q Would you care to summarize the letter for

( [REDACTED] [REDACTED] [REDACTED] )  
1 us?

2 A Well, actually it was -- he did mention  
3 the fact that the night before the crime, I've known  
4 him since I'm 13 years old, he also, it's not in  
5 there but he did write to the Parole Board  
6 indicating that I'm not a killer. That he actually  
7 said I might have been a thief, but I'm not a killer  
8 or murderer.

9 Q Okay, we'll --

10 A While you're there though actually I have  
11 a couple of questions myself since you're talking  
12 about letters. I understand you have about a  
13 thousand letters of opposition from the [REDACTED]  
14 [REDACTED] PBA and other members of law enforcement, is  
15 that true?

16 Q We have a variety of correspondence here.  
17 We haven't gone through it yet.

18 A I'm talking about in opposition of my  
19 parole.

20 Q There may be. There's a lot of  
21 correspondence here that we have to go over yet.  
22 But, go ahead, what's the question?

23 A Well, regarding the letters that you have  
24 from the [REDACTED] Policemen's Benevolent  
25 Association, I wanted to know what impact, influence

( [REDACTED] [REDACTED] [REDACTED] )  
1 that will have on your decision today?

2 Q If they exist that is just one of several  
3 factors that we're required to consider under  
4 Executive Law 259. The panel has yet to discuss  
5 this file and as to the weight that would be put on  
6 any one item I can't speculate right now. We would  
7 have to confer as a panel on that and all factors  
8 required.

9 COMMISSIONER FERGUSON: Are you still on  
10 any medication for the headaches or has that  
11 stopped?

12 A Well, my back, I have a compressed disc,  
13 herniated disc. They got me on Motrin which really  
14 doesn't do anything. I take Dicyclomine (phonetic  
15 spelling), I had my gallbladder taken out. I had  
16 prostate surgery.

17 COMMISSIONER FERGUSON: Is that a no to  
18 the mental health meds?

19 A Excuse me?

20 COMMISSIONER FERGUSON: Is that a no to my  
21 question about mental health meds?

22 A I didn't hear mental health.

23 COMMISSIONER FERGUSON: I'm asking if you  
24 still got the headaches that you were being  
25 treated for?

( [REDACTED] [REDACTED] [REDACTED]

1           A       Motrin. I'm not under mental health or  
2 anything, I haven't been, but I get anxiety a little  
3 bit here.

4           Q       The letter from Mr. [REDACTED] of  
5 [REDACTED] was received August 11th, 2006, two page  
6 letter, and he quotes in closing, the Board must  
7 examine the facts and be unbiased. It's not about  
8 being politically correct. My position as an  
9 ex-detective today is not politically correct. But  
10 I feel these things must be said. I am a  
11 conservative man and I believe in justice and  
12 justice has been served 31 years. Submitted to the  
13 Board for consideration signed [REDACTED]. Is  
14 that the letter?

15          A       Well, that's one of them. He wrote two.

16          Q       Okay. We'll check everything out.  
17 Anything else for us today, Mr. [REDACTED]

18          A       Yeah, well, actually I have a couple of  
19 questions, probably involve what you feel. In 2000  
20 parole was denied because release would deprecate  
21 the seriousness of the crime, that was the decision  
22 I received. In 2003 I was again denied ostensibly  
23 for the nature of my crime. The Board said also  
24 that my release was not in the best interest of the  
25 community. And that it also said all my

( [REDACTED] [REDACTED] [REDACTED] )

1 achievements and accomplishments are outweighed by  
2 the nature of my crime. And in 2006 again found  
3 that my release would deprecate the serious nature  
4 of the crime that would undermine respect for the  
5 law. My question is if in 2000, diminished respect  
6 for the law and then again in 2006 diminished  
7 respect for the law, excuse me, what difference is  
8 two more years going to make or ten more years if it  
9 says diminished the law one time --

10 COMMISSIONER FERGUSON: I mean we're not  
11 here to address all of your questions or  
12 concerns about prior Board decisions.

13 A Okay.

14 COMMISSIONER FERGUSON: You get a new  
15 panel. I don't believe you've met us before.  
16 You met me before for a postponement.

17 A Right. Mr. Ludlow I've had you twice  
18 already.

19 COMMISSIONER FERGUSON: Mr. Crangle I know  
20 you've never met.

21 A I never met you.

22 COMMISSIONER FERGUSON: Me, you met for a  
23 postponement. So each time you have a different  
24 Board and the factors are discussed, the Board  
25 can come to different conclusions about the

( [REDACTED] [REDACTED] [REDACTED] )  
1           relevance and the weight of each factor. So,  
2           you know, we can't speak for other Boards and  
3           what their opinions were and what their logic  
4           was behind each of their decisions.

5           A       Let me ask you something, we have three  
6           factors that you consider.

7                    COMMISSIONER FERGUSON: No, there's  
8           multiple factors we consider under the Executive  
9           Law.

10           A       Under the three factors there is a  
11           reasonable probability that I would live and remain  
12           at liberty without violating the law which seems to  
13           be a problem interpreting, interpreting that would  
14           not so deprecate the seriousness of the crime to  
15           undermine respect for the law and my release would  
16           not be compatible with the welfare of society. I  
17           have a question of those factors, one, do you  
18           consider those three factors cumulatively or  
19           alternatively? In other words, will you find one  
20           positive and two does apply or one applies?

21                    COMMISSIONER FERGUSON: We consider all  
22           the factors together. We try to weigh them and  
23           then we try to come to what we think is a fair  
24           and right decision.

25           A       With regard to those three factors do they

( [REDACTED] [REDACTED] [REDACTED] )  
1 all have to be positive?

2           COMMISSIONER FERGUSON: Listen, you're  
3 trying to get into some legal sparring thing  
4 here. I'm not interested in that. You're  
5 asking to lock us in positions on how we feel  
6 about this one, how we feel. We consider  
7 everything we're required to under the law. We  
8 consider each of the standards that are dictated  
9 to us by statute. We try to weigh those. In  
10 fact, we're still trying to decide a case from  
11 earlier this morning. Some cases take hours,  
12 sometimes cases take days. I've been on cases  
13 that take months to decide. So we consider  
14 everything that we're required to and we're not  
15 going to sit here and debate with you about the  
16 different standards and how they're considered  
17 and how they weigh up against each other. And in  
18 your case how does each one weigh up. That's  
19 what we do during our deliberations, not with  
20 you.

21           A       So you won't entertain the rest of my  
22 questions then?

23           COMMISSIONER FERGUSON: I don't know what  
24 the rest of your question is, so I'm not saying  
25 I'm not entertaining anything. I'm just saying

( [REDACTED] [REDACTED] [REDACTED] )

1           that particular question where you're asking us  
2           how we deliberate what weight we give to each  
3           and how we reconcile them with one another is  
4           what we do during our deliberation.

5           A       Well, actually some of the questions  
6           involve that they would be subjective opinions  
7           coming from you, I guess, but you don't want to  
8           answer them but I'll ask it anyway so you can give  
9           me an answer if you choose to. My question involves  
10          around diminished respect for the law, and I'm  
11          looking at those letters there and if you found that  
12          my release would deprecate the seriousness of the crime  
13          I'm wondering about all of those people that wrote  
14          letters on my behalf. So are you implying that they  
15          are tacitly undermining respect for the law since  
16          they are supporting my release?

17                COMMISSIONER FERGUSON: I think your  
18                question is an inappropriate question. Your  
19                question, we consider the letters that we're  
20                getting both for your release and against your  
21                release. We give them the weight that we think  
22                is appropriate and then we make our decision.

23           A       So those letters that are against my  
24           release, those are the letters we're referring to,  
25           the thousands that you have from PBA.



( [REDACTED] [REDACTED] [REDACTED] )

1           COMMISSIONER FERGUSON: The letters that  
2           we received for your release, in favor of it and  
3           against your release get considered.

4           A       So would you like to fault me for  
5           asking --

6           COMMISSIONER FERGUSON: Mr. [REDACTED] do  
7           I fault you for coming trying to do legal  
8           maneuvering of questions to try to lock us into  
9           specific answers --

10          A       Yes.

11          COMMISSIONER FERGUSON: -- for your own  
12          purposes?

13          A       For my own purpose.

14          COMMISSIONER FERGUSON: Do I understand  
15          why you're doing it?

16          A       Yes.

17          COMMISSIONER FERGUSON: Of course I  
18          understand why you're doing that.

19          A       Do you blame me?

20          COMMISSIONER FERGUSON: You need to  
21          understand when you're given an answer whether  
22          you like it or not --

23          A       Right.

24          COMMISSIONER FERGUSON: -- that's your  
25          answer.

( [REDACTED] [REDACTED] [REDACTED] )

1           A       Well, I'm not going to joust with you on  
2 the answer. What I'm asking you is if I can get a  
3 straight answer for something because after 34 years  
4 you think I want to spend the rest of my life in  
5 prison? You think that I should just throw my hands  
6 up and say forget it and I'm going to do whatever  
7 you're going to do and hit me with two more years?  
8 Am I going to sit here and do nothing about it or  
9 for it? I mean what would you do? I have been hit  
10 four times well passed the 25 minimum. So actually  
11 I've had you before already. So the judge gave me  
12 25 to life. I didn't get 25 to life without parole.  
13 I didn't get sentenced to death. And I didn't get  
14 sentenced, so but meanwhile I'm already doing 34  
15 years on 25 to life. I can't change the facts of  
16 the crime and I can't bring Matthew back. I wish I  
17 could, believe me, I could. I've told his family  
18 that a million times already and I said if it was me  
19 that night I would have been a lot better off. He  
20 would have been a hero and I would have been dead.  
21 I wouldn't be sitting here in front of you now. I  
22 wish to God that would happen. But I can't change  
23 that. What am I going to do, just sit here and  
24 throw my hands up?

25           COMMISSIONER FERGUSON: You got a sentence

( [REDACTED] [REDACTED] [REDACTED] )  
1 of 25 to life.

2 A Right.

3 COMMISSIONER FERGUSON: And that means the  
4 minimum you spend in prison --

5 A Is 25 years.

6 COMMISSIONER FERGUSON: -- is 25 years.  
7 The maximum you spend in prison is that you are  
8 here until your last dying breath. If you're a  
9 man of 20 that could be 50, that could be 60,  
10 that could be 70 years, depending on how old you  
11 are if you die. There are other individuals  
12 that get released their first shot when they  
13 come in at 20 to life, 25 to life, 15 to life.  
14 So you're asking me is it a life sentence,  
15 potentially it is. That's the sentencing range  
16 and that's the function of the Parole Board to  
17 try to decide and try to make a just decision as  
18 to where you fit in that range.

19 A Actually I think the interpretation is a  
20 little bit different. I think I am eligible for  
21 parole and you're supposed to determine whether or  
22 not I'm eligible.

23 COMMISSIONER FERGUSON: We don't determine  
24 whether or not you're eligible. You are legally  
25 eligible for parole. We determine if it's

( [REDACTED] [REDACTED] [REDACTED] )

1           appropriate for you to be paroled at a  
2           particular time.

3           A       Right. I'd like you to apply the same  
4           standards you apply to someone who committed a  
5           triple homicide you released last year. I mean can  
6           you make a comparison?

7                    COMMISSIONER FERGUSON: No. And listen,  
8           unless you have other questions besides this  
9           legal debating on our release decision, our  
10          release process and all of this other stuff  
11          there's nothing more substantive coming out of  
12          you except legal sparring which is not the  
13          purpose of this hearing. Now you want us to  
14          start doing a comparative analysis on cases that  
15          were released and weren't released? You know,  
16          this is bordering on the absurd at this point.

17          A       It is? [REDACTED]

18                    COMMISSIONER FERGUSON: Yes.

19          A       Well, then I guess we'll call it a day  
20          then.

21                    COMMISSIONER FERGUSON: Have a good day.

22          Sir.

23                    (Whereupon, the Inmate was excused.)

24                    (Whereupon, Commissioner Ferguson, Commissioner  
25          Ludlow and Commissioner Crangle confer.)

( [REDACTED] [REDACTED] [REDACTED] )  
1 BY COMMISSIONER LUDLOW:

2 Parole denied, hold 24 months. Next appearance  
3 is June 2010. Following careful review and  
4 deliberation of your record and interview this panel  
5 concludes that discretionary release is not  
6 presently warranted due to concern for the public  
7 safety and welfare. The following factors were  
8 properly weighed and considered, your instant  
9 offense in [REDACTED] County in [REDACTED] 1975 involved  
10 your commission of a burglary during which you fired  
11 a weapon at pointblank range at Police Officer  
12 [REDACTED] [REDACTED] resulting in his tragic death. Your  
13 criminal history includes prior unauthorized use of  
14 a motor vehicle and larcenist related offenses.  
15 Your institutional programming demonstrates progress  
16 and achievement which is noted to your credit. Your  
17 disciplinary record appears clean and is likewise  
18 noted to your credit. Based on all required factors  
19 and the file considered discretionary release at  
20 this time is not consistent with the public safety  
21 and welfare. Your discretionary release at this  
22 time would thus not be compatible with the welfare  
23 of society at large and would tend to deprecate the  
24 seriousness of the instant offenses and undermine  
25 respect for the law. (All Commissioners concur.)