

NEW JERSEY'S ROAD TO ABOLITION*

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New Jersey reinstated capital punishment in 1982. The New Jersey Supreme Court reversed nearly every capital conviction that it reviewed between 1982 and 2007. Twenty-five years later, on December 17, 2007, the State of New Jersey officially abolished the death penalty and replaced it with life without the possibility of parole. This article examines multiple converging factors that contributed to abolition, including the New Jersey Supreme Court's decision making in capital cases, public-opinion data, political conditions, and the New Jersey Death Penalty Study Commission hearings and report. This article suggests that New Jersey judicial decision making fostered a culture of ambivalence toward capital punishment, which, when combined with a host of unique political and social factors, made abolition possible.

On December 17, 2007, the State of New Jersey officially abolished the death penalty and replaced it with life without the possibility of parole. In doing so, New Jersey became the first state in nearly 40 years to eliminate capital punishment *legislatively*. The political decision by the New Jersey legislature and governor to abolish the death penalty is unique in recent history. As such, it should be carefully studied to determine how the experience in New Jersey contributes to an understanding of abolition processes.

Zimring and Hawkins (1986) suggest that states with a history of frequent executions are the states most likely to maintain, preserve, and most frequently use capital punishment today. This is so because frequent executions serve as a “kind of precedent, reassuring political actors that their own participation is neither inhumane nor immoral” (Zimring and Hawkins, 1986:144). As they argue, the historical use of capital punishment gives rise to cultural and political traditions that support continued executions.

Conversely, states with a history of infrequent executions are least likely to use capital punishment today. The absence of a “clear historical mandate for execution in a state results in the reduction of the enthusiasm of elected officials and political elites for execution, at the same time that it increases the level of opposition to execution in a particular state” (Zimring, 1991:741). Without a tradition of executions, states develop a culture of ambivalence about capital punishment.

Does New Jersey's experience with abolition fall within Zimring's theory of ambivalence? Between 1690 and 1963, 361 people were executed in New Jersey—a little more than one execution on average per year (Espy and Smylka, 2002). New Jersey's execution rate ranked twenty-third out of thirty-seven states with the death penalty (Zimring and Hawkins, 1987:136). New Jersey's death penalty was outlawed in 1972, and was not reinstated until 1982. The New Jersey Supreme Court later

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affirmed the constitutionality of the death penalty statute, but reversed or vacated nearly every capital sentence that came before it. As a result, New Jersey has conducted no executions since 1963.

How then was a state with a significant history of executions before the U.S. Supreme Court's *Furman* decision in 1972 decades later *legislatively* transformed into an abolitionist state? What explains the willingness of New Jersey politicians to abolish the death penalty in a state where the public supports capital punishment in principle? What impact did the New Jersey Supreme Court's death penalty decisions and pattern of reversals have on the state's political sensibilities around capital punishment?

This article first analyzes the history of the death penalty in New Jersey before and after the *Furman* decision. It then examines the New Jersey Supreme Court's pattern of decision making in capital-punishment cases since reinstatement in 1982 and examines public-opinion data from that same period. Finally, hypotheses are offered about the reasons for abolition in New Jersey and the multiple converging variables that contributed to abolition.

A BRIEF PRE-FURMAN HISTORY OF THE DEATH PENALTY IN NEW JERSEY

The Royal Charter of South Jersey of 1646 prohibited capital punishment (Bedau, 1982). In 1690, the colony passed a law authorizing capital punishment for a wide range of crimes, but later limited the death penalty to treason and murder. In practice, throughout the 1700s and 1800s, New Jersey sentenced only murderers to death. New Jersey also embraced death penalty reform and became one of the earliest states to ban public executions (Bohm, 2007; Banner, 2002).

At the start of the twentieth century, progressive momentum to abolish the death penalty began to build. Kansas, Minnesota, Oregon, South Dakota, Missouri, and Washington outlawed capital punishment. New Jersey, however, exhibited ambivalence (Bohm, 2007; Banner, 2002). Although it continued to execute capital offenders until 1963, the state convened commissions in 1907, 1964, and 1972 to study the issue.

New Jersey executed its last defendant in 1963, preceding by five years the unofficial nationwide execution moratorium that began in 1968. In *Furman v. Georgia* (1972), the United States Supreme Court declared that the death penalty was unconstitutional because it was applied in an arbitrary and capricious manner. There were no executions in the United States until after 1976, when, in *Gregg v. Georgia* (1976), the United States Supreme Court upheld a new death penalty statute drafted to avoid the infirmities criticized in *Furman*.

When the Supreme Court first decided *Furman*, numerous states immediately began revising their death penalty statutes. Within a year after *Furman*, "bills to restore capital punishment had been introduced in three dozen state legislatures. By midsummer, such bills had already been signed into law in twenty states. On the sec-

ond anniversary of *Furman*, twenty-eight states had new death penalty legislation and more than 100 persons in seventeen states had been sentenced to death under these new laws” (Bedau, 1977). Legislative efforts in New Jersey to pass a revised death penalty statute were less successful. Between 1976 and 1982, Democratic governor Brendan Byrne twice vetoed proposed death penalty laws. It was not until 1982, when Republican Thomas Kean took office, that New Jersey officially reinstated the death penalty.

NEW JERSEY SUPREME COURT JURISPRUDENCE

Shortly after New Jersey reenacted the death penalty, the state secured its first capital convictions. In 1983 three defendants were sentenced to death. The following year, seven death sentences were handed down. In 1985 there were seven more, followed by six in 1986 and another eight in 1987 (see Table 1).

In 1987 the New Jersey Supreme Court in companion cases affirmed the constitutionality of the state’s death penalty statute (*State v. Biegenwald*, 1987; *State v. Ramseur*, 1987). The court, however, reduced the capital sentence of Thomas Ramseur to life imprisonment because of erroneous jury instructions and vacated the capital conviction of Richard Biegenwald as a result of sentencing errors. In 1987 alone, the court reduced or vacated four death convictions or sentences. This judicial pattern of reversal or vacatur continued until 1991, when the New Jersey Supreme Court affirmed its first capital conviction (see Table 1). A federal court subsequently overturned that decision (*Marshall v. Hendricks*, 2004).

From 1987 until 2007, New Jersey secured a maximum of four death sentences per year, although there were no capital convictions in 1991 or 1992 or 2003, and only one capital conviction in 1988, 1989, 1998, 1999, 2000, 2002, and 2004 (see Table 1). New Jersey prosecutors also sought the death penalty less often in that same time period, despite no diminution of death-eligible murders (Hearing, October 11, 2006, Testimony of Claudia Van Wyck). Since 1982, there were a total of 455 death-eligible defendants, 228 capital-murder trials, and 60 capital convictions (Report, 2007:24). Fifty-seven of those convictions and/or sentences were reversed or vacated by the New Jersey Supreme Court or a federal court on habeas-corpus review.

In 2003, a bipartisan bill to study the death penalty in New Jersey passed both the state assembly and senate with near unanimity. The bill was supported by hundreds of citizen groups and the heads of nearly every major religious group in the state. Governor James McGreevey nonetheless vetoed the study bill (Fitzgerald, 2004). In January 2006, acting Governor Richard J. Codey signed into law a death penalty study bill that included a moratorium on all executions until completion of the study (Report, 2007:3)

The legislative moratorium actually followed a halt in executions based on lethal-injection litigation. In 2004 a New Jersey appellate court struck down the state’s protocol for lethal injection, and the New Jersey Supreme Court later denied a petition for certification, which allowed the appellate decision to stand as law (*In*

Table 1
Capital Convictions and Outcomes in New Jersey

| Year | # Capital Convictions ^a | # of Reversals | # Affirmed |
|------|------------------------------------|----------------|----------------|
| 1983 | 3 | | |
| 1984 | 8 | | |
| 1985 | 7 | | |
| 1986 | 6 | | |
| 1987 | 8 | 4 | |
| 1988 | 1 | 8 | |
| 1989 | 1 | 3 | |
| 1990 | 3 | 11 | |
| 1991 | 0 | 6 | 1 ^b |
| 1992 | 0 | 1 | 1 |
| 1993 | 4 | 0 | 1 |
| 1994 | 3 | 1 | 1 ^c |
| 1995 | 2 | 1 | 1 |
| 1996 | 4 | 1 | 0 |
| 1997 | 3 | | 3 ^d |
| 1998 | 1 | 1 | 3 ^e |
| 1999 | 1 | | 2 |
| 2000 | 1 | | 1 ^f |
| 2001 | 2 | 1 | |
| 2002 | 1 | 2 | |
| 2003 | 0 | | |
| 2004 | 2 | 2 | |

Source: New Jersey Administrative Office of the Courts, October 2005.

^a Two men included in "convictions" died before any appeals were heard in their respective cases. In addition, two men whose convictions were affirmed died before their appeals were exhausted.

^b Robert Marshall's death sentence was vacated in 2004 by a federal district court.

^c Anthony DiFrisco's death sentence was vacated in 2006 by the New Jersey Supreme Court.

^d John Chew's death sentence was vacated in 2004 by the New Jersey Supreme Court.

^e Robert Morton's death sentence was vacated in 2005 by a New Jersey Superior Court.

^f Peter Papasavvas death sentence was vacated in 2002 by the New Jersey Supreme Court.

re Readoption, 2004). As a result, and even absent the moratorium, New Jersey had no lawful execution method. (At the time of the lethal-injection decision, nine men remained on death row in varying stages of state and federal appeals. John Martini, a death-row inmate, had exhausted his appeals and was eligible for execution.)

Table 2
Public Opinion in New Jersey on the Issue of Capital Punishment

| Year | Support in Principle for DP in NJ* | Support in Principle for DP in the U.S.* | Support for DP and LWOP in NJ* | Support for DP and LWOP in the U.S.** |
|------|------------------------------------|--|--------------------------------|---------------------------------------|
| 1999 | 63% | 69% | 44%-37% | 56%-38% |
| 2000 | 62 | 63 | 44-43 | n/a |
| 2002 | 60 | 65 | 36-48 | 52-43 |
| 2003 | 58 | 64 | n/a | 53-44 |
| 2004 | n/a | n/a | n/a | 50-46 |
| 2005 | 61 | 66 | 34-47 | n/a |

Sources:

* Murray, 2006, summarizing public-opinion data on capital punishment.

** Moore, 2004.

PUBLIC OPINION ON CAPITAL PUNISHMENT IN NEW JERSEY

Although there have been no executions since 1963, public-opinion polls demonstrate that a majority of New Jersey residents favor capital punishment. This finding is consistent with public-opinion data in states that have long traditions of abolition and in states with death penalty legislation but no recent executions (Koch and Galliher, 1993). After *Gregg*, 72 to 73 percent of New Jersey residents supported the restoration of the death penalty (Rutgers-Eagleton, 1977 and 1981). Once capital punishment was reinstated in 1982, support for the death penalty consistently held at approximately 60 percent, and at times reached nearly 75 percent. A June 1994 poll showed that 59 percent of New Jersey residents “strongly favored” “more frequent use of the death penalty as a way to reduce crime” (Rutgers-Eagleton, 1994). A September 1995 poll showed that 68 percent of New Jersey residents disagreed with the Pope’s position that the death penalty is wrong (Rutgers-Eagleton, 1995).

The July 29, 1994 sexual assault and murder of seven-year-old Megan Kanka could explain, in part, the nearly ten-percentage-point increase in support for capital punishment between 1994 and 1995. Kanka’s death inspired the passage of a sexual offender notification law popularly known as “Megan’s Law.” Between 1999 and 2005, when public opinion regarding capital punishment was measured more frequently in the state, public support for the death penalty consistently measured approximately 60 percent (see Table 2). Although this represents a solid majority, it is somewhat less than the national average during the same time period.

New Jerseyans’ support for the death penalty also does not appear to run deep. A 2005 poll suggests that the New Jersey public did not view capital punishment as a significant political issue (Bloustein Center, 2005). Fifty-eight percent of New

Jersey voters indicated that replacing the death penalty with life without possibility of parole would have no impact on their voting. That a majority of voters expressed indifference in the face of a well-publicized and legislatively imposed execution moratorium seems to indicate ambivalence, rather than a strongly held belief about capital punishment.

Poll data also demonstrated a similar trend. While support for capital punishment remained somewhat constant, New Jersey residents, when given the choice, expressed an increasing preference for life imprisonment without the possibility of parole. In 1999 New Jersey residents preferred the death penalty to life without possibility of parole, 44 percent to 37 percent, once again showing they were less supportive of the death penalty than the nation as a whole (Murray, 2006). By 2005 New Jersey respondents indicated a preference of life in prison over the death penalty by a 47 percent to 34 percent margin, marking a significant shift in opinion (Murray, 2006).

New Jersey residents serving as jurors also showed less support for the death penalty than might have been predicted based upon polling data. In 228 capital trials, jurors returned death sentences in 60 cases, or slightly more than 25 percent of all capital trials (Report, 2007:24). In Maryland, by contrast, from 1976 to 2000, there were 76 capital convictions in 180 capital trials. (Krista McKim, information specialist, Death Penalty Information Center, personal communication, February 11, 2008). Thus, the capital-conviction ratio in Maryland was approximately 46 percent—double the capital-conviction rate of 25 percent in New Jersey.

What shapes death penalty opinion in New Jersey? Causes might include demographic factors, such as religion, income, or education, or political factors, such as elite opinion reflected in statements by elected officials, judges, or newspaper editorials. The New Jersey Supreme Court's actions in death cases, however, do not appear to be a major factor. Opinion hovered around 60 percent in favor of capital punishment from 1982 to 2005. Consistent judicial reversals of capital convictions neither provoked the public to call for judicial impeachment, nor persuaded the public to abandon its support for capital punishment. Rather, New Jersey public opinion appeared open to alternatives to capital punishment. Its willingness to support alternatives is greater than the national support, but follows the trend of increasing support for life without possibility of parole as an alternative to the death penalty.

THE NEW JERSEY DEATH PENALTY STUDY COMMISSION AND REPORT

Although the New Jersey Supreme Court's decisions did not appear to influence public opinion directly, they did have great influence on governmental officials and advocates of both abolition and capital punishment. In 2005 the legislature authorized a Death Penalty Study Commission ("the Study Commission"), composed of thirteen members, five appointed by the governor, two each by the president of the senate and the speaker of the general assembly, and four *ex officio*. The Study Commission

included surviving family members of murder victims, victims' advocates, law-enforcement officials, a retired justice of the New Jersey Supreme Court, attorneys, and representatives from the offices of the attorney general, the public defender, the county prosecutors association, and the state bar association.

The Study Commission focused on seven issues: 1) whether capital punishment serves a significant penological function; 2) the costs of the death penalty; 3) evolving standards of decency; 4) whether capital punishment at any stage in the process was arbitrary, unfair, or discriminatory; 5) whether there was a difference in crimes selected for capital punishment as opposed to those who receive life in prison; 6) innocence; and 7) possible adequate alternatives. To help in its consideration of these issues, the Study Commission conducted five days of public hearings. Witnesses included family members of murder victims, individuals who were wrongly convicted, leading national scholars who supported or opposed capital punishment, victims' rights advocates, law-enforcement representatives, and other public officials, as well as religious and civic leaders who testified on behalf of their organizations. National death penalty scholars, including Charles Ogletree of Harvard University and Jeffrey Fagan of Columbia University, testified to the Study Commission about deterrence, race, cost, and the effectiveness of the death penalty. The New Jersey state attorney general, a former prosecutor, and law-enforcement officials testified about their experiences and beliefs. Barry Scheck from the Innocence Project and several men who were exonerated testified about their experiences in the criminal-justice system.

Members of murder victims' families were perhaps the most compelling witnesses, and the Study Commission gave great consideration to the experiences of victims' families in its final report. Some families wanted to maintain capital punishment, and some called for abolition. Regardless of their stance on abolition, these witnesses were acutely aware of the New Jersey Supreme Court, its death penalty decisions, and the long appellate process that had prevented any executions.

Several members of victims' families complained bitterly about the judicial process. Sandra Place, whose mother was murdered, bitterly described belonging to a "club with an ever-growing membership, survivors of overturned death penalty sentences" (Hearing, September 13, 2006:13). Sharon Hazard-Johnson, whose mother and father were murdered, expressed her frustration that the man who killed her parents remained alive on death row: "Murderers in the State are making a mockery of the justice system" (Hearing, July 19, 2006:11). She later added that the numbers of family members of murder victims "that are for the death penalty have not dwindled. Survivors are simply exhausted and people are fed up because of the continued interference and overturning of death sentences by the State of New Jersey at our expense" (Hearing, September 13, 2007:177-78). Similarly, Marilyn Flax, whose husband was kidnapped and murdered, exhorted the Study Commission "not [to] change the law, but enforce the law. . . . The frustration with the victims is that it is taking too long" (Hearing, September 13, 2006:136).

In contrast, other family members of murder victims supported life without the possibility of parole over the death penalty. Jo Anne Barlieb, whose mother was murdered, explained how the “so-called justice system” overturned the death sentence of her mother’s killer twice, after which a third resentencing proceeding resulted in a jury deadlock and the automatic imposition of a thirty-year sentence with the possibility of parole. Barlieb explained, “I’d support the death penalty if the State of New Jersey could limit the appeals process and actually utilize it” (Hearing, September 13, 2006:22, 24). Richard Pompello, who founded the Crime Victims Law Center after his son was murdered, added that “the death penalty process in New Jersey over the last quarter century has been, in my opinion, the greatest failing of the justice system in the history of our State” (Hearing, September 13, 2006:32). He continued: “I have absolutely no doubt that there will never be an execution in New Jersey. . . . The New Jersey Supreme Court will never, at least in my lifetime, and any of yours, allow an execution to take place. That’s the reality of it” (Hearing, September 13, 2007:38-39).

In January 2007, the Study Commission recommended, by an 11-1 vote, that capital punishment be abolished and replaced with life without the possibility of parole. (Report, 2007:2). The attorney general abstained from the Study Commission’s vote, but declared that he would not oppose legislation to repeal the death penalty and replace it with sentence of life imprisonment without the possibility of parole. His reasons were pragmatic: “In the 24 years since capital punishment was reinstated in New Jersey, not one person has been put to death. . . . Furthermore, we believe it unlikely that the sanction will be carried out in the future. The complexities of capital litigation, and the case law and review process that have developed, have rendered the death penalty effectively unavailable” (Report, 2007:86). A police chief and two prosecutors, including one who represented the association of county prosecutors, joined the Study Commission’s recommendations.

Kathleen Garcia, victims’ advocate and member of the Study Commission, voted with the majority to abolish the death penalty. She explained that while she did not oppose the death penalty,

It has long been evident that the New Jersey Supreme Court will continue to ensure that no person, regardless of how horrendous the crime(s) committed, will ever be executed. . . . Illogical rulings by the Supreme Court over the years have resulted in victims/survivors losing all faith in our system of justice. . . . Nevertheless, wishing for the Supreme Court to do an “about face” will not make it so—and refusing to accept this fact ensures that survivors will continue to suffer as a result of this unjust process (Report, 2007:93-94).

The lone dissenter was John S. Russo, former president of the New Jersey State Senate and author of the original capital-punishment statute. He explained, “I believe that the fundamental problem is not the statute, but rather liberal judges and

other individuals who have consistently disregarded the legislative will and refused to enforce the law as written” (Report, 2007: 82).

In support of its recommendations, the Study Commission made eight factual findings:

- (1) the death penalty did not rationally serve a legitimate penological interest;
- (2) the costs of the death penalty are greater than life without possibility of parole;
- (3) the death penalty is inconsistent with evolving standards of decency;
- (4) there is no invidious racial bias in the application of the death penalty in New Jersey;
- (5) abolition will eliminate the risk of disproportionality in sentencing;
- (6) the penological risk in executing a small number of guilty persons is not sufficiently compelling to justify the risk of an irreversible mistake;
- (7) life without possibility of parole ensures public safety and addresses other legitimate penological interests, including the interests of the families of murder victims; and
- (8) sufficient funds should be dedicated to ensure adequate services and advocacy for the families of murder victims (Report, 2007:23).

The first six findings drew primarily from the testimony provided by witnesses other than murder victims’ family members. In contrast, the latter two findings addressed the frustrations of murder victims’ families with the judicial system. For instance, with respect to the seventh finding, the Report (2007:61) concluded that life without the possibility of parole was preferable to capital punishment because the “non-finality of death penalty appeals hurts victims, drains resources and creates a false sense of justice,” and as to the eighth finding, the Report (2007:62-65) sought to ensure adequate funding to assist families of murder victims with social services and advocacy.

The New Jersey Senate and Assembly welcomed the report. Governor John Corzine (2007) commended the blue-ribbon Study Commission: “As someone who has long opposed the death penalty, I look forward to working with the Legislature to implement the recommendations outlined in the report.” Members of the state senate and assembly also expressed their support for the bill (Mansnerus, 2007).

ADDITIONAL FACTORS INFLUENCING DEATH PENALTY ABOLITION IN NEW JERSEY

Abolition was the result of a unique set of converging factors, which included the efforts of a highly organized anti-death penalty advocacy group and religious organizations, national attention to the danger of executing innocent defendants, fiscal considerations, the declining violent-crime rate, an anti-death-penalty governor, the report by the blue-ribbon Study Commission recommending abolition, and political timing. Against a forty-five-year absence of executions, these factors combined to make abolition politically tenable. Yet, unlike in other states, there was no groundswell against the New Jersey Supreme Court and no mobilized opposition to

impeach the New Jersey Supreme Court. Indeed, there was little organized reaction at all. By contrast, for instance, in California, Republican politicians seized on public outrage over the court's death penalty decisions and launched a successful campaign to remove Chief Justice Rose Bird and two of her colleagues from the bench (Reinhold, 1988).

New Jerseyans for an Alternative to the Death Penalty (NJADP), a highly organized and effective nonprofit advocacy group, led the political movement toward elimination of the death penalty. Formed in 1999, NJADP engaged in extensive coalition building with disparate interest groups, including members of victims' families, law-enforcement officers, and politicians. It lobbied the legislature, held public forums, and commissioned public-opinion surveys. Abe Bonowitz, field director for NJADP, explained that local and consistent constituent contact with legislators was one key to their abolition strategy (Lajoie, 2008). When the 2003 study bill passed the assembly and the senate, NJADP solicited their members to send hundreds of thank-you letters to the legislators who voted for the study (Celeste Fitzgerald, director of NJADP, personal communication, March 2008). NJADP also was involved in legal advocacy and assisted New Jerseyans for a Death Penalty Moratorium in the successful lethal-injection challenge (*In Re Readoption*, 2004). During the hearings, members of NJADP testified effectively before the Study Commission.

In New Jersey, where approximately 40 percent of the population is Catholic, the anti-death penalty influence of the Catholic Church from both within and without the state was also significant in the abolition debate. NJADP extended its outreach to various Catholic organizations, such as the Knights of Columbus. In turn, highly influential Catholic leaders, such as the executive director of the New Jersey Catholic Conference and at least one New Jersey bishop, testified before the Study Commission and were unified in their anti-death penalty stance. Sister Helen Prejean, an internationally renowned anti-death penalty author and activist, toured the state in support of the abolition campaign. The Vatican expressed strong support for the abolition movement in New Jersey. In recognition of New Jersey's decision to abolish the death penalty, the Vatican ordered the City of Rome to light the Coliseum. Numerous other religious leaders who testified before the Study Commission were uniform in their opposition to capital punishment.

National attention to the risk of executing innocent defendants also contributed to abolition. In May 2007, New Jersey defendant Byron Halsey was exonerated through DNA evidence. Halsey had been charged with capital murder, but was convicted and sentenced to life imprisonment for the sexual assault and murders of two young children. It was later revealed that the star prosecution witness against him was the real perpetrator (Kelley, 2007). Halsey's exoneration and growing national awareness of wrongful convictions added a "New Jersey" face to the issue of innocence.

State financial constraints also worked in favor of abolition. By 2007, New Jersey was mired in chronic fiscal crisis. The Study Commission report cited cost sav-

ings from abolition as one of its main findings and estimated that millions of dollars would be saved (Report, 2007:31-33). A New Jersey Policy Perspectives Report estimated that New Jersey had spent approximately \$11 million per year, or over \$250 million, on capital punishment since 1982 (Forsberg, 2005).

Politics and political timing also converged to make abolition possible. In 2007 Democrats controlled the governorship, the senate, and the assembly. Democratic control in each elected branch was a recent phenomenon in New Jersey. Between 1991 and 2002, Republicans held a majority in both houses of the legislature, and a Republican governor was in office from 1994 to 2002 (Herszenhorn, 2001). In 2002 New Jersey elected a Democratic governor, along with a Democratic majority in the assembly. The senate was equally divided until the 2003 elections, when the Democrats secured a majority in both houses. With Democratic leadership firmly in place at the time of Study Commission report, abolition of capital punishment became politically possible. In addition, the abolition bill was considered and ultimately passed during the lame-duck congressional session. With political outcomes already determined by the preceding November election, politicians had less to fear in voting for abolition.

CONCLUSIONS

It is difficult to isolate any one factor that was critical for New Jersey's ability to abolish the death penalty politically. Certainly, the New Jersey Supreme Court's role in preventing executions produced a climate in which politicians could safely abolish the death penalty. It is impossible, however, to determine definitively whether the Supreme Court caused a decline in popular support for the death penalty or simply served as a gatekeeper against executions while other national and internal forces led the way to abolition. Similarly, it is difficult to determine whether the New Jersey Supreme Court demoralized capital-punishment supporters or whether New Jersey residents did not rally around capital punishment for demographic reasons.

The New Jersey experience falls well within what Zimring described as a "theory of ambivalence" (Zimring, 1996). The absence of an execution for forty-five years, combined with two gubernatorial vetoes by Governor Byrne and repeated judicial reversals in nearly every capital case, fostered a "special sensitivity" by elites to capital punishment (Galliher and Galliher, 1997:371). Despite the constitutionality of capital punishment, New Jersey elites had grown accustomed to a justice system that did not use executions in response to heinous murders. The legislature, judiciary, law-enforcement officials, and prosecutors were inured toward capital punishment in practice because for forty-five years they had gone about their work without any executions.

The state's tradition of liberal politics in other policy areas such as education and housing may also have paved the way for abolition. Political theorists predict that "death sentences are least likely to occur where liberal, rather than conservative, political forces are strongest because prosecutors, judges, and juries should be less likely to support this sentence in such jurisdictions" (Jacobs and Carmichael, 2004:253).

In other words, a public that primarily elects democratic leaders is less likely to seek severe punishment than regions with more conservative politicians (Jacobs and Carmichael, 2002). Other states with a history of liberal politics, such as Illinois, also have recently ceased to employ the death penalty (Hayler, 2008). Future research could include a cross-state study comparing the various factors that contributed to abolition in fact or in practice.

In 2007 New Jersey residents did not appear to place great importance on crime and capital punishment. Perhaps this is explained by decreasing crime rates. And while crime rates were declining, property taxes, housing costs, and concerns about schools were rising. As Patrick Murray, founding director of the Monmouth University Polling Institute explained, capital punishment is not an issue that residents follow closely as it impacts very few people directly (Murray, 2006). Indeed, the public's ambivalence was made clear when a majority indicated in a public-opinion poll that their vote would not be affected by a legislative decision to abolish capital punishment and replace it with a life sentence without the possibility of parole.

The impact of abolition in New Jersey was largely symbolic, as there had been no executions for over forty years and no likelihood of one in the near future. Abolition in New Jersey, however, may influence national debate around the issue of capital punishment. Public-opinion polls demonstrate that although the national public continues to favor capital punishment, support weakens when the public is presented with penalty alternatives, such as life without the possibility of parole. This, in part, reflects growing public concern about DNA exonerations, the execution of innocent people, and botched executions. With public opinion less stridently in favor of capital punishment, politicians may be more willing to revisit abolition, particularly when, as in New Jersey, there appears to have been minimal political fallout. In 2007 the legislatures in Maryland, Montana, Nebraska and New Mexico debated abolition but did not pass related legislation. The legislative passage of New Jersey's abolition bill may provide both the impetus and a road map for other interested legislative bodies to follow.

New Jersey's abolition of capital punishment also comes at an interesting juncture in elite opinion. In recent years, the Supreme Court narrowed the application and scope of capital punishment by declaring unconstitutional, in *Roper v. Simmons* (2005), the execution of juveniles and, in *Atkins v. Virginia* (2002), the mentally retarded. And although the Court recently affirmed the constitutionality of lethal injection as a method of execution, sitting Supreme Court justice John Paul Stevens simultaneously and publicly declared his opposition to capital punishment (*Baze v. Rees*, 2008). Stevens joins a cadre of prominent active and retired justices, legal scholars, and activists who have called for an end to capital punishment. New Jersey's abolition may provide evidence that capital punishment can be abolished in contemporary America without significant political consequences.

This case study about New Jersey abolition confirms Zimring's prediction that abolition would likely occur in states with a history of infrequent executions. New

Jersey's imposition of executions ended in 1963. The judiciary played a unique role in that history, with its intense scrutiny of capital convictions yielding a de facto execution moratorium for over four decades. New Jersey residents had become accustomed to a world where criminal justice functioned reasonably well without capital punishment. The judicially influenced climate of ambivalence, combined with a convergence of political and social variables, permitted the legislature to abolish capital punishment without fear of reprisal from an indifferent and immobilized public. **jsj**

REFERENCES

- Banner, S. (2002). *The Death Penalty: An American History*. Cambridge: Harvard University Press.
- Bedau, H. (1977). "The Courts, the Constitution and Capital Punishment." Capital Punishment Study Commission (1971) Series: Counsel's Files 1971-1975, Series No. SZCAT001 held by the New Jersey Department of State, New Jersey State Archives, Trenton.
- Bedau, H., ed. (1982). *The Death Penalty in America*, 3rd ed. New York: Oxford University Press.
- Bloustein Center for Survey Research at Rutgers University (2005). "New Jerseyans' Opinions on the Death Penalty." <http://www.njadp.org/forms/blousteinsurvey.html> (last accessed February 1, 2008)
- Bohm, R. (2007). *Deathquest III: An Introduction to the Theory and Practice of Capital Punishment in the United States*. Cincinnati, OH: Anderson Publishing Company.
- Corzine, J. (2007). Statement on the New Jersey Death Penalty Study Commission Report, January 2. <http://www.nj.gov/governor/news/news/approved/20070102.html> (last accessed March 1, 2008)
- Espy, M. W., and J. Smykla (2002). *Executions in the United States, 1608-2002: The Espy File* [Computer file]. 4th ICPSR ed. Compiled by M. W. Espy and J. Ortiz Smykla, University of Alabama. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor], 2004.
- Fitzgerald, C. (2004). "McGreevey Vetoes Death Penalty Study Bill; Prompts Angry Response from Bill Supporters." Press release, New Jerseyans for a Death Penalty Moratorium, Chatham. http://www.njadp.org/forms/veto_release.htm (last accessed March 1, 2008)
- Forsberg, M. (2005). "Money for Nothing? The Financial Cost of New Jersey's Death Penalty." Report, New Jersey Policy Perspective Web site. http://www.njpp.org/rpt_moneyfornothing.html (last accessed March 1, 2008)
- Galliher, J. M., and J. P. Galliher (1997). "Déjà vu All Over Again: The Recurring Life and Death of Capital Punishment Legislation in Kansas," 44 *Social Problems* 369.
- Hayler, B. J. (2008). "Moratorium and Reform: Illinois's Efforts to Make the Death Penalty Process 'Fair, Just, and Accurate,'" 29 *Justice System Journal* 423.

- Herszenhorn, D. (2001). "The 2001 Elections: The Legislature; Democrats Win Assembly in New Jersey," *New York Times*, November 1 <http://query.nytimes.com/gst/fullpage.html?res=9C02EFD71039F934A35752C1A9679C8B63> (last accessed February 1, 2008)
- Jacobs, D., and J. Carmichael (2004). "Ideology, Social Threat, and the Death Sentence: Capital Sentences Across Time and Space," 83 *Social Forces* 249.
- (2002). "The Political Sociology of the Death Penalty: A Pooled Time-Series Analysis," 67 *American Sociological Review* 109.
- Kelley, T. (2007). "DNA in Murders Frees Inmate After 19 Years," *New York Times*, May 16. <http://www.nytimes.com/2007/05/16/nyregion/16dna.html> (last accessed March 1, 2008)
- Koch, L., and J. Galliher (1993). "Michigan's Continuing Abolition of the Death Penalty and the Conceptual Components of Symbolic Legislation," 2 *Social and Legal Studies* 323.
- Lajoie, R. (2008). "Changing Hearts and Minds: New Jersey Activists Help Push Through the New Jersey State Legislature's Vote to Abolish the Death Penalty," 34:1 *Amnesty International* 22.
- Mansnerus, L. (2007). "Panel Seeks End to Death Penalty for New Jersey," *New York Times*, January 3. <http://www.nytimes.com/2007/01/03/nyregion/03death.html> (last accessed February 14, 2008)
- Moore, D. (2004). "Gallup Poll: Public Divided Between Death Penalty and Life Imprisonment Without Parole," Gallup News Service, June 2. <http://www.deathpenaltyinfo.org/article.php?scid=23&did=1029> (last accessed March 1, 2008)
- Murray, P. (2006). "Public Opinion on the Death Penalty in New Jersey: Report Prepared for Presentation to New Jersey Death Penalty Study Commission September 13, 2006 Public Hearing, Appendix 32X." <http://www.njleg.state.nj.us/legislativepub/pubhear/dpsc091306.pdf> (last accessed February 15, 2008)
- New Jersey Death Penalty Study Commission Report (2007). http://www.njleg.state.nj.us/committees/dpsc_final.pdf (last accessed December 15, 2007)
- Reinhold, R. (1988). "No Tilt as Yet from New California High Court," *New York Times*. January 1. <http://query.nytimes.com/gst/fullpage.html?res=940DE0D61630F932A35752C0A96E948260&sec=&spn=&pagewanted=1> (last accessed March 1, 2008)
- Rutgers-Eagleton Poll, Eagleton Institute of Politics (New Brunswick, N.J.), retrieved on January 5, 2008 from Rutgers-Eagleton Poll Archive at <http://www.scc.rutgers.edu/eagleton>.
- Rutgers-Eagleton Poll 24 (January and February 1977)
- Rutgers-Eagleton Poll 43 (January 1981)
- Rutgers-Eagleton Poll 98(a) (June 1994)
- Rutgers-Eagleton Poll 104 (September 1995)
- Rutgers-Eagleton Poll 123 (September 1999)
- Zimring, F. E. (1996). "The Wages of Ambivalence: On the Context and Prospects of New York's Death Penalty," 44 *Buffalo Law Review* 303.

- (1991). “Ambivalence in State Capital Punishment Policy: An Empirical Sounding,” 18 *New York University Review of Law and Social Change* 729.
- Zimring, F. E., and G. Hawkins (1986). *Capital Punishment and the American Agenda*. Cambridge: Cambridge University Press.

CASES CITED

- Atkins v. Virginia*, 536 U.S. 304 (2002).
- Baze v. Rees*, 128 S.Ct 1520 (2008).
- Furman v. Georgia*, 408 U.S. 208 (1972).
- Gregg v. Georgia*, 428 U.S. 153 (1976).
- In re Readoption with Amendments of Death Penalty Regulations N.J.A.C. 10A:23 ex rel. New Jersey Department of Corrections*, 842 A.2d 207 (N.J. Super. 2004), *cert. denied*, 862 A.2d 57 (N.J. 2004).
- Marshall v. Hendricks*, 313 F.Supp.2d 423 (D.N.J. 2004).
- Roper v. Simmons*, 543 U.S. 551 (2005).
- State v. Biegenwald*, 524 A.2d 130 (1987).
- State v. Ramseur*, 524 A.2d 188 (1987).