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### Panel takes up life-or-death debate

Commission set to begin weighing whether capital punishment should be abolished

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The U.S. Supreme Court banned capital punishment for re-tarded people and juveniles after concluding that such executions offend evolving standards of decency. A former governor of Illinois emp-tied its death row because of concerns that it housed innocent men.

Today, a state commission will begin considering whether New Jersey should go even further. In the first of several planned hear-ings, the panel will hear public comment on whether the state should abolish its death penalty, which has gone unused since its reinstatement 24 years ago.

"The death penalty does not have a place in New Jersey," said Celeste Fitzgerald, executive di-rector of New Jerseyans for Alternatives to the Death Penalty. "Our experience with it over the last decades shows it has been a failure."

Former state Sen. John Russo, who sponsored the 1982 law reinstating capital punishment and sits on the 13-member study commission, disagrees.

"The public has to feel there is a punishment that fits the crime," Russo said. "It's not as important that we execute a lot of people as that the penalty is there for those unusually vicious murders."

On a personal level, perhaps no one has more at stake than death row inmate John Martini and the widow of the man he kidnapped and murdered in 1989.

Martini, 75, is down to his final appeal, raising an argument that one judge has already rejected as "reaching for straws."

Marilyn Flax remembers the day in 1989 when she tried to rescue her husband, Fair Lawn businessman Irving Flax, by delivering a \$25,000 ransom to Martini. After collecting the money, Mar-tini, already on the run from a double murder in Arizona, eluded the FBI and killed Flax with three shots to the head.

"There are certain killers the death penalty was designed for, and John Martini is one of them," Flax said. "He should have been executed many years ago."

Flax said she is "very angry" that lawmakers have imposed a moratorium on executions until the commission completes its study.

"I feel this commission is just a stall tactic," she said. "New Jersey politicians are ignoring the law rather than enforcing it."

Tom Rosenthal, a spokesman for the state Office of the Public Defender, which represents Mar-tini, said, "It's not whether any convicted murderer does or does not deserve the death penalty. It's whether this state or any state can develop a fair system to make that determination."

Whether the death penalty is discriminatory, and what it costs, are among the questions the commission is expected to address.

Today's hearing, scheduled for 2 p.m. in the Statehouse Annex in Trenton, will focus on three basic questions: Does the death penalty serve a legitimate purpose, such as deterring crime? Is it worth the risk of executing the innocent? Is it consistent with evolving standards of decency?

## **DETERRENCE**

Russo, a former prosecutor, said his argument for capital punishment has always been that no lesser punishment is adequate for some particularly brutal murders.

"I never argued it was a deterrent," he said.

Other supporters of capital punishment have made that argument, and the U.S. Supreme Court allowed executions to resume in 1976 in part out of a belief that they would deter murders.

Scholars have reached conflicting results. Some say capital punishment has no effect on murder rates, though one econometric analysis concluded that each execution saves 18 lives.

Writing last November in the Michigan Law Review, Joanna Shepherd, a professor at Emory University, explained those contradictions. She concluded that the death penalty does deter murder, but only in six states, including Texas, that perform a lot of executions.

In states that use it infrequently, she found, it backfires because the "brutalizing effect" outweighs deterrence.

"To achieve deterrence, states must generally execute many people," Shepherd concluded. "If a state is unwilling to establish such a large execution program, it should consider abandoning capital punishment."

## **RISK OF MISTAKE**

A study by two Columbia University law professors of capital appeals from 1973 to 1995 found serious errors in nearly seven out of 10 cases. They concluded that the death penalty system was "collapsing under the weight of its own mistakes."

Richard Dieter, executive director of the Death Penalty Information Center in Washington, D.C., said 123 death row inmates nationwide have been exonerated by juries or prosecutors since 1973. He said there is "evidence, but not in controvertible proof, that some innocent people may have been executed."

Recent investigations by newspapers and law professors have suggested Texas executed three innocent men and Missouri mistakenly took the life of one.

"Don't tell me about Texas and Kansas and Alabama," Russo said. "This is not those states. In New Jersey, the risk is so minute, it does not warrant consideration."

Assistant Public Defender Dale Jones said, "I don't think New Jersey is in a position to say, 'We're smarter, we're better, we're infallible.' That sort of argument borders on arrogance."

## **STANDARDS OF DECENCY**

The New Jersey Supreme Court has repeatedly rejected arguments that death is cruel and unusual punishment.

Worldwide, 87 nations have abolished capital punishment for all crimes. The U.S. is among 71 nations that punish crimes such as murder with death; another 11 nations have capital punishment for extraordinary crimes such as genocide. The U.S. ranked fourth last year in the number of executions, surpassed only by China, Iran and Saudi Arabia.

"A civilized society doesn't need the death penalty," Fitzgerald said. "We have other means to protect society from dangerous offenders."

Supporters of capital punishment say decency cannot be judged in a vacuum.

"How decent is it to rape and murder a child?" Russo asked.

Flax said that compared with death from cancer or Lou Gehrig's disease, lethal injection is "a pretty easy way to die."

"Quite frankly," she said, "my husband had a worse death."

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