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Don't abolish death penalty, fix it

By John F. Russo

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The New Jersey Death Penalty Study Commission recently issued a report calling for abolition of that state's death penalty. The following are excerpts from the report of the lone dissenter on the panel, a former prosecutor and state legislator.

Although I sponsored New Jersey's current death penalty statute, my beliefs regarding capital punishment are not in any way influenced by pride of authorship. I was in favor of capital punishment long before I was first elected to the Senate in 1974. Neither are my beliefs on this issue motivated by the facts and circumstances of the murder of my father, who was killed in his home during the course of a robbery. The man who killed my father was not subject to the death penalty, nor do I believe he should have been.

My goal in getting the death penalty legislation adopted was not to establish a system of wholesale executions, but rather to make the penalty of death available in cases of extraordinarily vile and heinous crimes. I believe in the words of Justice Potter Stewart: "In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs. ...

"When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they 'deserve,' then there are sown the seeds of anarchy - of self-help, vigilante justice and lynch law."

There are several issues raised by the majority report that warrant comment. First, I have never attempted to justify the death penalty on an empirical deterrence argument, because it cannot be done. Studies have not

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resolved the issue of whether the death penalty deters murder. I have long suspected that the death penalty may be a deterrent for certain murders for hire and terrorism, but it cannot be proved.

Second, I totally discount and do not consider the cost involved. The financial costs of capital punishment have been used both to justify and criticize the death penalty. I have heard many justify the death penalty on the grounds that the state should not have to spend thousands of dollars per year to maintain a convicted killer for the rest of his life. Conversely, the argument has often been made that trial and appellate costs that result from fair enforcement of capital punishment make it too expensive. It doesn't matter what it costs. The taking of a human life is something far too important to be influenced either way by costs. Similarly, it has been said that the death penalty diverts resources from services for victims. Whether or not the state has the death penalty, victims of violent crime can and should be given appropriate services to cope with their loss.

Third, the majority cites polling data to support its recommendation to abolish the death penalty. Although I do not concede that there is an emerging consensus against the death penalty, my beliefs on the issue have never been motivated by popular opinion. Whether capital punishment is right or wrong does not depend on whether the winds are blowing in the right direction.

Fourth, New Jersey's 1982 death penalty statute has not been applied in a discriminatory fashion. The state Supreme Court has repeatedly rejected arguments that the administration of the death penalty is influenced by invidious racial bias.

Fifth, the risk that New Jersey will execute an innocent person under the 1982 statute is minute. As the majority report clearly states: "There have been no exonerations from death row in New Jersey in the 24-year history of the state's modern death penalty law." The possibility of executing an innocent person was a consideration at the time the bill was passed. In response, the bill was drafted very narrowly as to only apply to the worst criminals and afford each defendant the full opportunity to mount an effective defense and appeal his case to the state Supreme Court.

I concede that if the death penalty is going to be administered as it has been since 1982, it may need to be abolished. But 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. Problems such as these should be identified and corrected before the state's capital punishment system is abolished. In other words, let's face up to whatever problems there are and correct them, not run from them by abolition.

In 1967, I prosecuted a man in a death penalty case. At the time of his conviction, when the jury recommended a verdict "with no mercy," as it was then called, the judge had him stand and read him those terrible words: "I command that you be taken on such a day." I fought for that conviction and I believed in it, but I had to go straight into chambers after the verdict, and I stood there in tears.

I fully understand the gravity of this issue, yet I remain convinced that the death penalty should be available for extreme cases such as for serial killers and terrorists, or in situations where an unpaid ransom results in the killing of a child.

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