

## ***INTRODUCTORY NOTE***

On December 17, 2007, the New Jersey State Legislature repealed its death penalty statute. No other state has voted to abolish capital punishment since the United States Supreme Court's decision in *Griggs v. Georgia* in 1976. On April 14, 2008, the *Seton Hall Legislative Journal* hosted and sponsored a Symposium entitled *Legislation, Litigation, Reflection and Repeal: The Legislative Abolition of the Death Penalty in New Jersey*, co-sponsored by The New Jersey State Bar Association, The New York City Bar Association Capital Punishment Committee, and The Stein Center for Law & Ethics at Fordham Law School, with the purpose of developing the historical record, reflecting on the recent history of capital punishment in New Jersey, and examining how New Jersey's actions might provide a model for others to act in the same spirit. In attendance was a distinguished panel of legislators, scholars, and practitioners who offered their insights. What appears in the following pages are reproductions of presentations made during the Symposium. Preceding these reproductions is a timeline highlighting significant events relating to the death penalty in New Jersey, a biography of those who spoke at the Symposium, and an introductory commentary by Professor George Conk, who co-chaired the Symposium.

Resources for further research on the repeal of the death penalty in New Jersey can be found at <http://law.shu.edu/deathpenalty>.

### ***TIMELINE: THE DEATH PENALTY IN NEW JERSEY***

**1972**—*Furman v. Georgia*, 408 U.S. 238. In a per curiam opinion, the United States Supreme Court holds that the death penalty as imposed and administered by the states constitutes cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments. However, only two justices conclude that the death penalty is unconstitutional per se; the other concurring justices take issue with the “arbitrary and capricious”

nature with which the death penalty has been imposed. A de facto judicial stay is imposed upon use of the death penalty across the nation. In response to the decision, many states revise their death penalty statutes, attempting to address the concerns articulated by the Court.

**1976**—*Gregg v. Georgia*, 428 U.S. 153. The United States Supreme Court effectively ends the nationwide moratorium on the death penalty created by *Furman* when it upholds the constitutionality of Georgia's capital punishment statute and holds that capital punishment does not invariably violate the Constitution. The Georgia statute attempts to control arbitrariness by introducing a structure of aggravating and mitigating factors and requiring the state's highest court to conduct a proportionality review, comparing the death sentence on appeal to similar cases throughout the state. States reconstruct their capital punishment statutes to have a similar structure.

**1978**—*Lockett v. Ohio*, 438 U.S. 536. The United States Supreme Court holds that Ohio's death penalty statute, which allows a sentencing judge to consider only three mitigating factors in determining whether the death sentence should be imposed in any case, is unconstitutional. The Court makes clear that individualized sentencing is a constitutional requirement in imposing the death penalty. To meet constitutional requirements, the Court holds, a death penalty statute must not preclude consideration of all relevant mitigating factors

**1978**—Brendan Byrne is inaugurated as Governor of New Jersey for a second term and vetoes two bills to reinstate the death penalty in the state.

**1982**—Governor Thomas Kean signs the Capital Punishment Act into law, which restores the death penalty in New Jersey. The Act calls for a bifurcated trial in which punishment is determined in a separate proceeding following the establishment of guilt. In the guilt phase, the central question is whether the defendant committed "murder," —i.e., whether the defendant "purposely" or "knowingly" caused "death or serious bodily injury resulting in death" or caused death while committing, attempting to commit, or immediately after committing or attempting to commit "robbery, sexual assault, arson, burglary, kidnapping, or criminal escape." In the sentencing phase of the proceeding, ordinarily conducted before the same jury that determines guilt, the State

has the burden of establishing, beyond a reasonable doubt, the existence of one or more “aggravating factors” set forth in the Act, while the defendant has the burden of producing evidence of any “mitigating factors.” The Act provides that if the jury “finds that any aggravating factor exists and is not outweighed by one or more mitigating factors, the court shall sentence the defendant to death.” If the jury finds that no aggravating factors exist or that such factors are outweighed by mitigating factors, the Act provides for a minimum sentence of thirty years without parole eligibility. The State is required to notify the defendant of the aggravating factors that it intends to prove, the notice to be given during discovery in the guilt phase. The Act also allows defendants sentenced to death to directly appeal to the New Jersey Supreme Court as a matter of right, and requires the court to also determine “whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.”

**1984**—*Pulley v. Harris*, 465 U.S. 37. The United States Supreme Court declares that proportionality review is not mandated by the U.S. Constitution. Many states continue to require, either by statute or judicial decision, some form of proportionality review in the review of capital convictions.

**1985**—Public Law ch. 178 is passed, amending the Capital Punishment Act. The law: (1) clarifies that the State has the burden of proving beyond a reasonable doubt that the statutory aggravating factors that exist outweigh the mitigating factors in order for the death penalty to be imposed; (2) provides that the trial court must inform a deadlocked jury that its failure to reach a unanimous death verdict would result in a sentence of imprisonment of thirty years without parole; and (3) limits the proportionality review requirement to situations in which the defendant requests such a review.

**1985**—Public Law 1985, ch. 478 is passed, providing that: (1) in any instance where the defendant does not appeal a death sentence, the Office of the Public Defender or other court-appointed counsel must file the appeal; and (2) a juvenile who has been tried for murder as an adult and convicted may not be sentenced to death.

**1987**—*State v. Ramseur*, 106 N.J. 123. The New Jersey Supreme Court rejects a challenge to the constitutionality of the Capital

Punishment Act under both the federal and state constitutions, holding the Act constitutional “in all respects.”

**1988**—*State v. Gerald*, 113 N.J. 40. The New Jersey Supreme Court holds that it will search for reversible error *sua sponte* in death penalty cases. The court further holds that the state Constitution limits imposition of the death sentence to those who “purposely or knowingly cause death,” and thus that those who purposefully or knowingly cause serious bodily injury to another which results in death may not be subject to the death penalty.

**1988**—The New Jersey Supreme Court creates the Proportionality Review Project and appoints Professor David Baldus as Special Master to systematically study whether the death penalty is being implemented in a non-arbitrary manner.

**1988**—Leigh Bienen et. al. publish *The Reimposition of Capital Punishment in New Jersey: The Role of Prosecutorial Discretion*, documenting disparities in county prosecutors’ decisions to seek the death penalty.

**1991**—The Victim’s Rights Amendment to the New Jersey Constitution, art. I, ¶ 22, is passed, providing in part: “A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings . . . .”

**1991**—Special Master Baldus issues his Final Report to the New Jersey Supreme Court.

**1992**—*State v. Marshall*, 130 N.J. 109. The New Jersey Supreme Court conducts its first proportionality review using the data and methodology presented by Special Master Baldus. The court also makes clear that it considers proportionality review as constitutionally required under the New Jersey Constitution.

**1992**—Public Law 1992, ch. 5 is passed, amending the Capital Punishment Act to specify that proportionality review shall be limited to a comparison of similar cases in which a sentence of death was imposed.

**1992**—*Gerald* is overturned by constitutional amendment. Article I, ¶ 12 of the New Jersey Constitution is amended to provide that:

It shall not be cruel and unusual punishment to impose the death penalty on a person convicted of purposely or knowingly causing death or purposely or knowingly causing serious bodily injury resulting in death who committed the homicidal act by

his own conduct or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value.

**1992**—Public Law ch. 76 is passed, providing that the jury cannot be provided with evidence concerning the method or manner of execution which would be imposed on a defendant sentenced to death.

**1993**—Public Law ch. 27 is passed, making leaders of narcotics trafficking networks who commanded or by threat promised or solicited the resulting murder eligible for the death penalty and also adding such murders to the list of aggravating factors under N.J. STAT. ANN. § 2C:11-3c(4).

**1993:** Public Law ch. 111 is passed, clarifying that the term “homicidal act” for the purposes of the Capital Punishment Act means “conduct that causes death or serious bodily injury resulting in death.”

**1993**—Public Law ch. 206 is passed, adding as an aggravating factor under N.J. STAT. ANN. § 2C:11-3c(4) that the defendant caused death when committing the criminal act of “causing or risking widespread injury or damage.”

**1994**—Public Law ch. 132 is passed, adding the fact that the victim was less than fourteen years old at the time of the murder to the list of aggravating factors under N.J. STAT. ANN. § 2C:11-3c(4).

**1995**—Public Law ch.123 is passed, allowing prosecutors to introduce victim impact evidence during the sentencing phase of a capital trial in some circumstances.

**1996**—Public Law ch. 115 is passed, requiring defendants convicted of the murder of a law enforcement officer who do not receive the death penalty to be sentenced to life imprisonment without parole.

**1997**—Public Law ch. 60 is passed, requiring defendants convicted of capital murder, where the victim was less than fourteen years old and the homicide was committed during the commission of a sexual offense, to be sentenced to a term of life imprisonment without parole if not sentenced to death.

**1997**—Governor Christine Todd Whitman issues Executive Order No. 72, creating the Study Commission on Implementation of the Death Penalty in hope of finding ways to streamline the

process of review and expedite executions.

**1999**—The New Jerseyans for Alternatives to the Death Penalty (NJADP) is formed.

**1999**—Public Law, ch. 209 is passed, adding violation of a domestic violence restraining order to the list of aggravating factors under N.J. STAT. ANN. § 2C:11-3c(4).

**1999**—Public Law, ch. 294 is passed, allowing family members of a murder victim to display a photograph of the victim at sentencing.

**1999**—Gov. Whitman signs Public Law ch. 302, permitting the family members of murder victims to attend the execution of their loved one's murderer.

**1999**—The New Jersey Supreme Court appoints David Baime as Special Master to reevaluate the court's proportionality review methodology.

**1999**—Eagleton poll shows support for death penalty has fallen to 63%, down from 76% in 1975 and 73% in 1981.

**April 1999**—Special Master Baime issues his initial report to the New Jersey Supreme Court. Among his recommendations are: (1) the continued comparison of a defendant's case with those of similar death-eligible defendants, regardless of whether the death penalty was sought, despite Public Law 1992, ch. 5; (2) modification of the salient-factors and abandonment of the index-of-outcomes tests in proportionality review; and (3) the appointment of a Standing Master to assist in proportionality review.

**1999**—*In re Proportionality Review (I)*, 161 N.J. 71: The New Jersey Supreme Court adopts the recommendations of Special Master Baime's initial report with modifications.

**December 1999**—Special Master Baime issues his second report, pertaining to systemic proportionality review, to the New Jersey Supreme Court. He proposes a process for monitoring the possible presence of racial discrimination in the administration of the death penalty through a multifaceted approach, consisting of bivariate analysis, regression studies, case exploratory analysis, and precedent-seeking review.

**2000**—*In re Proportionality Review (II)*, 165 N.J. 206. The New Jersey Supreme Court adopts the recommendations of Special Master Baime's second report with modifications.

**2000**—Public Law ch. 88 is passed, amending the death penalty statute to require that if the jury finds the existence of one or more aggravating factors but finds that the aggravating factor(s) do not outweigh the mitigating factors found to exist, or the jury is unable to reach a unanimous verdict as to the weight of the factors, the defendant shall be sentenced to life imprisonment without eligibility of parole.

**2001-2005**—Special Master Baime releases a yearly Systemic Proportionality Review Report to the New Jersey Supreme Court.

**2002**—The September 11, 2001 Anti-Terrorism Act, Public Law ch. 26, is passed without a negative vote. Section 10 of the Act makes those who commit murder during the commission of terrorism eligible for the death penalty, while an act in aid of terror causing loss of life is made punishable by life imprisonment without eligibility of parole. The Act also adds the fact that the murder was committed during the commission of a crime of terrorism to the list of aggravating factors under N.J. STAT. ANN. § 2C:11-3c(4).

**2002:** Rutgers-Eagleton poll is released, indicating that when given a choice, New Jerseyans favor life imprisonment without eligibility for parole as the penalty for murder over the death penalty, 48% to 36%. The poll also indicates that 66% of New Jerseyans support a one year moratorium on executions while the death penalty is studied.

**2003**—Governor McGreevey vetoes Assem. 1913, which created a study commission to study the death penalty in the state and imposed a moratorium on executions pending its findings.

**2004**—*In Re Readoption with Amendments of Death Penalty Regulations, N.J.A.C. 10a:23*, 367 N.J. Super. 61 (App. Div.): The NJADP challenges the constitutionality of the revised New Jersey Dep't of Corrections regulations. Judge Pressler, joined by Judges Ciancia and Alley, hold that the death penalty cannot be carried out under current DOC regulations.

**2005**—Special Master David S. Baime issues his annual final report regarding systemic proportionality review. The Special Master finds that white victim cases are more likely to progress to the penalty phase than African-American and Hispanic victim cases, but “the race or ethnicity of the defendant overall is not an important factor in determining whether the death penalty is imposed.”

**2006**—Public Law ch. 321 is signed into law by Governor Richard Codey, establishing the New Jersey Death Penalty Study Commission and staying all executions pending the results of the study.

**January 2007**—The New Jersey Death Penalty Study Commission issues its final report. The Commission recommends replacement of the death penalty with life imprisonment without possibility of parole, to be served in maximum security prison. The Commission further recommends that any cost savings be used to benefit the survivors of homicide victims.

**January 2007**—A poll released by Quinnipiac University indicates that 51% of New Jerseyans prefer life without parole to the death penalty for defendants convicted of murder.

**December 10, 2007**—The New Jersey Senate approves S.171, which abolishes the death penalty in New Jersey and replaces it with a sentence of life imprisonment without the possibility of parole.

**December 13, 2007**—The New Jersey General Assembly approves S. 171.

**December 16, 2007**—Governor Jon S. Corzine commutes the sentences of the eight inmates remaining on death row to life imprisonment without the possibility of parole.

**December 17, 2007**—Governor Corzine signs S.171 into law. New Jersey becomes the first state in nearly forty years to legislatively repeal the death penalty.

**December 18, 2007**—The Colosseum, ancient site of public executions, is illuminated in tribute to New Jersey's actions.

**December 18, 2007**—The United Nations General Assembly calls for a worldwide moratorium on executions.

### ***SPEAKER BIOGRAPHIES***

*Sen. Christopher "Kip" Bateman*

*Assembly Sponsor of Repeal Bill*

Senator Christopher "Kip" Bateman is the Deputy Conference Leader in the New Jersey Legislature. He received his B.A. from Ithaca College, majoring in political science and history, and his J.D. from Seton Hall University School of Law.