

**NEW JERSEY OPINION**

# ***NEW JERSEY OPINION; No Savings In Lives or Money With Death Penalty***

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**By Leigh Bienen**

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THE recent Federal drug bill reintroducing capital punishment for certain drug-related murders in an election year is further evidence that politics never changes. You can fool some of the people, but, one hopes, not all of the time.

The death penalty is a fraud upon the public. The taxpayers are being sold a bill of goods. Both a simple and a complex analysis of the costs and benefits of the death penalty, and of the logic behind re-enactment, indicate that the policy accomplishes nothing its proponents claim, and its cost is exorbitant.

Since 1976, 38 jurisdictions have reintroduced the death penalty. There are now over 2,000 people on death row. And last spring the United States Supreme Court handed down an opinion stating that it would not invalidate state capital punishment schemes, even if those schemes were not applied in a manner that was neutral with regard to race. Capital punishment is back, and for all the wrong reasons.

The public was led to believe that the reintroduction of the death penalty would produce several desirable outcomes, soon, if not immediately. There would be less crime. The crime rate would go down because those people who commit violent and heinous crimes would know about the re-enactment of capital punishment and decide not to commit those murders.

But everything we know about murderers indicates that they don't act after rationally weighing their actions. And everything we know about the imposition of the death penalty tells us that it is just those who are too enfeebled, or mentally deficient, or hapless to plan their actions or participate in their defense who end up being sentenced to death.

In fact, the rational murderer could well conclude that his chances of being executed are minimal. In the whole United States, there have been 100 executions since 1976, and more than 240,000 murders have been committed in the same period.

People want to go back to the good old days when everyone respected law and order. Whether or not there ever were any such good old days, they weren't brought about by the infliction of capital punishment.

In New Jersey capital punishment was the law from Colonial days until 1972, and the Legislature re-enacted it in 1982. From 1907, when formal records were kept, the high point for capital punishment was 1930, when 16 people were sentenced to death and 11 executed. It wasn't until after 1920 that most death sentences were appealed.

In 1940 nobody was sentenced to death and nobody was executed, and there were 69 homicides recorded. In 1950 in New Jersey one person was sentenced to death; nobody was executed, and 99 homicides were reported. In 1986 in New Jersey, 459 homicides were reported, and fewer than 10 people were sentenced to death.

Equally illogical are the supposedly sophisticated arguments about the death penalty and deterrence, which are once again being put forward. That work has been conclusively discredited. But no one has discredited the statistical evidence, from study after study, in jurisdictions from Kentucky to Florida, showing that race of the victim is as important in determining who gets the death penalty as the presence of another crime, or even that the defendant has been previously convicted of murder.

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The public believes that it will save money by executing murderers. Nothing could be farther from the truth. The cost of the reimposition of capital punishment runs into the millions of dollars. Texas says the re-enactment of capital punishment has cost the state \$183.2 million. In Ohio it's been estimated that it costs \$1 million per execution, and a California study estimated over four times that. The cost of death-penalty trials, the costs of appeals, of separate places of confinement for prisoners, all far exceed the cost of keeping murderers in prison for the rest of their days. In New Jersey the state has spent millions of the taxpayers' money to house some 20 murderers under special guard at the maximum-security prison.

Well, some reply, let's get rid of those expensive due-process guarantees, which are wasted on our worst citizens anyway. But does this society really want to get rid of the premise that the accused is entitled to representation and innocent until proven guilty? Or is that premise now only going to operate for certain classes of likable or sympathetic criminals? People tend to think dueprocess guarantees are a luxury until one of their own is accused of a crime.

A more honest, but disturbingly cynical, point of view is the belief that the society needs capital punishment because the criminal-justice system is not to be trusted.

Cases where murderers have been let out, or considered for parole in what seems to be an alarmingly short period of time, have received a great deal of attention. They are, however, few and far between.

The majority of states, including New Jersey, now have in place sentencing statutes that insure that murderers and others convicted of serious crimes will actually spend many, many years, or the remainder of their lives, in prison. In New Jersey the mandatory minimum term for murder is 30 years, that is 30 calendar years, and it can be longer if one has additional convictions or prior offenses.

The public's distrust and frustration with the criminal-justice system is the worst reason to dust off the electric chair. And it is just that fear and paranoia that is played upon when support is drummed up for capital punishment. Executing a few who are selected by a system that is capricious, arbitrary and not racially neutral will not do away with the public's distrust of the legal system. It will only buttress the arguments of those who say the criminal-justice system oppresses the many and the poor for the benefit of the few and the rich.

It is a statistical certainty that some of those executed will be entirely innocent of their crimes. It is just as equally certain that for every executed person there will be 3 or 4 or 50 whose crimes were just as horrible, but whose lives were spared for reasons of luck or prosecutorial discretion, or because they had competent counsel, and race and jurisdiction will not have been irrelevant.

The costs of capital punishment are staggering, much more than the dollars and cents of court time, transcripts and appeals. The true cost of capital punishment is the establishment and perpetuation of a system of sanction that has repeatedly been shown to be counterproductive and discriminatory. It isn't fashionable to talk about justice, and the concept of justice for victims has added a new and valued dimension to the debate.

But what kind of justice for victims is it when only a select few are prosecuted for capital murder? The families and loved ones of the other thousands of victims see their cases disposed of as ordinary, noncapital murders. The message to them is clear: Society's resources aren't going to be spent on you.

The price of capital punishment is the support of a system that is unjust, and perceived to be unjust, as well as wasteful and inefficient. The price of capital punishment is that the public is misled and then disappointed. Capital punishment was going to accomplish desirable objectives, like reducing or deterring crime, and that was never possible.

The price of capital punishment is the hypocrisy introduced into the compact between the legislators and the governed, between the suppliers and consumers of public policy, if you will. The millions of public money wasted on capital punishment are measurable, but rarely mentioned. The price of capital punishment is beyond counting.

Leigh Bienen is a public defender who has just completed a study on homicide in New Jersey.

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