Life After the Death Penalty: Implications for Retentionist States

Presented by the Committees on Capital Punishment of the American Bar Association Section of Civil Rights & Social Justice and of the New York City Bar Association
Monday, August 14, 2017, 10 am at the House of the NYC Bar Association[1]

Speakers:
Thomas P. Sullivan—Co-Chair, 2000 Commission on Capital Punishment in Illinois; 2015 ABA Thurgood Marshall Award Recipient; partner, Jenner & Block
Shari Silberstein—Executive Director of Equal Justice USA
Celeste Fitzgerald—Director of Partnerships at Equal Justice USA; former Director of New Jerseyans for Alternatives to the Death Penalty
Robert Dunham—Executive Director of the Death Penalty Information Center

Moderator:
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Ronald Tabak: Welcome, on behalf of the New York City Bar Association, of whose Death Penalty Committee I am a member (and whose Chair, Art Cody, was very, very instrumental in putting this program together); and on behalf of the American Bar Association Section on Civil Rights and Social Justice, whose Committee on Capital Punishment I chair.

Today's program will consider what led up to the abolition of the death penalty in a significant number of states during the first two decades of this century. Our distinguished panelists will include in their discussion of how abolition occurred several leading arguments that people opposing abolition made in state after state – concerning a variety of horrible things they said would result from abolition.

I will introduce all the speakers now. The first will be Tom Sullivan of the Jenner & Block law firm, based in Chicago, Illinois, who, among many other things, chaired a study commission whose work played a crucial role in Illinois.

Shari Silberstein, the head of the Equal Justice USA, played a major role in New York and is also is extremely knowledgeable about what has occurred in Maryland and Connecticut.

[1] This article is an edited, reorganized, and revised version of the transcription of the August 14, 2017 program. The edits and reorganization were made by the program's moderator and approved by the panelists, who also in some instances made further edits and provided updated materials.

Celeste Fitzgerald, now at Equal Justice USA, was at the relevant time at the center of the New Jersey abolition effort and will also discuss the abolition experience in New Mexico.

Robert Dunham, the Executive Director of the Death Penalty Information Center, will analyze several things that those opposed to eliminating capital punishment repeatedly said would likely occur if the death penalty were abolished.

Tom, Shari, and Celeste will also discuss what has happened since abolition in the states that each is covering today. They will also discuss, as will Rob, the implications of all this for states that still have the death penalty.

I note, as background to our discussion, that the number of states that are actually imposing new death sentences has been greatly diminishing, and that only a small number of counties are responsible for the majority of new death sentences in those states.

Now, I am pleased to call on our first speaker, Tom Sullivan.

Thomas Sullivan: Thank you, Ron.

I'm going to discuss the successful effort to abolish the death penalty in Illinois, which we'd had for many, many years. Indeed, we were a major producer of death sentences.

The abolition effort really began in 1998, when the Northwestern University Law School held a national conference on wrongful convictions and the death penalty. Six hundred people came from throughout the United States, including 31 who had been convicted and given the death penalty but then had been exonerated as wrongfully convicted. That conference spurred many calls for abolition of the Illinois death penalty. The Northwestern Center on Wrongful Convictions, the Illinois Coalition to Abolish the Death Penalty, the American Civil Liberties Union, and others joined in the chorus.

One of the major disturbing factors in Illinois was the number of exonerations that had occurred within the few years before this conference. We had 11 executions since the death penalty was reinstated back in 1976, and 11 exonerated during the same time frame -- so the number was tied. There was wide publicity concerning the possibility that Governor George Ryan would take some action, although he had supported the death penalty and one person had been executed under his watch.

In 2000, he took action. He appointed a 14-member commission to examine the reasons why these mistakes were being made and to make recommendations as to how the death penalty system in Illinois could be more accurate, just and fair. Before the Commission started its work, Governor Ryan imposed a moratorium on executions. He said, "No more people are going to be executed 'til this report is rendered." The Commission chair was Frank McGarr, a very esteemed Federal District Judge; and the co-chairs were former U.S. Senator Paul Simon and me (a former U.S. Attorney). We met with supporters and opponents of the death penalty, and with national experts on both sides. Our meetings were held in private, except we had four public hearings—two in Chicago and two in Springfield, the state capital. We issued no press releases and we kept the deliberations secret. We met, personally, with many of the victims' families and with the exonerated and their families. Those were very moving times for us.

We understood that we had not been asked to recommend whether or not the death penalty should be abolished in Illinois, although after we rendered our report, Governor Ryan said, "Why didn't you make a recommendation?" We believed we were asked to make recommendations as to how the system could be changed to make it more accurate.

In April of 2002, we issued our report, which is several hundred pages long. It discusses how we went through our job and the recommendations that we made, including the votes on each recommendation. Our votes were often not unanimous. The Commission had people on both sides of many issues. We recommended many reforms that should be implemented if the death penalty were to be retained in Illinois. These would have required a great deal of effort, both legislatively and in terms of money, because of the high cost of prosecuting death cases and the high rate of reversals on appeal. The court proceedings after the imposition of the death penalty until execution averaged over 12 years So, there was little or no deterrent effect.

We recommended, among other things, that custodial interrogations of arrested felony suspects be recorded from start to finish, that they reform the eyewitness identification procedures, that the eligibility factors for the death penalty be reduced from 20 to 5, that no capital punishment be imposed based on single identification or the testimony of an in-custody witness, a so-called "jailhouse snitch," or the uncorroborated account of a witness or a mentally retarded person.

We recommended that the decision of each of the 101 state's attorneys to seek the death penalty be confirmed by a statewide review panel; that there be a pre-trial hearing with respect to the testimony of in-custody informants whom defense counsel would have a chance to cross-examine before the judge made a determination of whether their testimony was going to be permitted; that the trial judge concur in a jury's death verdict; and that the Illinois Supreme Court— to which cases went directly on direct review in capital cases – should consider whether the sentence was imposed due to some arbitrary factor, whether an independent weighing of aggravating and mitigating factors indicated death was the proper sentence, and whether the death sentence was excessive or disproportionate to the penalty imposed in similar cases. We felt that automatic direct review by the Illinois Supreme Court would help to ensure that capital punishment was warranted in light of other, earlier capital punishment cases. And we recommended that detailed information be collected about the capital punishment system.

We made several important findings; that there were a greater number of capital punishments imposed if the victim were white than if the victim were non-white; it wasn't the race of the defendant but rather the race of the person who was killed. We also found that the capital punishment cases took far longer, from trial to sentence. We estimated, based on experts whom we had retained, that the state would have saved $200 million if capital punishment had been abolished in 2000, just two and a half years before we rendered this report in April 2002.

We also found that there was a great disparity in who got the death penalty. It ranged from people who had killed multiple victims, including children, to one man who had no violence in his background who had killed an elderly woman during the course of a robbery. We

could not make sense of the continuum of the people who got the death penalty. It depended so much on where the crime occurred; most of the death penalties were imposed in downstate Illinois in small communities where people knew the victims.

The Illinois legislature, which was controlled by Republicans, passed not a single one of our recommendations during the 2002 session. In January 2003, as George Ryan was about to leave office, he announced that he was taking everyone off of death row. He took more than 160 people off of death row and gave them life sentences.

There were death cases still on appeal which were covered by the moratorium and by Governor Ryan's clearing out death row. Among those affected were several who did not want a life sentence because they felt they had a chance of getting a reversal on appeal. So we had an empty death row at that point. George Ryan said, "Our capital punishment system is haunted by the demon of error in determining guilt, and who among the guilty deserves to die."

This all was followed by a slow road to abolition, which took another eight years. Abolishing the death penalty doesn't just happen in one day. It takes a lot of time and a huge number of people and organizations, and effort. The General Assembly eventually adopted a few of the recommendations that the Commission made but not many, and created what was called the Illinois Capital Punishment Reform Study Committee, which I chaired for six years. We met about 60 times. In October 2010, we published our sixth and final report, whose hundreds of pages contain many of the recommendations that were already made by the original Governor's Commission but which were not adopted. We analyzed what had happened in the interim, and we determined that, in order to have a fair, accurate and just death penalty, there were many, many more reforms that had to be made, and a lot of money spent, to get the system back in order. And in the meantime, a few new death penalties were imposed, so a few new people were put on death row.

Thus, the potential for capital punishment still existed in Illinois despite our reports and the Governor's emptying of death row in 2000. To abolish capital punishment in Illinois, we needed a legislative bill passed by both the Senate and the House, and then signed by the Governor.

The Governor at the time that we rendered our first report in 2002 was George Ryan, who was succeeded in 2003 by Rod Blagojevich, a Democrat who supported capital punishment. He was impeached in 2009 for having tried to extract personal benefits to sell the United States Senate seat that Barack Obama had given up. He was removed from office, and is still in jail. Lieutenant Governor Pat Quinn became Governor. Among the opponents of capital punishment were the Board of Governors of the Illinois Bar Association, which has 30,000 members, and the *Chicago Tribune*, the major newspaper of Chicago. Leigh Bienen at Northwestern Law School published an article in the *Journal of Criminal Law and Criminology* demonstrating the huge amount of money that was spent in Illinois on death cases that involved lengthy proceedings and led to very few executions.

There followed a lengthy series of efforts by individuals and organizations opposed to capital punishment. Then there was an almost miraculous event -- in 2010 both houses of the

Illinois legislature passed a bill providing that the death penalty be abolished. Intensive lobbying then began. Governor Quinn took his time, and listened to all sides. On March 9, 2011, he signed the bill, making Illinois the 16th state to abolish the death penalty.

Since 1996, when intense focus on Illinois' death penalty started, 12 people were executed in Illinois and 20 totally exonerated. To put it another way, 20 people who were convicted and had been given the death penalty were found not to have committed a capital crime.

Due to time constraints, I've not covered all that transpired. But I consider it important to emphasize that this didn't happen just by chance. Many organizations, some of which are represented here on this panel, were very important participants in generating support and publicity in the effort to persuade legislators to vote for abolition. Governor Pat Quinn was persuaded, I think, even before the bill came to him, but he took his time before announcing his decision.

I call your attention to two articles that had been written, one by Rob Warden of Northwestern University. In "How and Why Illinois Abolished the Death Penalty," Rob went into great detail about many of the subjects I've discussed. This summary is at 30 *Journal of Law and Inequality* page 245, University of Minnesota Law School, Summer 2012. The other outstanding article is Leigh Bienen's *Capital Punishment in IL: Reforms, Economic Realities, and a Saliency for Issues of Cost,* 100 *Journal of Criminal Law and Criminology* 1301 (2010).

I'll just add this: there were many supporters of the death penalty who opposed abolition, and it was a real fight. But once Governor Quinn signed the bill there has been silence. We haven't heard another serious word about re-instating the Illinois death penalty.

A great deal of time, attention, and effort were spent on the few cases that involved the death penalty in Illinois, while little attention was given to the huge number of people who were convicted and incarcerated for crimes. All that time, attention, and money can now be shifted to reforming the entire Illinois criminal justice system. That would mean that there has been a double benefit from having abolished the death penalty in Illinois.

One final thing: In Illinois, there was a statute passed to take part of the money -- which was in the hundreds of millions of dollars – that had been spent pursuing these death cases and to use that part of those funds into helping the families of the victims of crimes.

Ronald Tabak: Thank you, Tom. Shari will now talk about New York, Connecticut and Maryland.

Shari Silberstein: I'm Shari Silberstein and I'm the Executive Director of the Equal Justice USA, a national organization that's working to transform the justice system. We work at the intersection of criminal justice, public health, and racial justice to promote responses to violence that are trauma-informed, that advance racial equity, and that put the needs of survivors and healing at the center of justice.

There is certainly no less trauma-informed response to violence than executing people, which is part of why the death penalty is EJUSA's longest-standing program. We work state-by-state, partnering up with some of the state-based groups working to end the death penalty. So, we've been involved in pretty much every state campaign that we're discussing today.

New York was the last state to bring back the death penalty -- in 1995. But it wasn't late because of a lack of political enthusiasm. The New York legislature, year after year after year, would pass death penalty reinstatement bills and then the Governor (first, Hugh Carey and then Mario Cuomo) would veto them. Some of the veto override votes came perilously close to succeeding. Ultimately, in 1995, there was a new Governor in New York, George Pataki, who ran on bringing back the death penalty and was ready to sign a death penalty bill. Fortunately, after becoming the last state to bring back the death penalty, New York later became the first state to get rid of it.

The death penalty lasted here for only about 9 years. Many things happened during those years in organizing, public education, and incredible litigation by defense counsel and the state Capital Defender's Office. Then in 2004, the New York Court of Appeals (the state's highest court) held in *LaValle* that the jury instruction mandated by the death penalty law was unconstitutionally coercive. They ruled that the death penalty in New York could not be applied until the Legislature fixed that provision in the law. Very quickly after that ruling, the Assembly Speaker, the Senate Majority Leader, and Governor Pataki all said that when the Legislature returned during the summer, it would enact the fix to that provision, and the death penalty statute would be up and running again. In New York, those three men (the two legislative leaders and the Governor) were often referred to as the "three men in a room." It was said that the "three men in a room" could achieve virtually any legislative result that they agreed upon.

But that is not what happened this time. Why? Because a great deal had changed in the 9 years during which New York had had the death penalty. The state had spent about $200 million on the death penalty, but had sentenced only 7 people to death – none of whose death sentences were upheld on appeal and thus none of whom had become even remotely close to being executed. All the other problems that death penalty opponents had cited when the law was enacted, based on the experiences in the states that had reinstated capital punishment earlier, had emerged in New York: racial bias, the risk of wrongful convictions, the adverse impact of the death penalty on victims' and defendants' family members, the substantially higher cost, the arbitrariness, and much more. As New Yorkers became aware of these things during its 9-year experiment, public support for the death penalty dropped considerably.

So, there was a really clear message that organizers and other death penalty opponents could deliver: "We've learned a lot about the death penalty over these 9 years." While many death penalty opponents knew these problems would be inevitable from the outset, the frame of a tried and failed experiment created space for people to change their minds without adverse judgment. Some legislators who had supported the death penalty in 1995 (and for years before) said, in substance: "Wow, this didn't really go the way that we hoped it would." Some continued to support the death penalty *in theory*, but no longer believed that it worked *in practice*.

EJUSA teamed up with New Yorkers Against the Death Penalty and many other organizations here in New York, including the New York City Bar Association, to deliver that message and to ensure that the many people who changed their minds on the issue could be heard.

The Legislature came back into session in the summer of 2004 to pass a "quick fix" that would address the Court's concerns. But there was strong and historic opposition in the Assembly's Democratic caucus and they adjourned without fixing the death penalty. A couple of months later, the Assembly Speaker announced that the Assembly would hold hearings on the death penalty – in stark contrast with 1995, when the death penalty was reinstated without even *one minute* of hearings. Originally, three hearings were scheduled, but there was such an outpouring of people wanting to testify that two more were added. More than 170 witnesses came out to testify, virtually all of them opposed to capital punishment either categorically or as practiced. These included family members of murder victims in very high-profile cases, police officers, present and former prosecutors, people who had been sentenced to death but were later exonerated, civil rights leaders, and faith leaders. The vast majority of witnesses, who came from across the political spectrum and across the gamut of life, forcefully said that the citizenry had learned a lot about the death penalty in 9 years, that New York didn't need it, that we'd be better off without it, and that there was no reason to pass the quick fix. These hearings were truly remarkable in 2004-05 — a time when the death penalty's inevitable demise had not yet emerged in public discourse.

Since then, there has been a steady stream of states ending the death penalty and people coming out against it. Today, the eventual end of capital punishment seems to many to be just a matter of time. Back then, this forceful response in testimony from almost 200 people from all walks of life – supported by standing-room only crowds in the hearing rooms – was very powerful.

By the end of the hearings, two powerful committee chairs had changed their minds on the issue. They did so proudly, and without fear. Assemblywoman Helene Weinstein did so in a *New York Times* feature, while Assemblyman Joseph Lentol accepted awards for his role and spoke about how proud he was to change his vote. He shared in one national speech that he slept better at night as a result.

The final legislative step came on April 12, 2005, when the Assembly's Codes Committee (chaired by Assemblyman Lentol) voted against the "quick fix" bill. This vote to reject the death penalty bill essentially let stand the Court of Appeals' decision that – absent a fix – stopped the death penalty in New York. This was the first time in the United States' post-*Furman* era of the death penalty that a state legislative body had voted, in effect, to start the process of dismantling its death penalty.

However, there were still three people left on New York's death row. Although the Court of Appeals had held that the constitutional flaw it had identified in the statute was structural and could not be cured by giving a different charge in a particular case, the Queens District Attorney chose to appeal a case in which the statutorily mandated charge had been altered. Since *LaValle*, Governor Pataki had appointed a conservative jurist to replace one of the 4 members of the 4 to 3

majority, so the public opinion campaign continued as the appeal proceeded. When it was decided in 2007, Judge Robert S. Smith, who had vehemently dissented in *LaValle,* voted to apply *LaValle* in holding unconstitutional the death penalty in *State v. Taylor,* 9 N.Y. 3d 129 (2007). He based his vote largely on the doctrine of *stare decisis*, which he said was especially applicable in light of the fact that the Legislature had had the opportunity to fix the statute's unconstitutional provision and had not done so. The ruling led to the emptying of New York's death row. Later on, the regulations that created a death row in New York were dismantled and New York became the first state in the country to end the modern death penalty.

That was 10 years ago and it is fitting to have this conversation on the 10th anniversary of this exciting development.

Since part of today's discussion concerns "What were the arguments against repeal?" and "Did any of those come true?" I'll address those questions -- first in the context of New York. The death penalty proponents' arguments were all the traditional ones you would expect. They talked about the bloodbath that would come if there were no death penalty: murders would spike; the killings of police officers would spike; killings of corrections officers would spike. None of those things happened. Every credible study on deterrence has found no evidence that the death penalty deters, but New York gave us a real life example. Death penalty proponents' fears were all unfounded.

Shortly after the abolition of New York's death penalty, New Jersey abolished its death penalty, as Celeste will discuss. Abolition next occurred in Illinois, about which Tom talked earlier in today's program. Then came Connecticut, in 2012.

Connecticut's abolition of its death penalty was especially significant because the repeal effort there was the first successful one that was led by a large coalition of family members of murder victims. The families joined with a campaign team led by EJUSA and the Connecticut Network to Abolish the Death Penalty. Almost 200 family members of murder victims were part of the coalition that called on Connecticut to end the death penalty.

This was important because of the context: simultaneous with the repeal efforts nearing their climax was the trial of a case from Cheshire, Connecticut. It was the high-profile, nationally reported case of the invasion by two men of the Petit family's home and the brutal killings of Ms. Petit and her two daughters. Ms. Petit's husband, Dr. William Petit, was the only survivor -- and he was vocally in favor of the death penalty.

Cheshire, Connecticut, where the murders occurred, is a largely white, wealthy neighborhood. This case received extensive press coverage for years, both in- and out-of-state – far more than other murders in Connecticut. This had the effect of giving Dr. Petit's personal pro-death penalty views significant weight in the public discourse compared to other families of murder victims.

Many other family members of Connecticut murder victims felt that the death penalty was harmful and should be ended. There were a number of reasons they felt this way. Some felt that the death penalty created a hierarchy of victims. The death penalty is supposed to be

reserved for the "most heinous crimes" but for the family burying a loved one, every murder is heinous. Others felt that the long process was re-traumatizing to victims' families. The death penalty is the only sentence that does not start until all the appeals are done. Thus, families are left in limbo, waiting for the sentence to be carried out while they return to court for decades. Still others felt that the incredibly high cost spent of seeking to execute a handful of people was a terrible use of resources when victims' families across the state were not getting any kind of healing, services, or support to rebuild their lives.

About 80 family members of murder victims came together to express these concerns in the first year. They signed a letter calling on the Legislature to end the death penalty. Representatives of the coalition held a press conference where they shared their views. Their message was particularly powerful because instead of focusing on the personal opinions, they emphasized how the death penalty was harmful to all survivors – even those who might personally want the death penalty. The press conference was packed and you could "hear a pin drop" in the audience. At least one journalist shared with our campaign team that they'd never heard arguments like this before. It was a profound moment where you could feel, in the room, the environment around the death penalty shift right before your eyes.

As the campaign continued, the media began to focus more on the disproportionate influence that the Cheshire case had on death penalty policy in the state. Vickye Coward, an African American woman whose son Tyler was murdered in New Haven, became a very prominent spokesperson for repeal. The media began to notice the difference between the Cheshire case and Ms. Coward's son's case, even though both murders happened around the same time. Ms. Coward spoke tirelessly for death penalty repeal and for support to all survivors.

Bolstering this message from victims' families was a movement of people of color. The year before, Troy Davis had been executed in Georgia. He was a black man who had been executed despite very strong evidence that he was not guilty of the crime. It was an international case; almost 1 million people around the world signed petitions opposing his execution. The NAACP played a prominent role in trying to prevent that execution. Davis' execution really galvanized death penalty opponents, including the NAACP.

The result was a powerful coalition of victims' families and communities of color who rallied around the idea that the communities most impacted by violence had unmet needs. The Connecticut repeal campaign pointed out that the State was spending $4 million on a single death penalty case while family members and communities that were most likely to experience violence had little access to resources or help. This was a winning formula. Connecticut ended the death penalty in 2012.

I'll close with Maryland, which imposed a moratorium on executions in 2002 shortly after Governor Ryan had put the moratorium in place in Illinois. The focus in Maryland was around racial bias, and the moratorium was to remain in place until the results of a University of Maryland study of racial bias were released and addressed. Unfortunately, a new Governor was elected the following year and reversed the moratorium, allowing executions to go forward.

The coalition that won the moratorium stayed active and when another opportunity arose in 2007, we were ready to mobilize. Martin O'Malley became Governor that year. He had long been against the death penalty and even came to the legislature to testify in favor of repeal his first year in office. However, a strong focal point of the debate was the murder the year before of two corrections officers in the Maryland corrections system. There had not been any corrections officers in Maryland killed by an inmate for 20 years before that. In just about every state, such killings are very rare. In a lot of the states you'll see it's something that happens once in 10 years or once in 20 years. In Maryland, there was a lot of analysis about why these murders had happened – including discussion about cuts to resources and staffing, which really enabled these tragic murders to occur. But a few death penalty proponents latched onto these killings as the reason why Maryland's death penalty should not be repealed.

As a result, it took a few more years to achieve death penalty repeal in Maryland. A study commission met for six months in 2008. It held in-depth hearings. What we've been referring to today as the "parade of horribles" were all trotted out by death penalty supporters as reasons to keep the death penalty, including a spike in prison killings. Many witnesses refuted these claims.

The next year, confronted with the study results, the Maryland Legislature opted to severely narrow the death penalty rather than repeal it. Under this bill, one could get the death penalty only if there were biological evidence, a voluntary videotaped confession, or a video of the murder. The bill tried – ineffectively -- to solve the problem of wrongful convictions, but did not deal with *any* of the other problems that had been raised throughout the course of the study commission.

At this point, no one was happy. The repeal proponents, of course, were not happy, but neither were the death penalty supporters, who felt the law was much too narrow. One prosecutor even said that the law would be the end of the death penalty in Maryland. And, of course, any kind of law like this had all kinds of unintended consequences. It was a hastily-passed bill, drafted on the floor of the Senate amidst confusion, that essentially created more arbitrariness in the death penalty in Maryland. A prosecutor gave a hypothetical example of a murder where a hundred people watch and photograph someone pumping bullets into another man while shouting, "I am killing this man on purpose to steal his money, and I have deliberated for weeks before doing so." This person would no longer be eligible for the death penalty in Maryland, because the case did not involve any of the three kinds of evidence that were required under the narrowed statute. The arbitrariness of this chaotically crafted law generated more costs more litigation and didn't even solve the one problem it was trying to solve, which was wrongful convictions.

As this law was implemented, several more states repealed the death penalty. The national NAACP had come into the fight in Connecticut and was now ready to work with EJUSA and our state partners in Maryland. The *Baltimore Sun* ran an article noting the historic level of investment by the NAACP in a state anti-death penalty campaign. As in Connecticut, there was a strong focus on the needs of family members of murder victims and communities of color. A new repeal bill had a provision requiring that the savings from the death penalty's repeal would be re-directed towards support services for family members of murder victims.

Ultimately that provision was taken out, but the educational effort around the unmet needs of murder victims' families was so successful that the Governor promised to allocate the funds anyway. Maryland repealed the death penalty in 2013, and the next year, the coalition came back to the legislature to make sure we finished the job and the funds for survivors were approved. So far, over $1 million of saved death penalty costs have been re-distributed to provide services for victims' family members in Maryland.

It's notable that we went back and fought for that money the year after the death penalty was repealed. The death penalty abolition movement could have moved on, having achieved the primary goal, but meeting the needs of survivors had become an equally primary goal. We teamed up with the victims' service providers in Maryland, who had no position on the death penalty one way or another, but of course supported funding for victims' services. It was very clear to them and it was very clear to the legislators who voted for this funding that this was death penalty savings money: that Maryland could take better care of survivors because they were saving money that would have been spent on the death penalty. We've been able to get that funding renewed every year since then -- $1.5 million from death penalty savings in total has been allocated to the family members of murder victims.

Although Maryland and Illinois are the only two states where there has been a dollar transfer of this kind, the awareness of the needs of survivors has greatly increased in all the states that have abolished the death penalty. Moreover, that has helped to move to the forefront the needs of survivors within the broader national conversation about criminal justice reform.

Celeste Fitzgerald: Thank you for having us here today. I'm going to discuss New Jersey and New Mexico. They share a lot of similarities. New Jersey was the first state to end the death penalty legislatively in the post-*Furman* era. New Mexico was the second state to do so. Both states had small death rows, strong public defense systems, and excellent capital defense across the board.

Both states' campaigns to end the death penalty very much focused on the impact of the death penalty on victims' family members -- which were articulated sensitively by involved victims' family members. Both even shared similar obstacles -- including governors who were very strongly pro-death penalty. For example, in New Jersey, we had for a time a governor who changed his mind along the way, after having co-sponsored the death penalty bill in 1982.

Here's a summary of the gist of what happened. New Jersey brought back the death penalty in 1982. Between 1982 and December 17, 2007, when Governor Corzine signed the repeal bill, there had been over 200 death sentences sought, juries had returned a death sentence 59 times, and there were 51 reversals, leaving 8 men on death row when New Jersey ultimately ended it in 2007. A highly publicized and egregious case was that of Jessie Timmendquas, who killed Megan Kanka, the girl who had inspired Megan's Law.

There were 17 men on death row when New Jersey's seven year abolition campaign began with a small group of people who gathered in a church basement. We said, "We're not just going to talk about all the reasons we don't like the death penalty; we're actually going to end it." Eventually, we became New Jerseyans for Alternatives to the Death Penalty.

NJADP was founded by a man who lost had his daughter to murder. Our staff included two other persons who were murder victims' family members, and several others who had lost family members to murder served on our board.

We first began to pick up momentum in 2003 when, nearly unanimously, the New Jersey State Legislature in a bipartisan vote passed a study bill. The study bill started its life as a moratorium bill. We were clearly told by the speaker —who was sympathetic—that we had to take the moratorium out of the bill. In 2003, no state had a moratorium law. Yet, the study bill was itself vetoed by Governor Jim McGreevey.

In 2004, repeal legislation was introduced, also by bipartisan sponsors, as had also been true of the original moratorium bill. At this point, NJADP was also scrutinizing the state's annual proportionality reviews, which found that defendants were more likely to proceed to the sentencing phase of a capital trial if the victim was white. The State blamed that on geography, which was a factor. We brought out that arbitrary factors like geography shouldn't come into play and that the end result – racial disparity – matters and impacts faith in the system. We also did our own research and found that the race of the victim was statistically significant, after we corrected an error that the State had made. This showing of racial disparity became the basis for a legal challenge that was being litigated even as the moratorium and repeal bills were being advanced in the Legislature. NJADP also challenged the state's regulations for lethal injection, which resulted in a court-ordered moratorium in 2004.

A turning point came when Governor Richard Codey (who had become Governor when Jim McGreevey resigned), spoke out in favor of the moratorium despite having been a co-sponsor of the death penalty law when it was enacted. This was a big deal in New Jersey. But in the same month, one of New Jersey's death row inmates lost his last appeal before the U.S. Supreme Court. At that point, executions could have become an automatic process in New Jersey. The reason why that did not happen—the reason this inmate did not get an execution date -- was because the lethal injection regulations had not been readopted. For that reason, and with the court-ordered moratorium in place, the trial judge could not set an execution date.

The moratorium bill passed with significant bipartisan support in 2005. It was the first legislatively imposed moratorium in modern times, and it authorized the study commission.

A blue ribbon commission was appointed in 2006. It was made up of victims' family members, law enforcement, prosecutors, and defense attorneys. The Commission looked at everything from wrongful convictions to race to the impact on victims' family members. As the Commission's vote on abolition was fast approaching, I got a call from an AP reporter while I was still wearing my pajamas. He told me what the vote was. I thought, "Wow, who is the one vote against repeal?" and he said it was Senator Russo, who was the original sponsor of the death penalty law. I said, "Wow, we got the police chief, we got the prosecutors?" The Commission, indeed, did vote 11-1 to call for abolition of the death penalty. It also recommend that we increase services for victims' family members.

The repeal campaign followed. This was the definition of a grassroots campaign. We started as those five members in a church basement and we now had 10,000 people who were working together in New Jersey to end the death penalty. The repeal bill started off well from the start, with strong sponsors. I want to single out Senator Ray Lesniak, in particular, for stepping up, as well as Senator Bateman, Assemblyman Caraballo, and Senator Martin; all of our prime sponsors were very, very involved and it made a difference. And a crucial role was played by Governor Jon Corzine who, from the very beginning of his political career said he wanted to end the death penalty. He did so on December 17, 2007. He also commuted the death sentences of everyone on death row the night before the abolition bill became law, to allay concerns about the resentencing provision in the repeal bill.

There was little outcry following repeal. There was basically *no* outcry. I remember when the moratorium bill passed, we didn't even the make the top headline; the smoking ban beat us. When the repeal passed, that was a big story, an international story. I was braced for some sort of negative public reaction; yet, there were only a handful of letters to the editor over a couple of days, and then nothing. In fact, the *Star Ledger* called it "New Jersey's proud moment."

I think that continues to be the case throughout New Jersey. It's one of the finest moments in our history and we're very proud of it.

As for our opponents, their loudest spokespeople asserted that abolition would bring about a "parade of horribles." They claimed that the sky would fall, that there would be an increase in police killings, and ultimately, an increase in murders of children. We'll hear more today about how that just didn't happen. There also were "do it for the victims" and "eye for an eye" arguments that you hear in all of the states from those opposing abolition.

New Mexico was the next state to legislatively repeal. It did so in 2009. Those of us in New Jersey and New York were in touch with the abolition advocates in New Mexico, and all three states benefited from the national context. Pope John Paul II came to the U.S. and, in a talk in St. Louis, called for an end to the death penalty. Sister Helen Prejean and her book *Dead Man Walking* also received great attention at this time.

The New Mexico advocates' goal from the outset was repeal. As I said before, New Mexico had a small death row. Their organizers' messages very much focused on the risk of executing an innocent and the impact on family members of murder victims.

There were a couple of unsuccessful attempts to end the death penalty in New Mexico. In 2003, an attempt to "move" the abolition bell floundered. Then, in 2005, it passed the House but got stuck in the Senate. Governor Bill Richardson was a block to that effort.

By 2009, after meeting with many victims' family members, exonerees and others, Governor Richardson said he was open to repeal. That was enough to propel the repeal campaign forward. The abolition organizers had a very strong grassroots effort that had been going on for years and they put that into action and won repeal in March 2009.

The opponents of repeal cited the same "parade of horribles" that were raised in other states. Their messages highlighted police killings. When I spoke to Viki Harrison, the director of the campaign near its culmination, she told me what she was hearing on the State Senate floor. She said there was a great deal of talk about religion, and about crime. But the loudest message from the opposition was about corrections officers.

Years after the abolition bill was enacted in New Mexico, I asked Ms. Harrison whether any prison guards had been killed in New Mexico. Her answer was "No."

Ronald Tabak: I'm now pleased to call upon Robert Dunham.

Robert Dunham: Thank you, Ron. I'm Robert Dunham, I'm the Executive Director of the Death Penalty Information Center. The Death Penalty Information Center provides information and analysis on death penalty issues. We don't take a position for or against the death penalty itself, but we have been critical of the way in which it is administered across the United States.

Having said that, the facts pretty much take a side on the relationship between the abolition of the death penalty and murder rates. Before I tell you what that relationship is, let me provide a bit of background.

Immediately before this paragraph is a map of the United States showing states with and without the death penalty. 31 states and the federal government have the death penalty; 19 states and the District of Columbia don't.

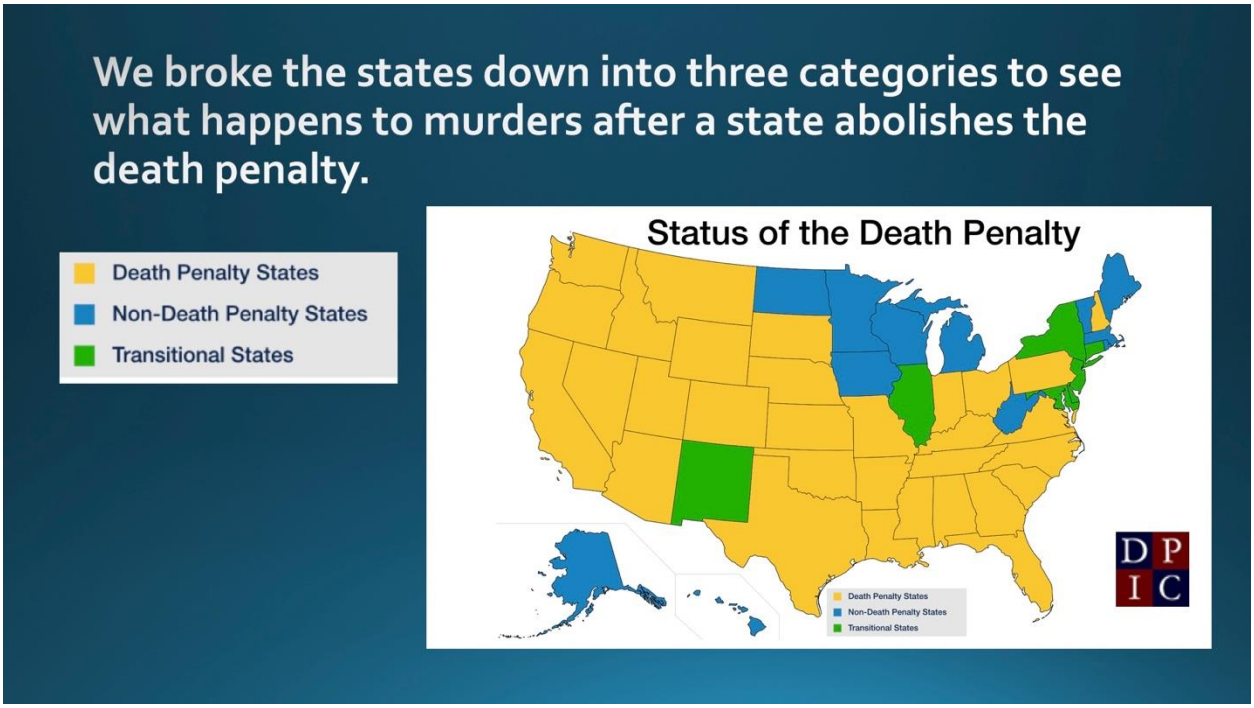
The direction of change is clear. Since 2007, seven states have been added to the states without the death penalty as they legislatively repealed their death penalty statute or declared it

unconstitutional.[2] To try to determine what happened when states abolished the death penalty, we broke the states down into three categories:

1. Death Penalty States: states that have had the death penalty essentially from the beginning of the modern era of the death penalty in the 1970's through now;

2. Non-Death Penalty States: states that abolished the death penalty at some point in the 20th century and never had it at any point during our study period; and

3. Transitional States: states that, at some point in this century have abolished the death penalty; for that, essentially, we're looking at 2007 and forward.



This gave us four comparison groups: the three categories of states, plus the country as a whole. We then looked at two sets of murder rates nationally from 1987 through 2015: murders generally and murders of law enforcement personnel. We chose 1987 as the starting date because that was the earliest date for which we found FBI Uniform Crime Statistics on officers feloniously killed in the line of duty.[3]

[2] Nebraska's legislature repealed the death penalty in 2015, but voters restored the law in November 2016, so the repeal never went into effect. We did not consider Nebraska to be a state without the death penalty.

[3] Our source of information on the number of murders nationwide and in each state was the FBI Uniform Crime Reports, Annual Murder Data from 1987 to 2015. Our source of information on the numbers of murders of law enforcement nationwide and in each state was the FBI Uniform Crime Reports, Law Enforcement Officers Killed & Assaulted, Officers Feloniously Killed Annual Data (LEOKA reports), 1987 through 2015. Our source of information on population nationwide and in each state was the FBI Uniform Crime Reports, Annual State Population Data from 1987 through 2015.

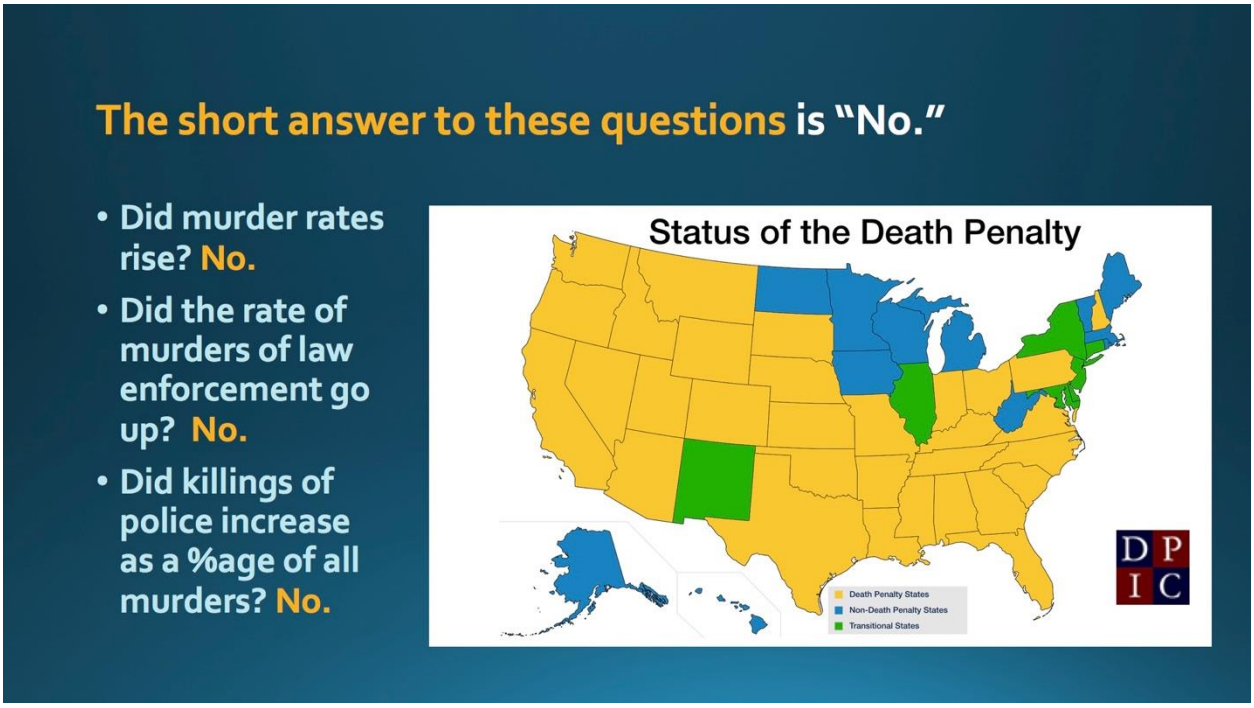
We wanted to find out: would there be a "parade of horribles" following the abolition of the death penalty?

- If the death penalty were a deterrent, the hypothesis would be that murder rates in the transitional states would surely rise, both in the transitional state itself and in comparison to the trends in death-penalty and non-death-penalty states as a whole. Did they?

- If the death penalty were necessary to protect law enforcement, there should be a noticeable change in the rates at which police were killed, again both in the transitional state itself and in comparison to the trends in death-penalty and non-death-penalty states as a whole. Did killings of police officers go up?

- And, if—as opponents of death-penalty abolition had argued—police officers were especially vulnerable without the death penalty and its repeal would lead to "open season on police officers," you'd expect to see not just an increase in the rate at which police officers were killed, but an increase in the number of murders of police officers as a percentage of all homicides. Did that happen?

The short answer to these questions was: "No."



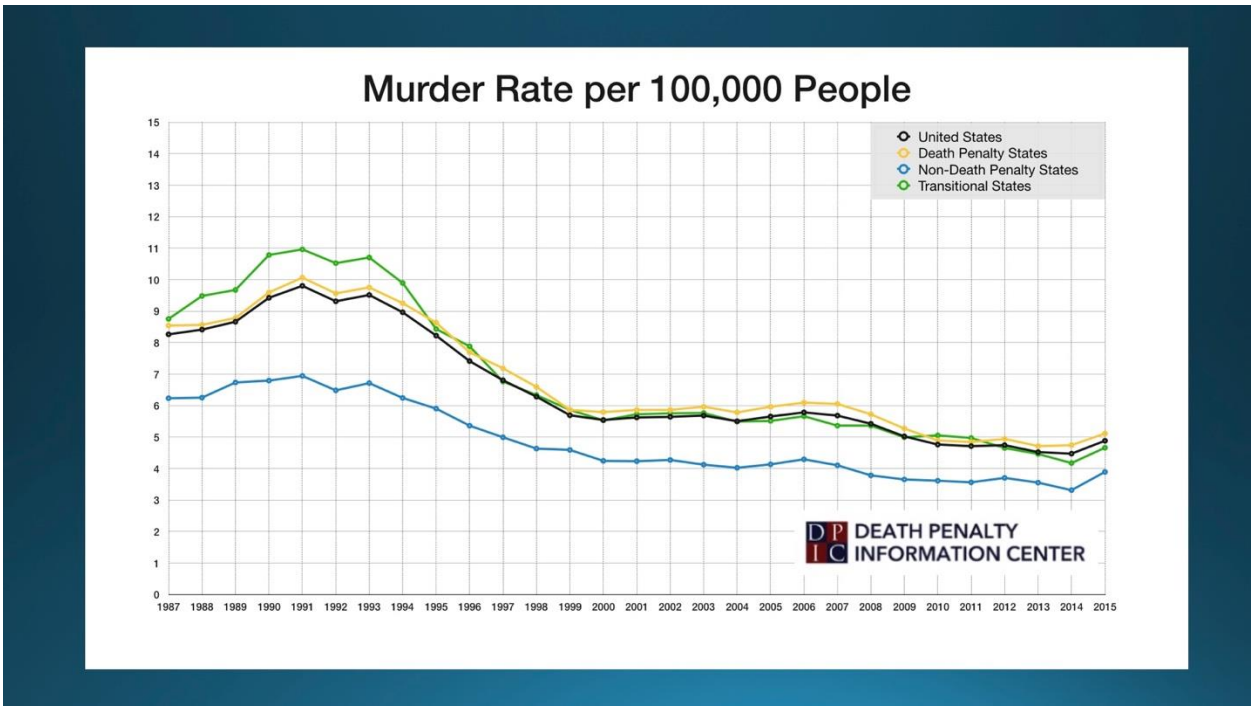
Before I talk about individual states I want to discuss some trends. We calculated murder rates per 100,000 people for the nation as a whole, for each category of states, and for the

transitional states individually.[4] We did similar calculations for the rates at which law enforcement personnel were killed and for the percentage of all murders that involved law enforcement victims in the line of duty. Then we created graphs of rates over time for each type of murder data for each of the comparison groups. The graphs have four trend lines: in each, the black line represents the United States national average; the yellow line is the trend for the death penalty states; the blue line is the non-death penalty states; and the green line is the transitional states.

Overall Murder Rates

As suggested earlier, the theory that murder rates would rise after a state abolishes the death penalty is predicated upon the assumption that the death penalty actually affects murder rates. Accepting that assumption, our hypotheses were that: if the death penalty deterred murder generally, then—all other things being equal—when homicide rates rise nationally, they should rise less in death-penalty states than in non-death-penalty states; when homicide rates fall nationally, they should fall more in states that have the death penalty than in states that don't; and murder rates should rise more or fall less after states abolish the death penalty in comparison both to death-penalty states and states that had long before abolished the death penalty. And if this hypothesized deterrent effect were anything but coincidental in any given state, the pattern of disproportionately larger increases and disproportionately smaller decreases in murder rates should be consistent across the states that had abolished.

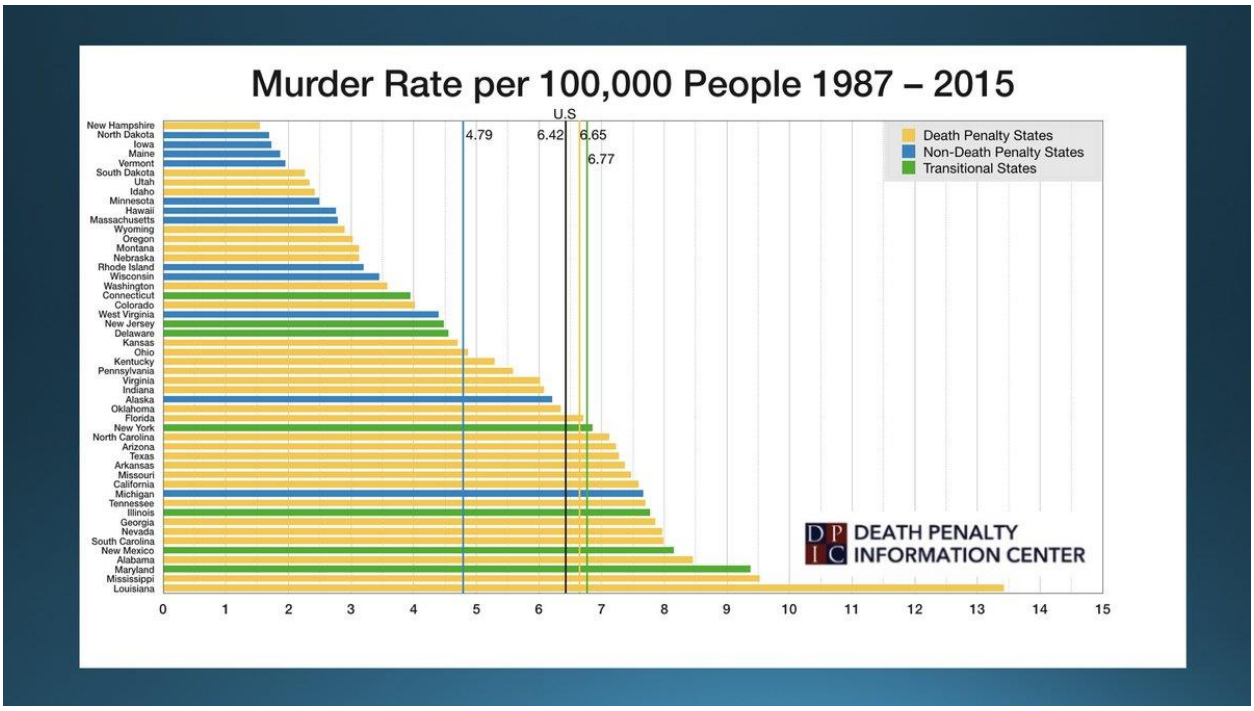
[4] To see how we performed the calculations, see Death Penalty Information Center, Supporting Data for 2017 DPIC Study of Murder Rates and Killings of Police, https://deathpenaltyinfo.org/Data-from-DPIC-Study-of-Murder-Rates-and-Killings-of-Police. The numbers for each state and our calculations for each category of state are contained in a series of Microsoft Excel spreadsheets. You can download the spreadsheets containing the data on which the study is based, and our calculations from that data, at https://deathpenaltyinfo.org/files/spreasheet/AppendixITables.xlsx.



The chart just before this paragraph shows the trends in the overall murder rates. The first thing to notice is the trends are the same, irrespective of what group of states you are in. That suggests that the death penalty doesn't make a difference in murder rate trends. It isn't the deterrent it was advertised to be.

An interesting point to notice here is that the transitional states as a whole—the states that eventually abolished the death penalty—had higher collective murder rates earlier on in the study period, on the left-hand side of the graph. What you would have expected to see, if the death penalty were a deterrent, is that the rates in those states would disproportionally rise over time following abolition, so the green line should spike in comparison to the other lines near the right-hand side of the graph. That did not happen. Instead, the patterns for all four comparison groups are virtually identical from the year 2000 on.

We then color-coded the 50 states by category and ranked them by their average murder rate for the years 1987 through 2015. The states with the fewest numbers of murders per 100,000 people are at the top of the graph. Those with the highest number of murders per 100,000 people are towards the bottom. The vertical lines reflect the average murder rate over the entirety of the study period for each category of state. Again, the national average is black; the non-death penalty-line is blue; the death-penalty line is yellow, and the line for the transitional states is green.



What we found is that virtually every state that had a murder rate above the national average was a death-penalty state for most or all of the study period. The non-death-penalty states were clustered among the states with the lowest murder rates, and all but one of them had a murder rate below the national average. Death penalty states had 12 of the 16 highest murder rates and 21 of the highest 27. Non-death penalty states had 7 of the 11 lowest murder rates. There was no discernible pattern among the transitional states. Three of those seven states had among the nation's highest murder rates and none were among the nation's lowest, but three had lower murder rates than the average rate for non-death penalty states.

We then compared the murder rates nationwide and for each of the categories of states and looked to see where the individual transitional states fit in. The numbers reflected what a visual comparison of the murder rates in the fifty states suggested: murder rates in individual states tend to be higher if the state has the death penalty; and, collectively, murder rates are higher in states that have the death penalty than in states that do not.

Here is what the numbers told us:

Murder Rates (1987-2015)					
Category of State	*Murder Rate/100,000 Population*	*Murder Rate in Comparison to:*			
		United States		*Non-Death Penalty States*	*Transitional States*

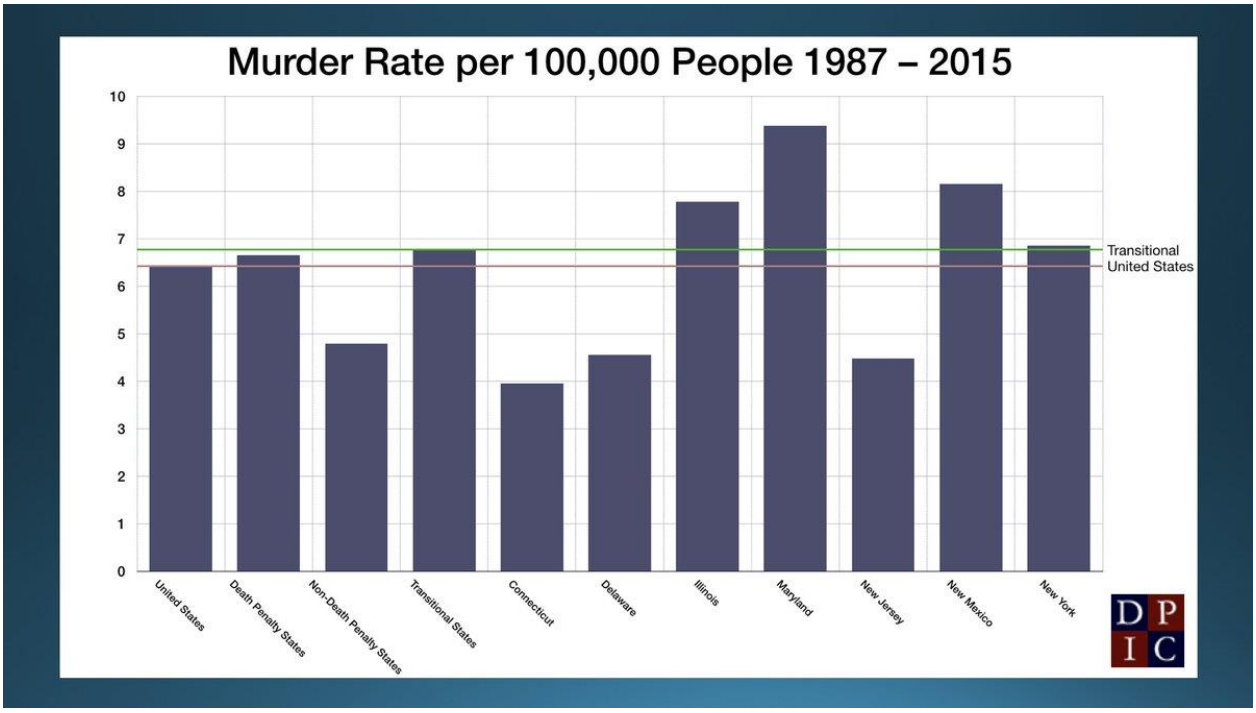
			Death Penalty States		
United States	*6.424*	*X*	*1.03 times lower*	*1.34 times higher*	*1.05 times lower*
Death Penalty States	*6.646*	*1.03 times higher*	*X*	*1.39 times higher*	*1.02 times lower*
Non-Death Penalty States	*4.788*	*1.34 times lower*	*1.39 times lower*	*X*	*1.41 times lower*
Transitional States	*6.767*	*1.05 times higher*	*1.02 times higher*	*1.41 times higher*	*X*

The death penalty states had a higher than average murder rate—indeed, that was the case for every one of the 29 years we reviewed. Overall, murders were committed in those states at a rate 1.39 times higher than murders in non-death penalty states.

I think it is ridiculous to suggest that the death penalty caused higher murder rates. Instead, what I think the numbers are telling us is that the death penalty does not drive murder rates; the relationship is the other way around: murder rates drive whether there's a death penalty. Generally speaking, the states that have the most murders and the highest murder rates are the ones that tend to have the death penalty. And the states that most long ago abolished the death penalty tend to be states that have had the fewest number of murders and the lowest murder rates.

But what about the transitional states? It wasn't surprising that their average murder rate was higher than in the non-death penalty states. But 1.41 times higher? The transitional states not only had a murder rate that was higher than the national average, but one that was higher than the overall murder rate of the death penalty states that did not later repeal capital punishment. What we saw was that the overall murder rate in the transitional states was substantially higher than all other categories of states from 1987 through 1995, dropped below the murder rates in the retentionist states in 1995, and has remained below the murder rates in those states in all but two years since. The murder rate in the transitional states has remained very close to, and even slightly below, the national rate for the last two decades.

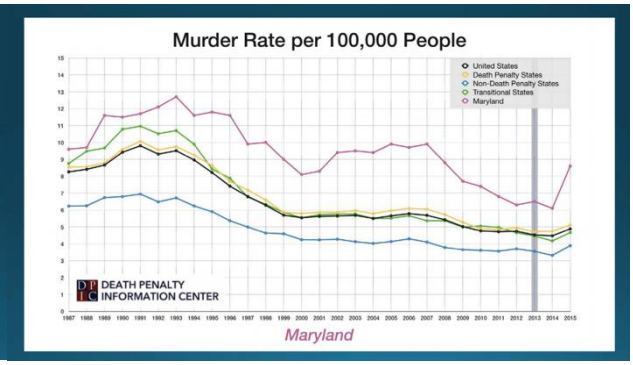
If the death penalty had any causal relationship to murder rates, those numbers would make no sense at all. There should, instead, have been a discernible pattern within the transitional states, with murder rates disproportionately rising as death-penalty abolition occurred. To study what happened, we individually graphed all of the states that abolished the death penalty and compared them to each of the categories of states.



The two thin horizontal lines that you see above are the rate for the United States as a whole (purple), and the rate for transitional states as a whole (green). The first four vertical bars are the murder rates for our four categories of states. They graphically depict how much higher the murder rate is in the death penalty states than in the non-death penalty states. The seven bars to the right are, in alphabetical order, the murder rates for each of the states that abolished the death penalty this century.

The murder rates for the transitional states don't appear to tell us very much. There is no consistent pattern. Illinois, Maryland, and New York—each with a large urban center—and New Mexico have murder rates higher than the national average and higher than the average for death penalty states. Connecticut, Delaware, and New Jersey have murder rates far below the national average and below even the average of the non-death penalty states.

What Happened in States That Repealed the Death Penalty?



The seven graphs immediately preceding this paragraph show the murder rates in the seven transitional states that have abolished the death penalty during the 21st century, presented

in the order in which they abolished the death penalty. The murder-rate trend line for these individual states is depicted in purple. The colors depicting the four categories of states is the same as before. The gray vertical line indicates the year of abolition, and makes it easier visually to assess what happened to murder rates after a state abolished the death penalty.[5]

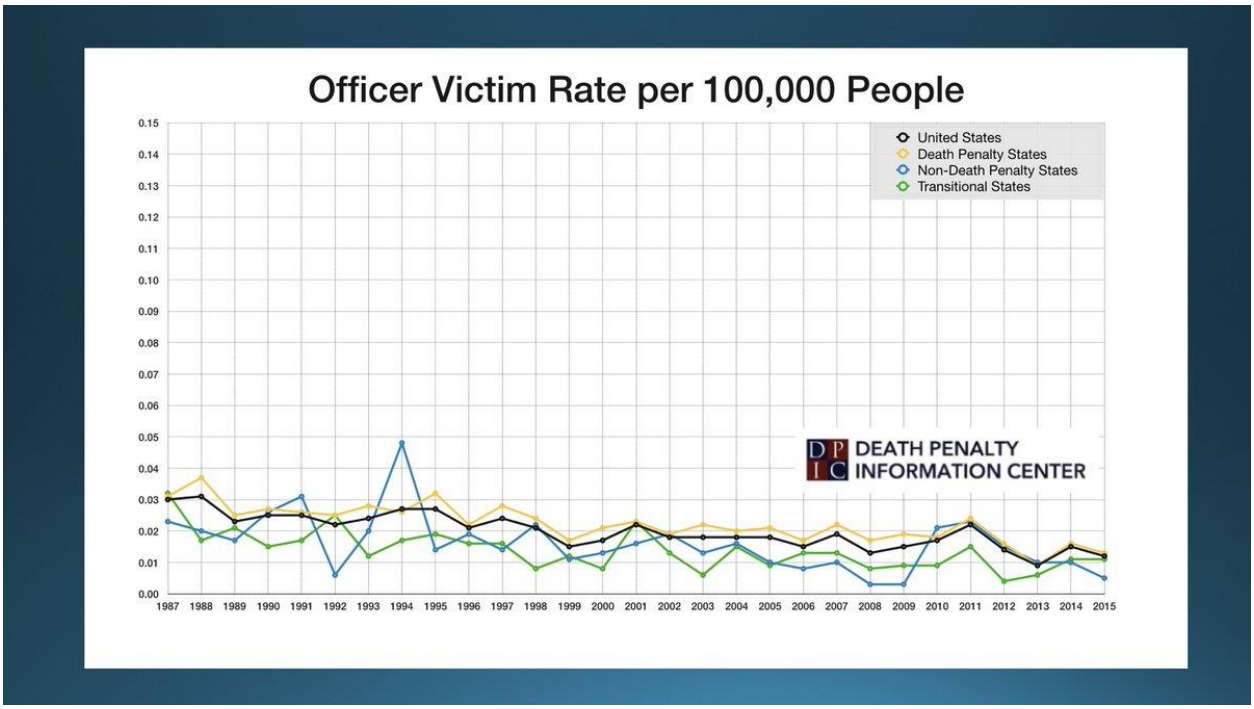
The most succinct description of what occurred after abolition is, "nothing"—or at least nothing systematic. There are some idiosyncratic changes in murder rates in individual states—New Mexico appears to have an immediate, significant decline; Maryland a delayed increase; Delaware, an increase before abolition. But there is no distinct pattern of change in these states following abolition. States that had a higher-than-average murder rate before abolition had a higher-than-average murder rate afterwards. States that had a lower-than-average murder rate before abolition had a lower-than-average murder rate afterwards. Moreover, the numbers suggest that if you look at three-year totals instead of the much more volatile annual numbers, the murder rates in the individual transitional states tend to track the trends nationwide.

So, homicide rates did not spike following abolition. They did not rise disproportionately to increases in other categories of states; they did not fall slower than murder rates were falling in other states. Abolition had no distinctive effect on murder rates, and the predicted surge in murders never materialized.

Officer-Victim Rates

We next looked at officer-victim rates—based on the *FBI Uniform Crime Reports* statistical data on officers killed and assaulted (known as the "LEOKA Reports"). We used a sub-category of data from the LEOKA Reports, law enforcement officers feloniously killed in the line of duty. These are deaths in the line of duty: that means if an officer was killed off-duty and not in his or her role as an officer, that doesn't get included.

[5] For states that judicially abolished capital punishment, we have defined the year of abolition as the year the state courts cleared their death row by retroactively applying their initial decision that the state's death penalty was unconstitutional. By then, the state legislature had been provided an opportunity to enact new legislation to cure the constitutional error in their statute, but had not done so. We therefore list New York's year of abolition as 2007, rather than 2004—although the absence of any post-repeal effect on murder rates in that state appears even stronger if it were to be calculated from 2004. In Delaware, both the initial decision declaring the state statute unconstitutional and the decision applying that ruling retroactively to clear the state's death row were in 2016. So, while we consider Delaware a transitional state, its repeal is too close in time to analyze meaningfully any post-abolition effects.



Above this paragraph is the graph of officers killed in the line of duty. Because killings of police (fortunately) are very rare and represent a tiny fraction of all murders, the year-by-year numbers are volatile (especially at the state level) and are less reliable as a snapshot of what is going on. In particular, the year-to-year numbers in the non-death penalty states—the blue trend line—exhibit broad fluctuations, with several dramatic spikes up and down in the early 1990's. There are spikes as well on the green line—the numbers for the transitional states—mostly reflecting localized events in New York and New Mexico. But most of those spikes occurred before those states abolished the death penalty, so clearly abolition did not play a role in those increases or declines. Viewed over the longer term, historic patterns emerge for each of the categories of states and, generally-speaking, the trends are similar.

As I said earlier, because of the small numbers of killings of police and the year-to-year fluctuations, the officer-victimization rates in individual years are less reliable indicators of what is going on here than are the patterns over longer periods of time and the cumulative long-term numbers. What we see over the course of time is that the rates at which police officers are killed is *higher* in most years in states that have the death penalty than in states that don't. And, over the course of time, it is *lowest* in most years in states that once had the death penalty but later-on abolished it.

When we aggregate the numbers, this is what we see:[6]

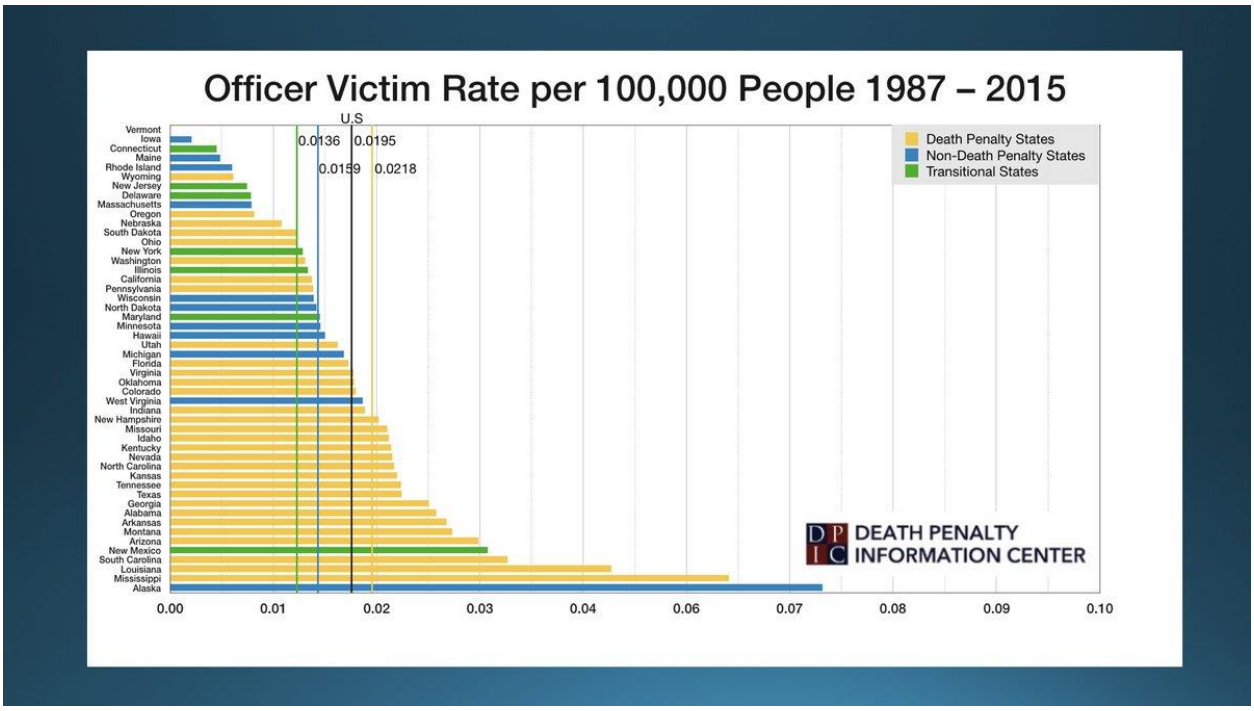
[6] Murders in which police officers are victims are so rare and the officer-victimization murder rates are so small that we report them in the table as the murder rate per 1 million population. Even then, the numbers are a fraction of one in a million. But looking at the numbers at this decimal level avoids injecting mathematical errors from rounding and makes the numbers easier to grasp visually.

Officer Murder Rates (1987-2015)					
Category of State	*Murder Rate/1,000,000 Population*	*Murder Rate in Comparison to:*			
		United States	*Death Penalty States*	*Non-Death Penalty States*	*Transitional States*
United States	*0.195*	*X*	*1.11 times lower*	*1.23 times higher*	*1.43 times higher*
Death Penalty States	*0.218*	*1.11 times higher*	*X*	*1.37 times higher*	*1.59 times lower*
Non-Death Penalty States	*0.159*	*1.23 times lower*	*1.37 times lower*	*X*	*1.16 times higher*
Transitional States	*0.136*	*1.43 times lower*	*1.59 times lower*	*1.16 times lower*	*X*

As with murder generally, the death penalty states had a higher-than-average rate of murders of police officers: 1.11 times higher than the country as a whole; 1.37 times higher than non-death penalty states; and 1.59 times higher than the transitional states. That the risk of a police officer being murdered in the line of duty was 1.37 times *lower* in states that had long abolished the death penalty than in states in which it was a long-time fixture undermines the myth that the death penalty is necessary for officer safety.

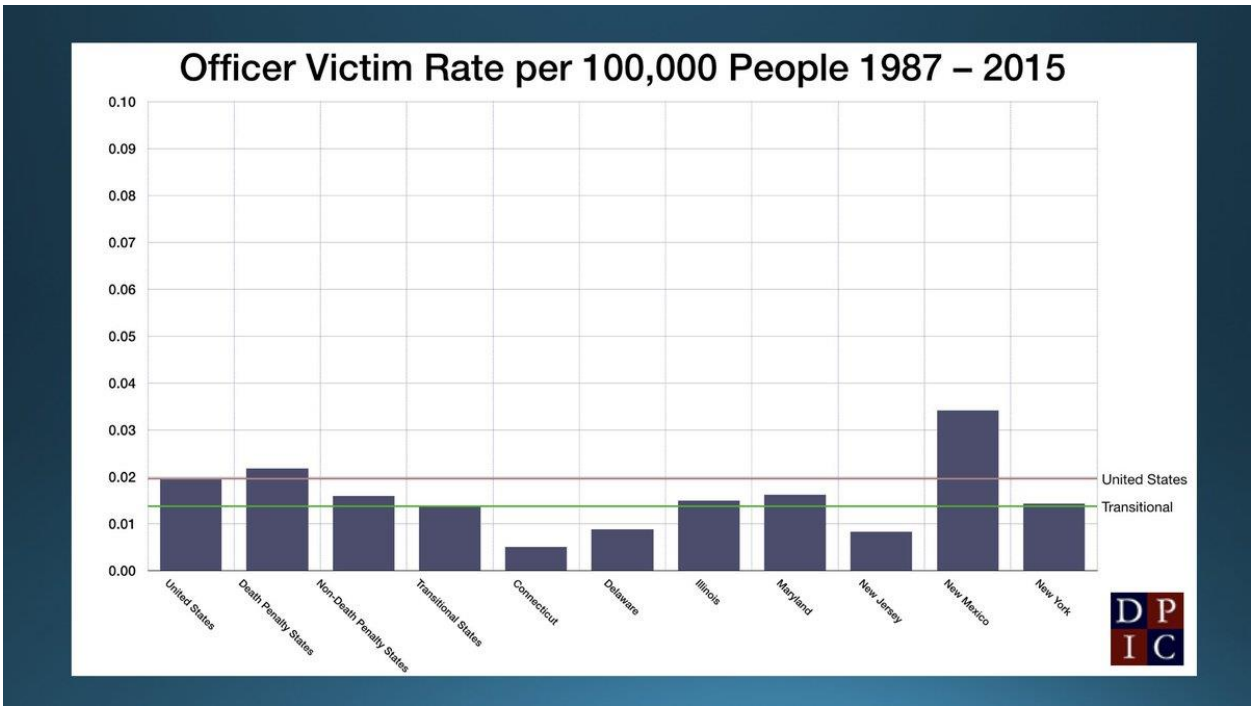
But even more interestingly, officers were substantially less likely to be murdered in one particular group of states: the transitional states—states that had the death penalty for most of the study period, but subsequently abolished it. In these states, the officer-victim rates were 1.43 times lower than the national average. That murders of police occurred at such different rates in this class of death penalty states prior to their abolition of the death penalty than in the states that did not abolish the death penalty once again underscores that the presence or absence of the death penalty did not make officers either more safe or less safe, and indeed, there appears to be no causal relationship whatsoever between the death penalty and murders of law enforcement personnel in the line of duty.

We again created a graph of the fifty states by category, and this time ranked them by their average officer-victim murder rate for the years 1987 through 2015. The states with the lowest rate of law enforcement officers murdered in the line of duty are at the top of the graph. Those with the highest rate of law enforcement officers murdered in the line of duty are at the bottom. Again, the vertical lines reflect the average officer-victim murder rate over the entirety of the study period for each category of state.



The numbers show that having the death penalty has not made officers safer. When you look at the officer-victim rate, you see—as we did with murders generally—that officers are disproportionately killed in states that have the death penalty, as compared to states that don't. And, with the exception of New Mexico, the states that ultimately abolished the death penalty are clustered at the top of the graph, among the states with the lowest rates of killings of police officers. Four of the five safest states for police officers were non-death penalty states. Eight of the nine safest states for police officers were states that either did not have the death penalty at any time in the study period or transitional states that recently abolished capital punishment. By contrast, death penalty states comprised 22 of the 25 states with the highest rates of officers murdered in the line of duty.

Further—again with the exception of New Mexico—when you lay bar graphs of the transitional states side-by-side against the averages of each of the categories of states, you see that the officer-victim rates for the transitional states all were substantially below the average for police-murder victimization in the long-term death penalty states and below the national average. The officer-victim rates in the transitional states also were at or below the average for the non-death penalty states as a whole.



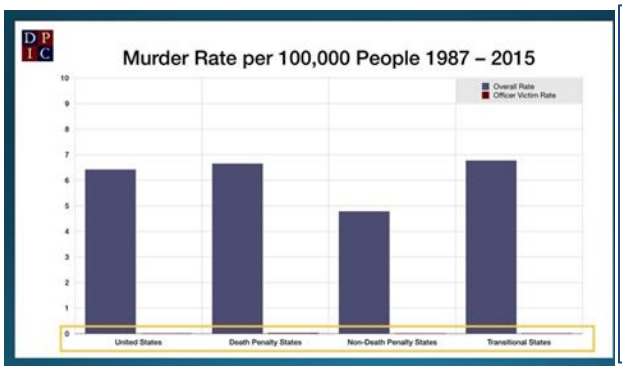
What Happened to Killings of Officers in States That Repealed the Death Penalty?

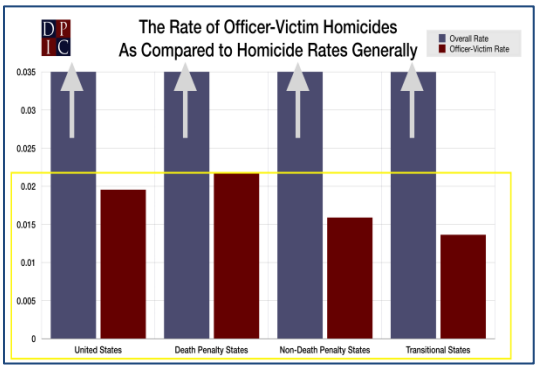
After this paragraph, we include the graphs of the officer-victim murder rates in the seven transitional states that have abolished the death penalty during the 21st century, again presented in the order in which they abolished the death penalty. Again, they show no pattern of increased officer-victimization, nor any consistent deviation from national trends.

If there is no discernible relationship between having or not having the death penalty and trends related to murders generally or murders of police officers in particular, what is going on? To me, the numbers suggest that the answer is "politics": the rate at which police officers are killed is a political factor in a state's judgment as to whether to keep or repeal the death penalty. It's not a question of, "Is the death penalty necessary to protect police officers?" or even "Is there any evidence that the death penalty makes officers safer?" Instead, the prevalence or absence of murders of police officers changes the political climate in which decisions are made about whether to retain or repeal the death penalty. Phrased differently, while the death penalty appears to make no measurable contribution to police safety, the rate at which police officers are killed appears to drive the political debate about the death penalty.

The rates at which officers are murdered is tiny compared to the national murder rates as a whole. The second bar graph after this paragraph shows murder rates in the United States per 1,000 people versus the murder rates of police officers. When you line them up side-by-side, you can't even see the numbers for the police officers. You have to enlarge the graph

substantially to see that. That, of course, is a good thing. The fewer the murders of police officers, the better.



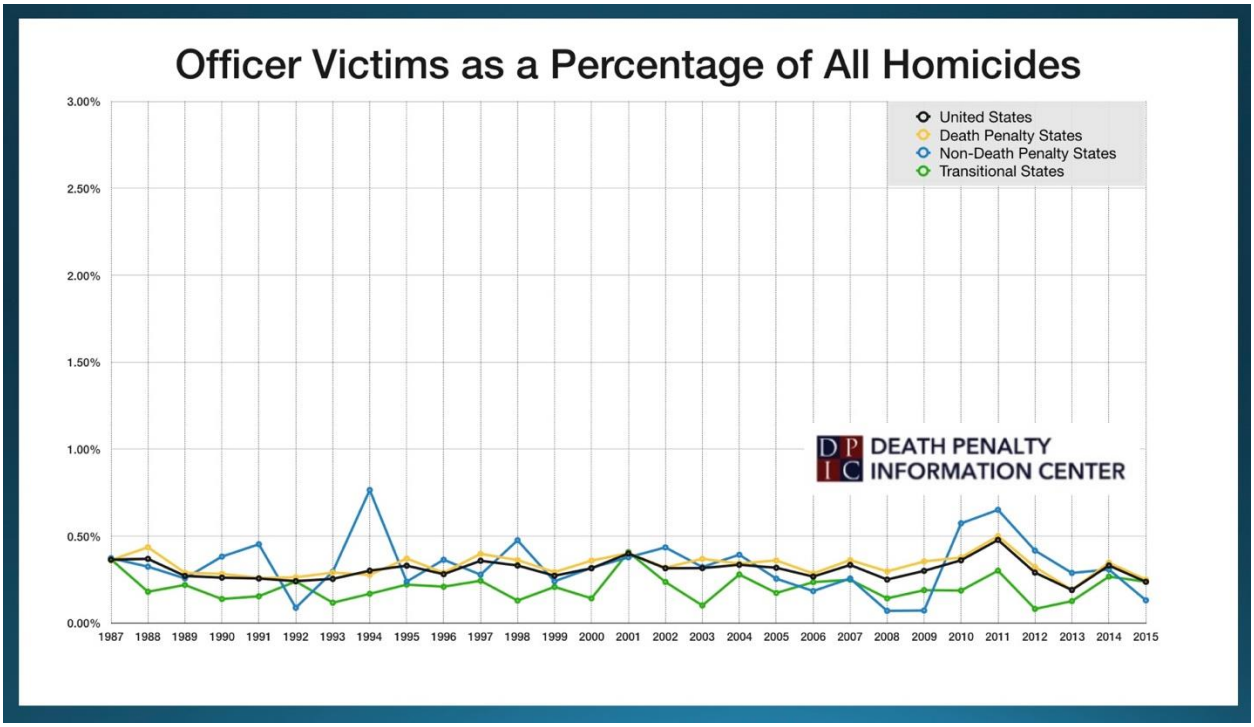


What we see from the data is that a tiny number of murders has a disproportionate political effect. The overall murder rate creates some background level of concern about public safety and the desirability of the death penalty. Against this backdrop, the officer-murder rate stands out and has the largest impact upon death-penalty decision makers. Murders of police officers have an impact on policy that is disproportionate to the impact of murders generally.

Officer Victims As a Percentage of All Homicides

We initially looked at the percentage of homicides that involved law-enforcement victims to test the argument that police officers are especially vulnerable without the death penalty, such that its abolition should not just increase the rate at which police officers are killed, but increase it disproportionately to the projected increase in murders generally. Neither of those increases occurred, but the percentage of murders that involved law-enforcement victims told us something else of social significance.

It turns out that in both death penalty states and non-death penalty states, one-third of one percent of all murders have an officer as a victim. Not so in the transitional states. The formerly death-penalty states that recently abolished capital punishment have not only lower rates of murders involving law-enforcement victims, but also a much lower percentage of murders in which officers are victims (one-fifth of one percent). And as the graph below shows, irrespective of murder trends over time, the percentage of murders in which officers are victims was consistently lower in the transitional states.

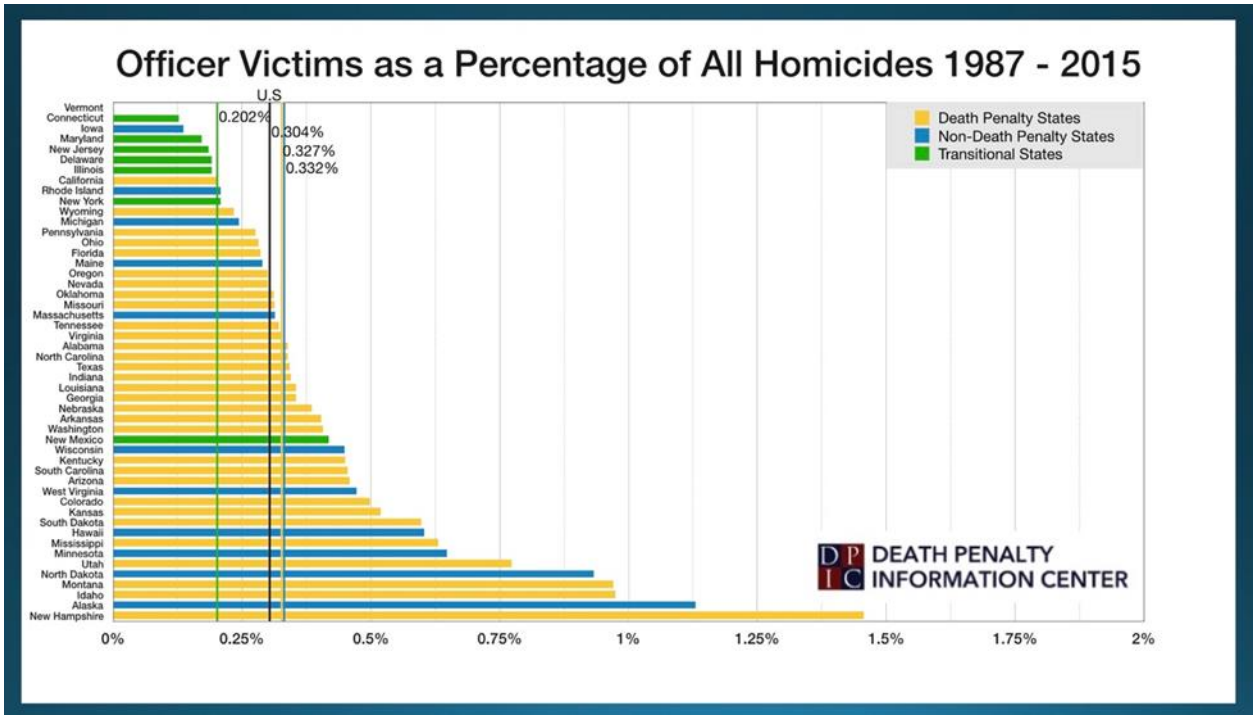


Here are the numbers.

Percentage of Homicides With Officers as Victims (1987-2015)					
Category of State	*Officer Percentage of Homicides*	*Officer Percentage of Homicides in Comparison to:*			
		United States	*Death Penalty States*	*Non-Death Penalty States*	*Transitional States*
United States	*0.304%*	*X*	*1.08 times lower*	*1.09 times lower*	*1.51 times higher*
Death Penalty States	*0.327%*	*1.08 times higher*	*X*	*1.01 times lower*	*1.62 times higher*
Non-Death Penalty States	*0.332%*	*1.09 times higher*	*1.01 times higher*	*X*	*1.65 times higher*
Transitional States	*0.202%*	*1.51 times lower*	*1.62 times lower*	*1.64 times lower*	*X*

As mentioned above, the percentage of murders in which police officers were victims was virtually identical in states that long had capital punishment (0.327%) and states that had long abolished it (0.332%). However, it was ***1.6 times lower*** (0.202%) in the transitional states. The presence or absence of a death penalty did not appear to have any effect on this rate in the transitional states: the percentage of murders in which officers were victims remained below the percentage in the other comparison categories before any of the transitional states abolished the death penalty, as—one-by-one—they began abolishing capital punishment, and after they collectively abolished it.

The state-by-state graph of officer victims as a percentage of all homicides dramatically illustrates the difference between transitional states and the other states with respect to the killings of police officers. The percentage of killings that involve police officers doesn't tell us much about either the death penalty states or the non-death penalty states. Their overall averages are virtually indistinguishable and there is significant variance among the individual states in both categories. But there is a huge difference between these states and the transitional states. When we look at the bar graphs, we see that—again, with the exception of New Mexico—in all the states that have recently abolished the death penalty, the percentage of murders involving law-enforcement victims is far less than it is in other states.



Conclusions

So what do we learn when we look at these numbers? We learn that states with the death penalty continue to have higher murder rates than states without the death penalty – both murders generally and murders with law-enforcement victims. We learn that national trends are national trends, irrespective of whether a state has long had the death penalty, whether it never had the death penalty, or whether it recently abolished the death penalty.

We learn that there's no apparent correlation between the death penalty and changes in murder rates -- if anything, the relationship goes the other way around: states with higher murder rates tend to have -- and retain -- the death penalty. We learn that as abolition occurs, murders don't rise, nor do the rates or percentages at which police officers are killed. National murder

trends are national trends before abolition by individual states. National murder trends remain national trends after abolition. The trends remain the trends, with or without the death penalty. Simply put, the death penalty does not drive whether and to what extent murders occur, and the death penalty has no discernable effect on the killing of law enforcement officers.[7]

So, the death penalty and death penalty abolition appear to have no effect on murder rates. And the long-term decline in death sentencing and executions has not led to more murders, either.

We have seen historic drops in death sentencing across the country: 2016 and 2017 had the fewest new death sentences of any years in modern U.S. death-penalty history.[8] We have fewer and fewer states imposing death sentences than in past decades—13 in 2016 and 14 in 2017. We have fewer and fewer counties in the United States imposing the death penalty, only 28 counties in 2016 and 29 in 2017.[9] We're seeing abolition in the states, one at a time: seven states this century.[10] We're seeing abolition in practice in individual counties, as prosecutors who over-pursue the death penalty have been defeated at the polls. In the last two years, incumbent prosecutors in five of the 16 most prolific death-sentencing counties in the country were replaced with a new generation of reform prosecutors who said they intend to use the death penalty sparingly, if at all.[11]

So there appears to be a continuing political movement towards reducing the use of the death penalty. We see a long-term death sentencing decline and a long-term decline in executions.

Many factors go into abolition. We've heard today about a lot of them. They contribute to the political environment in which abolition does or does not occur. Abolition of the death penalty is much more likely to occur in states in which killings of police officers are low, and particularly where they are low as a percentage of killings overall.

But the numbers show that when abolition does occur, there is no "parade of horribles" afterwards. Murder rates don't go up. Abolition of the death penalty has not led to open season

[7] There is, however, a sense in which murder drives the death penalty: fewer murders is undoubtedly one of the contributors to fewer death sentences.

[8] See DPIC, Number of Jurisdictions Imposing New Death Sentences, 2013-2017, https://deathpenaltyinfo.org/YearEnd2017#infographic.

[9] *Id.*

[10] See DPIC, *States with and without the death penalty*, https://deathpenaltyinfo.org/states-and-without-death penalty.

[11] See DPIC, Anti-Death Penalty District Attorney Elected in Philadelphia, the Nation's 3rd Largest Death Penalty County (Nov. 9, 2017), https://deathpenaltyinfo.org/node/6922; DPIC, New Generation of Prosecutors May Signal Shift in Death Penalty Policies (July 19, 2017), https://deathpenaltyinfo.org/node/6820; DPIC, Voters Oust Prosecutors in Outlier Death Penalty Counties, Retain Governors Who Halted Executions (Nov. 10, 2016), https://deathpenaltyinfo.org/node/6600.

on police officers. And murders—both in general and of police officers in particular—still occur at higher rates in states that have the death penalty than in states that don't.

Ronald Tabak: Thank you very much, Rob, for that very cogent discussion. Now, we'll turn back to Shari to discuss any positive developments – besides the use of savings from abolition to help murder victims' survivors -- that have occurred since the death penalty was abolished in the states we have discussed today.

Shari Silberstein: A few years after some of the campaigns about which Celeste and I have spoken today, EJUSA and a few other organizations led a two-year dialogue process to bring together criminal justice reform organizations and victims assistance organizations to seek common ground. These two movements had been siloed and often pitted against each other, but we have many common interests: in finding solutions and addressing violence in a way that takes care of survivors, advances equity, provides meaningful accountability instead of mass incarceration, and really keeps people safe and reduces violence. The two years of dialogues have led to other kinds of collaborations.

In New York, there was also a period when New Yorkers Against the Death Penalty and EJUSA brought these different stakeholders together -- stakeholders who could not talk to each other in the same way when the death penalty was on the table because our differences over the death penalty took up so much space. Without the death penalty, there was new space created for conversations about how best to achieve the key goals of safety and healing. New Yorkers Against the Death Penalty did a great deal of work on increasing funding and programs to reduce violence, separate from the issue of whether to have a death penalty.

Several of the states about which I talked passed other criminal justice reforms after the death penalty ended. One of the bill sponsors in Maryland suggested that the process of ending the death penalty created space for what later became justice re-investment campaigns and other criminal justice reforms. This idea of creating space involves taking the elephant out of the room and thereby creating room for various kinds of conversations between stakeholders who didn't necessarily think they could work together when the death penalty was getting in the way.

Finally, I want to discuss the conventional wisdom that opposing the death penalty would hurt political careers. That is less of a fear today, but it was a greater concern when some of these bills were in progress. In all the states about which I spoke, no one who voted for the successful repeal bill later lost a re-election bid due to that vote. Many of these legislators cast those votes with pride. In Maryland, especially, as we were going into the gallery to watch the final vote, lawmakers were actually posting on their Facebook accounts about how excited they were to cast this vote.

And over time, in an increasing number of district attorneys' races, the candidates who most fervently push the death penalty are losing. The new prosecutors who are replacing them are not only less aggressive about the seeking the death penalty, but they often favor other kinds of reforms as well.

In an increasing number of states, legislative committees have held hearings on the death penalty for the first time in a long time. In red states like Missouri, Louisiana, and Utah, death penalty repeal bills got out of committee and onto the floor. Whereas the states we talked about earlier were all "blue" states, now there is a great deal of leadership from "red" states – with Republicans sponsoring more death penalty repeal bills than ever. A group called Conservatives Concerned about the Death Penalty, which is housed at EJUSA, has been around for four years. It is leading the significant shift among Republicans and conservatives to take on this issue. These conservatives are spreading the message that the death penalty doesn't comport with conservative values, is not fiscally responsible, is not small government, and is not pro-life. I think it's especially good news that this is a bipartisan effort at a time of great partisanship on many other issues.

Ronald Tabak: I conclude by first thanking our audience, both live and live-streaming and those who will be reading an edited version of this program eventually. I also greatly thank our panelists.

Finally, I note the views of the two sponsoring organizations, which are not the same. The New York City Bar Association has long been opposed to the death penalty. It remains opposed to the death penalty. The American Bar Association does not have any opinion on the death penalty, *per se*. It has been, since 1997, for a moratorium on executions until various policies relating to subjects like racial discrimination, quality of counsel, habeas corpus and others are implemented. It has two projects on the death penalty; one (among many other things) tries to find lawyers, as does this Association, for indigent people on death row who have no right to counsel. The other (among many different things) has done assessments about the actual implementation of the death penalty in 12 states. There also are some other states, like Ohio, which have done their own assessments. The ABA also sponsors informational programs, of which this is one, to try to provide more information on the subject.

Thank you all very much for coming, and for your kind attention.