

Making History: The Repeal Of The Death Penalty In New Jersey

The Editor interviews **David Pascrell**, Chair, and **David Filippelli**, Associate, in the Government Affairs Department of Gibbons P.C.

Editor: Would you tell our readers about your background?

Pascrell: I have been a registered lobbyist on the state and federal levels for almost 12 years now. After law school, I clerked for a chancery court judge, Judge Amos Saunders. I have worked in government affairs for the lion's share of my career. I litigated for about a year before I took a position at a firm in Trenton, after which I moved to the government affairs practice group of Gibbons. I have been here for about six years.

Filippelli: Before joining Gibbons I served as a legislative director and communications director in Washington D.C. and in New Jersey for a member of Congress. I came to Gibbons about five years ago, around the time that David Pascrell started this project with Judge Gibbons.

Editor: How did Judge Gibbons contribute to this project?

Pascrell: He was a professor at Seton Hall Law School, of which I am an alumnus. When I joined the firm, we opened Gibbons' Trenton office to start the government affairs practice group. Several months later, Judge Gibbons called to tell me about New Jerseyans for a Death Penalty Moratorium, an organization on whose board he was serving and which has since grown into New Jerseyans for Alternatives to the Death Penalty (NJADP). He was very active in promoting the organization's mission, which at that time was to legislatively impose a moratorium on the death penalty in New Jersey. Not surprisingly, I was very excited that the standard bearer of our firm was calling me a few months into a relatively new practice group for the firm. In 2002, I began to work with (then chairperson and now director) Celeste Fitzgerald on the group's lobbying efforts for enactment of the first-in-the-nation legislative moratorium on capital punishment, which also included the creation of the New Jersey Death Penalty Study Commission.

Editor: Can you tell us more about the Study Commission? Who were its members?

Filippelli: The make-up of the 13-member commission was striking. They were appointed by the governor, the leaders of the Senate and Assembly and by several non-government groups. Members included a retired Supreme Court justice who had sought the death penalty during his tenure; a Republican police chief who supported the death penalty; family members of murder victims, and other concerned citizens. It was very much a bipartisan group of distinguished people, and they conducted five very fair and open public hearings throughout 2006. Several were pro death penalty when they convened on day one, but the vote that came out in their January 2007 report was 12-1 in favor of repeal.

Editor: How was all of this paid for?

Pascrell: Our representation began as a pro bono assignment. As the organization grew over the course of several years, Celeste seized the growing momentum in the state for repeal and began to seek more funding. Meanwhile, several national organizations who were looking for a state that was ripe to abolish the death penalty threw their energy behind New Jersey. Private contributions from philanthropic institutions began to come into the organization, enabling it to hire staff, as well as to retain us as government affairs counsel. Along with us came seasoned media professionals, whom we were able to



David Pascrell



David Filippelli

advise, thanks to David Filippelli's background in communications.

Editor: What would you say were significant turning points for the move toward repeal?

Pascrell: The first was the Senate's passage of Public Law 2005, C.321. A de facto moratorium was in place already because the lethal injection regulations had yet to be revised by the Department of Corrections in accordance with a state court decision, but NJADP thought it an important initial step to have the legislature manifest its desire to impose a moratorium during a death penalty study commission phase. When this legislation came up before the Senate, we thought we would win by a razor thin majority. Several Republicans and Democrats opposed to the moratorium bill decided to change their votes in caucus through a spirited debate and under guided leadership. I was very much encouraged by the bipartisan nature of that vote; all along we have strived to avoid making the death penalty a partisan issue.

Filippelli: Another important moment in our effort came when our message switched from simply seeking *abolition* of the death penalty to seeking an *alternative* to it – life in prison without parole. To argue simply that the death penalty had failed without articulating that we were going to replace it with a very strong penalty, we felt, would be a mistake. I believe it was a turning point when this organization understood that to achieve its objective we had to speak in different terms and renamed itself New Jerseyans for Alternatives to the Death Penalty.

Editor: Tell us more about the NJADP.

Pascrell: The goal of our client was to impose a moratorium and then begin to debate on replacing the death penalty with life without the possibility of parole. They asked that a study commission convene, and the hope was that it would recommend repeal of the death penalty. None of the current death row inmates would be put to death during the course of this.

This was by no means a foregone conclusion in the state of New Jersey. Richard Codey, President of the New Jersey Senate, had on many public occasions stated that he was supportive of the death penalty, and his staff indicated in private conferences that he would not change his position. It was an amazing turning point when Senator Codey put the abolition bill up for a vote, and not only did he not oppose the bill, he ultimately decided to vote for and advocate for repeal – thanks to the extraordinary efforts of the NJADP over many years. The NJADP is a tribute to the concept that if you believe in something strongly enough; if you are creative enough in terms of your approach; and if you never give up, then ultimately you will prevail.

Filippelli: The strength of this group cannot be underestimated. We certainly are proud of the lobbying efforts that we undertook, but at the end of the day it was the 12,000 New Jerseyans in the NJADP who made passage of S-171 a reality.

What made our work with the NJADP so special was the process by which we put it

together. There was a significant media component, a significant grassroots component and a significant legislative component, and they all worked hand in hand. Literally every week we evaluated how we were doing on each of those fronts because they were all integral to the process. We had to convince the media. We had to keep our grassroots supporters engaged so that they would continue to communicate with their legislators. Members of the legislature needed to understand that the trend in New Jersey public opinion was moving more and more to replacing this outdated system.

Editor: Who were the drivers at the NJADP?

Filippelli: The founding father of the organization, Lorry Post, lost his daughter to murder and he opposed the death penalty for her killer – as do many family members of murder victims. He recruited Celeste Fitzgerald, who ultimately became the director and leader of the effort. Every time Lorry and Celeste came in the State House they delivered a powerful message, as did many people who shared his experience and views. A critical part of this project was that victims' family members convinced the legislators that they could no longer claim that the death penalty had to be kept for the sake of the victims' families.

Editor: How did you convince the legislature?

Filippelli: New Jersey has 40 members in the Senate and 80 in the Assembly, and throughout a five year period we got to know an awful lot about those people – what each one's particular concerns were and what would move him or her toward our side. This effort did not rely on one particular argument. It was not just that we might execute an innocent person, that the death penalty cost too much or that we had not executed anyone in 40 years. It was all of those things.

Pascrell: Dozens of people who had lost a family member to murder came forward to say that with the unending appeals and the fact that no one was put to death, there was never any closure for them. These people wanted to concentrate on honoring the life of their loved ones, not putting their murderers to death.

Editor: Did recent cases of exoneration by DNA evidence play a role?

Pascrell: DNA exoneration was not specifically pertinent to the inmates then on death row in New Jersey, as their guilt was well established. Nonetheless, the argument that innocent persons may be executed was highlighted by the over 100 cases of death row exoneration that had popped up all over the United States. These cases give credence to the argument that wrongful executions are occurring in this day and age despite all of the civil protections in place through the trial and appellate process, and this was the key argument to win over some members of the Legislature.

Filippelli: At the very first hearing of the study commission, Larry Peterson, who had just been exonerated in South Jersey (a capital case, but not a death row inmate), testified unbelievably forcefully about the fact that he had spent 18 years in prison for a capital crime that he did not commit. Sitting next to him was Barry Sheck, the leading DNA attorney from the Innocence Project in New York at the Benjamin Cardozo School of Law.

Editor: How strong were the findings on the death penalty as a deterrent?

Filippelli: The commission took testimony

from experts on both sides and what they ultimately determined was that you could not prove at all conclusively that the death penalty has a deterrent effect.

Editor: And the final push occurred over the course of 2007?

Pascrell: We could have pushed for consideration of S-171 earlier in 2007. After much deliberation and consideration we decided that it would be best for us to delay, and the Legislature came to the same conclusion.

Filippelli: This allowed us to spend 2007 educating legislators on what the commission found. The comprehensive report covered eight different topics – ranging from possible execution of innocent persons to whether or not the death penalty was consistent with our standards of decency today – and included a draft piece of legislation for review. Throughout 2007 we helped the legislature take in the report and understand what was being recommended – specifically, abolition of the death penalty and replacement with life in prison without parole.

Editor: What was the practical result of this legislation in terms of commuted sentences?

Filippelli: The first thing is that the Governor did was commute all of the sentences of those currently on death row, which he announced when he signed the bill into law.

Pascrell: It was unclear whether or not one could apply retroactively a life without parole sentence – essentially a new sentence – on the death row inmates. To relieve us of having to get into that debate the governor commuted those sentences.

Editor: Are there any other states with similar bills pending?

Filippelli: Bills are pending in Maryland, Colorado and New Mexico, I believe.

Editor: Did this experience affect you personally?

Pascrell: In my 12 year-lobbying career as an attorney, this has been by far the most rewarding effort that I have ever undertaken. It has been an honor for me to be involved in this. It happened by virtue of the fact that I decided to come to Gibbons to become a part of what I think is just a truly wonderful firm. When I first started representing this organization I was pro death penalty myself, and I believe now that this was the case because I simply did not spend the time to understand the arguments for repeal and to really get into the debate. So I applied the same techniques that had changed my opinion to my lobbying efforts. It boiled down to this: the more information that we provided to members who were in a position to vote on repealing the death penalty, the more inclined they were to feel comfortable with replacing the death penalty with life without parole. I saw first hand the power of information to significantly change minds. I'm not sure that I will have another experience as powerful in my career.

Filippelli: We take great pride in everything that we do for our clients but this certainly was a rare, historic event. It was especially powerful to hear the stories of family members. I, too, was conflicted about the death penalty. What changed *my* mind was the testimony of the family members of murder victims, who overwhelmingly told the legislature that it was not doing them any favors by upholding this system, which ultimately keeps the perpetrator in the news. More to the point, I came to believe that abolishing the death penalty was simply the right thing to do.