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ILLINOIS ABOLISHES THE DEATH PENALTY

by CHRISTINA McMAHON

On February 5, 1999, within 48 hours of his scheduled execution by lethal injection, Illinois death-row inmate Anthony Porter walked out of jail a free man.¹ After serving 16 years on death row for a double-homicide conviction, Porter had exhausted his appeals and his family had already made his funeral arrangements.²

However, two days before his execution, the Illinois Supreme Court granted Porter a temporary reprieve— not from his conviction, but because he scored so low on an intelligence test that the Court questioned whether Porter could understand his sentence.³ This reprieve had an unintended consequence: during the stay of execution, a journalism professor and his students were able to prove Porter's innocence.⁴

Porter's exoneration has been cited as "the beginning of the end" of the death penalty in Illinois.⁵ According to former Gov. George Ryan, Porter's case, followed by a string of death row pardons in Illinois, triggered his decision to set a moratorium on the death penalty in 2000.⁶ Gov. Ryan's moratorium remained in force until recently, when on March 9, 2011, Gov. Pat Quinn signed a law making Illinois the 16th state to formally abolish the death penalty.⁷

The new law commutes all sentences that previously qualified for capital punishment into life without parole.⁸ Gov. Quinn also commuted the sentences of 15 inmates already on death row.⁹ Furthermore, the law provides that state funds from the Capital Litigation Trust Fund (CLTF), which previously paid for capital trials, will instead go towards services for victims' families and law enforcement training.¹⁰

The decision to abolish the death penalty in Illinois was not a thoughtless one. According to Richard Dieter, Executive Director of the Death Penalty Information Center, "No state has studied the death penalty more than Illinois. . . For a Midwest state that actually had one of the larger death rows in the country to come to this point, I think, is even more significant than some of the earlier states which hardly used the death penalty."¹¹ Gov. Quinn, who asserts that abolishing the death penalty was his most difficult decision as governor, stressed the impossibility of creating a capital system "free of all mistakes, free of all discrimination."¹²

Gov. Ryan, who entered office as a staunch defender of the death penalty but came to view the issue as "one of the great civil rights struggles of our time," made Illinois the first state to enact a death penalty moratorium after Porter's case— and following reports that, since Illinois' enactment of the capital punishment in 1977, more death row inmates had been exonerated than put to death.¹³ Between 1977 and 2000, 13 inmates were exonerated and 12 were executed.¹⁴

The 13 exonerated men spent up to 18 years on death row for wrongful convictions. DNA tests cleared some, while for others, the prosecution's cases collapsed after the convictions were reversed for new trials.¹⁵ The number of exonerated death row inmates rose to 20 by 2009.¹⁶ Additionally, post-mortem questions have been raised concerning the innocence of one of these

12 men, Girvies Davies, who was executed in 1995 based on a disputed confession obtained following extended police threats.¹⁷

Exonerated death row inmates may suffer even greater emotional trauma than others exonerated of crimes.¹⁸ Rebecca Volk, a caseworker for the Life After Innocence Project, notes a higher degree of Post-Traumatic Stress Disorder (PTSD) among prisoners released from death row than for other exonerees, stemming from “years of day-to-day knowing that you will die, but not knowing when.”¹⁹ Illinois recently passed a new law that will go into effect July 1, 2011, providing mental health services for exonerees suffering from PTSD.²⁰

Overall, 311 inmates were sentenced to death in Illinois between 1977 and 2010.²¹ Corruption and discrimination have plagued Illinois in a large number of these capital cases.²² In one Chicago Tribune investigation of 300 Illinois death penalty cases, 33 death row inmates were represented by a disbarred or suspended attorney, 35 black inmates were convicted by an all-white jury, and 46 cases used jailhouse informant testimony as primary evidence.²³ The Illinois Capital Punishment Reform Study Committee (ICPRS) found that death sentences are disproportionately issued to the poor and ethnic minorities.²⁴

There were also several cases of confessions obtained through police beatings and torture.²⁵ One recent example is the case of Victor Safford, released in September 2010 after serving 21 years in prison— 11 on death row— after being tortured into a false confession by former police lieutenant Jon Burge.²⁶ Lt. Burge allegedly obtained over 200 tortured confessions over the course of his career, and is currently serving a 54 month prison sentence following his conviction of lying in a civil case about the torture and abuse of suspects by Chicago Police Department officers.²⁷

In response to these reports, Gov. Ryan enacted capital punishment law revisions in 2003 requiring that homicide interrogations be filmed and changing of rules on informant testimony.²⁸ Before leaving office in 2003, Gov. Ryan commuted *all* 167 death sentences in Illinois to life imprisonment, stating, “Because the Illinois death penalty system is arbitrary and capricious— and therefore immoral— I no longer shall tinker with the machinery of death.”²⁹

In addition to unfair application of capital punishment, supporters of the death penalty ban claim that Illinois cannot afford it. Over \$100 million has been spent on capital cases in the last 10 years, and one study in California

showed that capital cases cost up to six times more than a non-capital murder trial.³⁰ Also, over \$64 million has been paid to men released from death row in Illinois as compensation and to defend against their claims.³¹

Illinois Attorney General Lisa Madigan opposed the ban on capital punishment, along with several county prosecutors and victims' families.³² They claim that the total number of prisoners exonerated from death row represents only a small percentage of capital cases in Illinois, stating at the time of Illinois' moratorium that "in reality there have been 247 death-sentenced defendants in Illinois, not just 25. Of the thirteen "innocents," five were acquitted on retrials. . . In the other eight cases, prosecutors dismissed charges without a retrial because of evidence problems. Only one of the thirteen has been clearly established to be innocent."³³

Moreover, opponents argue that recent procedural safeguards are sufficient to prevent innocent people from being wrongly executed.³⁴ Such safeguards include videotaped interrogations, greater access to DNA evidence, and increased oversight to prevent police confessions obtained by force.

The ICPRS also issued several recommendations which, if enacted, could greatly reduce the number of capital cases and the risk of error in capital trials.³⁵ Such recommendations include the creation of a database to monitor ethnic and economic disparities in seeking capital punishment, as well as limiting the types of cases for which capital punishment may be pursued from 21 types to five types.³⁶ However, opponents claim that even these added measures are not failproof.³⁷ Volk states that the threat of placing an innocent person on death row "cannot be eradicated, because this is a human justice system that will always be prone to human error."

Additionally, prosecutors complain that repealing the death penalty will strip their access to CLTF money, forcing counties to absorb the costs of all murder trials.³⁸ They also claim they will lose a necessary "bargaining chip"—stating the new law will result in more trials because prosecutors lose the threat of the death penalty to get guilty pleas from suspects who opt for life in prison.³⁹ According to Thomas Gibbons, State's Attorney for Madison County, Ill., "When we go to battle in the most serious, heinous crimes, we have to have every weapon available to us."⁴⁰

Others oppose the law on moral grounds, citing the value of an execution to provide justice and closure to victims' families, and the necessity of capital punishment in the "worst of the worst crimes."⁴¹ Some opponents wish to reinstate the death penalty, at a minimum, for cases of mass murder and the murder of children and law enforcement officers.⁴² According to DuPage County State's Attorney Bob Berlin, "I firmly believe that there are certain cases that are so shocking, outrageous and have such an impact on the economy that there is no other sentence."⁴³

Whether the death penalty could be reinstated for such extreme cases remains to be seen. For now, Illinois' death row, with its long history of corruption and false convictions in capital trials, is no more.

NOTES

1 Steve Mills, *What Killed Illinois' Death Penalty*, CHI. TRIB., Mar. 10, 2011, available at http://articles.chicagotribune.com/2011-03-10/news/ct-met-illinois-death-penalty-history20110309_1_death-penalty-death-row-death-sentences; *Anthony Porter: False testimony by a Purported Witness Landed Anthony Porter on Death Row*, NORTHWESTERN LAW CENTER ON WRONGFUL CONVICTIONS, available at <http://www.law.northwestern.edu/wrongfulconvictions/exonerations/ilPorterSummary.html> (last visited Apr. 2, 2011); Report of the Governor's Commission on Capital Punishment, Apr. 15, 2002, available at http://www.idoc.state.il.us/ccp/ccp/reports/commission_report/index.html (hereafter Gov. Comm. Report).

2 Center on Wrongful Convictions, *supra* note 1.

3 *Id.*

4 *Id.*; Mills, *supra* note 1.

5 Mills, *supra* note 1.

6 *Id.*; Gov. Comm. Report, *supra* note 1 at 1.

7 *Illinois Abolishes the Death Penalty*, NATIONAL PUBLIC RADIO, Mar. 9, 2011, available at <http://www.npr.org/2011/03/09/134394946/illinois-abolishes-death-penalty>.

8 *Id.*

9 Mills, *supra* note 1.

10 *Id.*

11 NPR, *supra* note 7.

12 *Id.*

13 Steve Mills et. al, *Governor to Halt Executions*, CHI. TRIB., Jan. 20, 2000, available at <http://www.truthinjustice.org/haltdp.htm>.

14 *Id.*

15 Mills, *supra* note 1.

16 *Time to Make the Death Penalty Moratorium Permanent*, EQUAL JUSTICE USA, available at <http://news.change.org/stories/time-to-make-the-death-penalty-moratorium-permanent> (last visited Apr. 5, 2011) (*hereinafter* Equal Justice).

17 Mills, *supra* note 1.

18 Telephone Interview with Rebecca Volk, caseworker for The Life After Innocence Project (May 3, 2011).

19 *Id.*

20 *Id.*

21 Illinois Capital Punishment Reform Study Committee: 6th and Final Report, Oct. 28, 2010 (hereafter ICPRS Report).

22 Gov. Comm. Report, *supra* note 1.

23 ICPRS Report, *supra* note 21.

24 *Id.*

25 *Id.*

26 *International Human Rights Group Reviews Cases of Chicago Torture Under Burge*, NORTHWESTERN UNIVERSITY RODERICK MACARTHUR JUSTICE CENTER, Sept. 27, 2010, available at <http://www.law.northwestern.edu/macarthur/police/burge.html>.

27 Matt Kelley, *In Chicago, Torture and Indifference: The Jon Burge Trial*, CHANGE.ORG, June 10, 2010, available at <http://news.change.org/stories/in-chicago-torture-and-indifference-the-jon-burge-trial>; *Former Police Officer Jon Burge Sentenced for Lying About Police Torture*, THE CHI. SYNDICATE, Jan. 26, 2011, available at <http://www.thechicagosyndicate.com/2011/01/former-chicago-police-officer-jon-burge.html>.

28 ICPRS Report, *supra* note 21.

29 David Goodman, *The Conversion of Gov. Ryan: A former death penalty proponent pulls the switch on capital punishment in Illinois*, AMNESTY INTERNATIONAL USA, available at <http://www.amnestyusa.org/magazine/ryan.html> (last visited Apr. 20, 2011).

30 Equal Justice, *supra* note 16; Dieter, Richard C., *What Politicians Don't Say About the High Costs of the Death Penalty*, Executive Director, The Death Penalty Information Center, available at <http://www.fnsa.org/v1n1/dieter1.html> (last visited Apr. 5, 2011).

31 Equal Justice, *supra* note 16.

32 NPR, *supra* note 7.

33 *Pennsylvania District Attorneys Association Newsletter: Capital Litigation Report*, available at <http://www.prodeathpenalty.com/liebman/pennsylvania.htm> (last visited Apr. 20, 2011).

34 *Id.*

35 ICPRS Report, *supra* note 21.

36 *Id.*

37 Volk Interview, *supra* note 18.

38 Jim Suhr, *Prosecutors say Quinn move would tie hands*, CHI. SUN-TIMES, Feb. 21, 2011. (However, opponents claim the CLTF offers a financial incentive for counties to pursue the death penalty.)

39 *Id.*

40 *Id.*

41 *Id.*; *Illinois Death Penalty Ban Wouldn't Affect 15 Inmates Currently on Death Row*, HUFFINGTON POST, Jan. 13, 2011, available at <http://huffingtonpost.com/2011/01/13/illinois-death-penalty-ban.html>.

42 *Id.*

43 Suhr, *supra* note 38.