

# Gov. Ryan Deals Mortal Blow to Death Penalty

*Illinois Gov. George Ryan's bold action on Jan. 11, commuting to life imprisonment the sentences of all 167 inmates on the state prison's death row, was intensely controversial. After reviewing every single case and meeting with the families of victims and of the condemned, Ryan concluded that four of the inmates awaiting execution were innocent, and pardoned them. His blanket commutation has been intensely criticized, but it is "likely to lead the nation toward a similar conclusion," to quote one editorial. The following are extensive excerpts from his speech announcing the decision, at Northwestern University Law School in Chicago. Subheads have been added.*

Four years ago I was sworn in as the 39th governor of Illinois. . . . That's when I was a firm believer in the American system of justice and the death penalty. I believed that the ultimate penalty for the taking of a life was administered in a just and fair manner. Today, three days before I end my term as governor, I stand before you to explain my frustrations and deep concerns about both the administration and the penalty of death. . . .

I want to share a story with you. I grew up in Kankakee which even today is still a small Midwestern town, a place where people tend to know each other. Steve Small was a neighbor. I watched him grow up. He would baby-sit my young children—which was not for the faint of heart since Lura Lynn and I had six children, five of them under the age of 3. He was a bright young man who helped run the family business. He got married and he and his wife had three children of their own. Lura Lynn was especially close to him and his family. We took comfort in knowing he was there for us and we for him. One September midnight he received a call at his home. There had been a break-in at the nearby house he was renovating. But as he left his house, he was seized at gunpoint by kidnappers. His captors buried him alive in a shallow hole. He suffocated to death before police could find him. His killer led investigators to where Steve's body was buried. The killer, Danny Edward, was also from my hometown. He now sits on death row. I also know his family. I share this story with you so that you know I do not come to this as a neophyte without having experienced a small bit of the bitter pill the survivors of murder must swallow. . . .

I never intended to be an activist on this issue. I watched in surprise as freed death row inmate Anthony Porter was released from jail. A free man, he ran into the arms of North-

western University Prof. Dave Protesch, who poured his heart and soul into proving Porter's innocence with his journalism students. He was 48 hours away from being wheeled into the execution chamber where the state would kill him. It would all be so antiseptic and most of us would not have even paused—except that Anthony Porter was innocent of the double murder for which he had been condemned to die.

After Mr. Porter's case there was the report by *Chicago Tribune* reporters Steve Mills and Ken Armstrong documenting the systemic failures of our capital punishment system. Half of the nearly 300 capital cases in Illinois had been reversed for a new trial or re-sentencing. Nearly half! Thirty-three of the death row inmates were represented at trial by an attorney who had later been disbarred or at some point suspended from practicing law. Of the more than 160 death row inmates, 35 were African-American defendants who had been convicted or condemned to die by all-white juries. More than two-thirds of the inmates on death row were African American. Forty-six inmates were convicted on the basis of testimony from jailhouse informants.

I can recall looking at these cases and the information from the Mills/Armstrong series and asking my staff: How does that happen? How in God's name does that happen? I'm not a lawyer, so somebody explain it to me. But no one could. Not to this day. Then over the next few months, there were three more exonerated men, freed because their sentence hinged on a jailhouse informant or new DNA technology proved beyond a shadow of doubt their innocence. We then had the dubious distinction of exonerating more men than we had executed. Thirteen men found innocent, 12 executed. As I reported yesterday, there is not a doubt in my mind that the number of innocent men freed from our death row stands at 17, with the pardons of Aaron Patterson, Madison Hobley, Stanley Howard, and Leroy Orange. That is an absolute embarrassment. Seventeen exonerated death row inmates is nothing short of a catastrophic failure. But the 13, now 17 men, is just the beginning of our sad arithmetic in prosecuting murder cases.

## Justice and Fairness

During the time we have had capital punishment in Illinois, there were at least 33 other people wrongly convicted on murder charges and exonerated. Since we reinstated the death penalty there are also 93 people—93—where our criminal justice system imposed the most severe sanction and later rescinded the sentence or even released them from custody because they were innocent. How many more cases of wrongful conviction have to occur before we can all agree that the system is broken? Throughout this process, I have heard many different points of view expressed. I have had the opportunity to review all of the cases involving the inmates on death row. I have conducted private group meetings, one in Springfield and one in Chicago, with the surviving family members of homicide victims. Everyone in the room who wanted to speak

had the opportunity to do so. Some wanted to express their grief, others wanted to express their anger. I took it all in. My commission and my staff had been reviewing each and every case for three years. But I redoubled my effort to review each case personally in order to respond to the concerns of prosecutors and victims' families. This individual review also naturally resulted in a collective examination of our entire death penalty system.

I also had a meeting with a group of people who are less often heard from, and who are not as popular with the media. The family members of death row inmates have a special challenge to face. I spent an afternoon with those family members at a Catholic church here in Chicago. At that meeting, I heard a different kind of pain expressed. Many of these families live with the twin pain of knowing not only that, in some cases, their family member may have been responsible for inflicting a terrible trauma on another family; but also the pain of knowing that society has called for another killing. These parents, siblings and children are not to blame for the crime committed, yet these innocents stand to have their loved ones killed by the state. As Mr. Mandela told me, they are also branded and scarred for life because of the awful crime committed by their family member. Others were even more tormented, by the fact that their loved one was another victim—that they were truly innocent of the crime for which they were sentenced to die.

It was at this meeting that I looked into the face of Claude Lee, the father of Eric Lee, who was convicted of killing Kankakee police officer Anthony Samfay a few years ago. It was a traumatic moment, once again, for my hometown. A brave officer, part of that thin blue line that protects each of us, was struck down by wanton violence. If you will kill a police officer, you have absolutely no respect for the laws of man or God. I've known the Lee family for a number of years. There does not appear to be much question that Eric was guilty of killing the officer. However, I can say now after our review, there is also not much question that Eric is seriously ill, with a history of treatment for mental illness going back a number of years. The crime he committed was a terrible one—killing a police officer. Society demands that the highest penalty be paid. But I had to ask myself—could I send another man's son to death under the deeply flawed system of capital punishment we have in Illinois? A troubled young man, with a history of mental illness? Could I rely on the system of justice we have in Illinois not to make another horrible mistake? Could I rely on a fair sentencing? . . .

Once I studied, once I pondered what had become of our justice system, I came to care above all about fairness. Fairness is fundamental to the American system of justice and our way of life. The facts I have seen in reviewing each and every one of these cases raised questions not only about the innocence of people on death row, but about the fairness of the death penalty system as a whole. If the system was making so many errors in determining whether someone was guilty in

the first place, how fairly and accurately was it determining which guilty defendants deserved to live and which deserved to die? What effect was race having? What effect was poverty having?

And in almost every one of the exonerated 17, we not only have breakdowns in the system with police, prosecutors, and judges, we have terrible cases of shabby defense lawyers. There is just no way to sugarcoat it. There are defense attorneys that did not consult with their clients, did not investigate the case and were completely unqualified to handle complex death penalty cases. They often didn't put much effort into fighting a death sentence. If your life is on the line, your lawyer ought to be fighting for you. As I have said before, there is more than enough blame to go around.

### **Illinois Statute May Be Unconstitutional**

I had more questions. In Illinois, I have learned, we have 102 decision-makers. Each of them are politically elected, each beholden to the demands of their community and, in some cases, to the media or especially vocal victims' families. In cases that have the attention of the media and the public, are decisions to seek the death penalty more likely to occur? What standards are these prosecutors using? Some people have assailed my power to commute sentences, a power that literally hundreds of legal scholars from across the country have defended. But prosecutors in Illinois have the ultimate commutation power, a power that is exercised every day. They decide who will be subject to the death penalty, who will get a plea deal or even who may get a complete pass on prosecution. By what objective standards do they make these decisions? We do not know, they are not public.

If you look at the cases, as I have done—both individually and collectively—a killing with the same circumstances might get 40 years in one county and death in another county. I have also seen co-defendants who are equally or even more culpable, get sentenced to a term of years, while another, less culpable defendant ends up on death row. In my case-by-case review, I found three people that fell into this category, Mario Flores, Montell Johnson, and William Franklin. Today I have commuted their sentences to a term of 40 years, to bring their sentences into line with their co-defendants and to reflect the other extraordinary circumstances of these cases. . . .

We have come very close to having our state Supreme Court rule our death penalty statute—the one that I helped enact in 1977—unconstitutional. Former state Supreme Court Justice Seymour Simon wrote to me that it was only happenstance that our statute was not struck down by the state's high court. When he joined the bench in 1980, three other justices had already said Illinois' death penalty was unconstitutional. But they got cold feet when a case came along to revisit the question. One judge wrote that he wanted to wait and see if the Supreme Court of the United States would rule on the constitutionality of the new Illinois law. Another said precedent required him to follow the old state Supreme Court ruling

with which he disagreed. Even a pharmacist knows that doesn't make sense. We wouldn't have a death penalty today, and we all wouldn't be struggling with this issue, if those votes had been different. How arbitrary. . . .

### **'Eye for an Eye Leaves the World Blind'**

I was struck by the anger of the families of murder victims. To a family, they talked about closure. They pleaded with me to allow the state to kill an inmate in its name to provide the families with closure. But is that the purpose of capital punishment? Is it to soothe the families? And is that truly what the families experience? I cannot imagine losing a family member to murder. Nor can I imagine spending every waking day for 20 years with a single-minded focus to execute the killer.

The system of death in Illinois is so unsure that it is not unusual for cases to take 20 years before they are resolved. And thank God. If it had moved any faster, then Anthony Porter, the Ford Heights Four, Ronald Jones, Madison Hobley and the other innocent men we've exonerated might be dead and buried. But it is cruel and unusual punishment for family members to go through this pain, this legal limbo for 20 years. Perhaps it would be less cruel if we sentenced the killers to Tamms [Correctional Center] to life, and used our resources to better serve victims.

My heart ached when I heard one grandmother who lost children in an arson fire. She said she could not afford proper grave markers for her grandchildren who died. Why can't the state help families provide a proper burial? Another crime victim came to our family meetings. He believes an inmate sent to death row for another crime also shot and paralyzed him. The inmate, he says, gets free health care while the victim is struggling to pay his substantial medical bills and, as a result, he has forgone getting proper medical care to alleviate the physical pain he endures. What kind of victim's services are we providing? Are all of our resources geared toward providing this notion of closure by execution instead of tending to the physical and social service needs of victim families? And what kind of values are we instilling in these wounded families and in the young people?

As Gandhi said, an eye for an eye only leaves the whole world blind. President Lincoln often talked of binding up wounds as he sought to preserve the Union. "We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection."

This Summer, a United States District Court judge held the Federal death penalty was unconstitutional and noted that with the number of recent exonerations based on DNA and new scientific technology we undoubtedly executed innocent people before this technology emerged.

As I prepare to leave office, I had to ask myself whether I could really live with the prospect of knowing that I had the opportunity to act, but that I failed to do so because I might be

criticized. Could I take the chance that our capital punishment system might be reformed, that wrongful convictions might not occur, that enterprising journalism students might free more men from death row?

A system that's so fragile that it depends on young journalism students is seriously flawed.

"There is no honorable way to kill, no gentle way to destroy. There is nothing good in war. Except its ending." That's what Abraham Lincoln said about the bloody war between the states. It was a war fought to end the sorriest chapter in American history—the institution of slavery. While we are not in a civil war now, we are facing what is shaping up to be one of the great civil rights struggles of our time. . . .

### **'Mercy Bears Richer Fruits. . .'**

One of the few disappointments of my legislative and executive career is that the General Assembly failed to work with me to reform our deeply flawed system. I don't know why legislators could not heed the rising voices of reform. I don't know how many more systemic flaws we needed to uncover before they would be spurred to action. Three times I proposed reforming the system with a package that would restrict the use of jailhouse snitches, create a statewide panel to determine death eligible cases, and reduce the number of crimes eligible for death. These reforms would not have created a perfect system, but they would have dramatically reduced the chance for error in the administration of the ultimate penalty.

Our systemic case-by-case review has found more cases of innocent men wrongfully sentenced to death row. Because our three-year study has found only more questions about the fairness of the sentencing; because of the spectacular failure to reform the system; because we have seen justice delayed for countless death row inmates with potentially meritorious claims; because the Illinois death penalty system is arbitrary and capricious—and therefore immoral—I no longer shall tinker with the machinery of death. I cannot say it as eloquently than [U.S. Supreme Court] Justice [Robert] Blackmun. The Legislature couldn't reform it. Lawmakers won't repeal it. But I will not stand for it. I must act. Our capital system is haunted by the demon of error—error in determining guilt, and error in determining who among the guilty deserves to die.

Because of all of these reasons today I am commuting the sentences of all death row inmates. . . .

As I said when I declared the moratorium, it is time for a rational discussion on the death penalty. While our experience in Illinois has indeed sparked a debate, we have fallen short of a rational discussion. Yet if I did not take this action, I feared that there would be no comprehensive and thorough inquiry into the guilt of the individuals on death row or of the fairness of the sentences applied. . . . Abraham Lincoln said, "I have always found that mercy bears richer fruits than strict justice." I can only hope that will be so.