

Testimony of

The Honorable George Ryan

June 12, 2002

Chairman Feingold, it's a pleasure to be speaking to you.

Please excuse my absence, we're in the middle of a special session at our state capitol, and I could not get away. Because of the importance of this issue and your leadership, I am delighted that we were able to connect through technology from Springfield, Illinois.

Springfield, by the way, is the home of your colleague, Illinois' senior senator and my friend Senator Dick Durbin.

I want to thank the distinguished members of this committee for indulging me.

Thank you for inviting me to testify on the Illinois death penalty moratorium.

Throughout my career, I believed only the guilty could be sent to Death Row.

I never questioned the system.

Mr. Chairman, you may have heard me tell this story before.

Though it was 25 years ago, I vividly remember voting to put the death penalty back on the Illinois books.

During the debate, an opponent of the death penalty asked if any of us who supported it would be willing to "throw the switch."

It was a sobering question.

It wasn't my responsibility and for that I was relieved. Administering the death penalty was up to the criminal justice system, and surely the system would never make a mistake.

So, I voted for the death penalty.

The fact is now, as governor, I learned the responsibility is mine, I do "throw the switch."

That's the toughest part of being Governor.

Since those days as a legislator, a lot has happened to shake my faith in the death penalty system-- and the more I learn, the more troubled I've become.

The state executing an innocent man or woman is the ultimate nightmare.

The fact is, we've come too close to that prospect 13 times in Illinois.

Anthony Porter's case is a shocking example of that.

Back in the fall of 1998, when I was still campaigning for Governor, Anthony Porter was scheduled to be executed on September 23 of that year.

He had ordered his last meal and been fitted for his burial clothes.

Mr. Porter had been convicted in the 1982 shooting death of a man and woman in a South Side Chicago park.

Two days before he was to die, his lawyers won a last minute, temporary reprieve based on his IQ which was, they believed, about 51.

With that delay, some of the great journalism students from Northwestern University, and their professor, David Protess, a powerful champion for justice, had the time to start their own investigation into the then 16-year-old case.

With the help of a private detective, the students picked apart the prosecution of Anthony Porter. Key witnesses, like one who claimed he saw Porter at the crime scene, recanted their testimony - they now said Porter was framed.

The students then followed their leads to Milwaukee, where the private detective obtained a videotaped confession from a man named Alstory Simon.

Simon told the private detective that he shot the two victims in an argument over drug money. With that new evidence, charges were dropped and the innocent Mr. Porter was freed in February 1999.

The charges against him were wrong, and he nearly went to his death for them - after spending nearly 17 years on death row!

I met with Mr. Porter last week. He told me how he was kept in his dark cell for 23 hours a day. His eyes don't tolerate the sunlight well anymore. That's tough punishment for a guilty man, let alone an innocent one. Imagine enduring that pain, all the while knowing you are innocent.

I was caught off guard by Mr. Porter's case. I had just taken office.

I didn't know how bad our system was.

And shortly after Anthony Porter's case, while I was still reeling, the Andrew Kokoraleis case came to my desk.

Andrew Kokoraleis was a serial killer and had been charged with the brutal rape and mutilation murder of a 21-year-old woman.

After the mistakes the system made in the Porter case, I agonized.

I thoroughly reviewed the case files, consulted with staff, and with veteran prosecutors and defense attorneys.

I requested additional information from the Prisoner Review Board.

I double-checked and then I triple-checked.

I wanted to be absolutely sure.

And in the end, I was -- sure beyond any doubt that Kokoraleis was guilty of a monstrous unspeakable crime. I allowed his execution to proceed.

But it was an emotional, exhausting experience - one I would not wish on anybody.

It all came down to me: a pharmacist from Kankakee, Illinois, who had the good fortune to be elected by the people of Illinois to be their Governor.

I now had to "throw the switch."

Quite frankly, that might be too much to ask of one person to decide.

But, that experience was not the end of the journey.

Journalists Steve Mills and Ken Armstrong of the Chicago Tribune conducted an in-depth investigation of the death penalty cases in Illinois in 1999 that was startling.

Half of the nearly 300 capital cases in Illinois had been reversed for a new trial or sentencing hearing.

33 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.

35 African-American death row inmates had been convicted or condemned by an all-white jury.

In fact, two out of three of our approximately 160 Illinois death row inmates are African-American.

Prosecutors used jailhouse informants to convict or condemn 46 death row inmates.

It was clear there were major questions about the system - questions that I alone could not answer.

In January of 2000, the 13th death row inmate was found wrongfully convicted of the murder for which he had been sentenced to die.

At that point, I was looking at our shameful scorecard: since the death penalty had been reinstated in 1977, 12 inmates had been executed and 13 were exonerated.

To put it simply, we had a better than a fifty-fifty chance of executing an innocent person in Illinois.

The odds of justice being done were as arbitrary as the flip of a coin.

Up until then, I had resisted calls by some to declare a moratorium on executions.

But then I had to ask myself, how could I go forward with so many unanswerable questions about the fairness of the administration of the death penalty in Illinois.

How on earth could we have come so close --- again, and again, and again - to putting fatal doses of poison into the bodies of innocent people strapped to gurneys in our state's death chamber?

It was clear to me that when it came to the death penalty in Illinois, there was no justice in the justice system.

I declared the moratorium on January 31, 2000 because it was the only thing I could do.

That was the easy part. The hard part was to find out what had gone so terribly wrong.

The hard part was to try to answer how our system of justice became so fraught with error, especially when it came to imposing the ultimate, irreversible penalty.

So I appointed some of the smartest, most dedicated citizens I could find to a commission to study what had gone so terribly wrong.

It was chaired by former Federal Judge Frank McGarr and co-chaired by former Senator Paul Simon and former U.S. Attorney for the Northern District of Illinois Thomas Sullivan.

They led a panel which included former prosecutors, defense lawyers, and non-lawyers.

Accomplished attorney Scott Turow, a best-selling author and commission member, will also testify before you today.

My commission put together a tremendous document.

They developed 85 recommendations to improve the caliber of justice in our state system. It does not single anyone out, but it calls for reforms in the way police, prosecutors, defense attorneys, judges and elected officials do business.

I have taken that entire report and introduced everything that requires legislation to the Illinois General Assembly.

My bill proposes barring the execution of the mentally retarded; mandating that natural life is given as a sentencing option to juries; reducing death penalty eligibility factors from 20 to 5; and barring the death penalty when a conviction is based solely on a jailhouse "snitch."

This summer, the Illinois General Assembly will hold hearings. I hope they'll hear from all of the key parties - the prosecutors, defense attorneys, victims, and the wrongfully convicted.

My commission reviewed, at some level, every capital case that we have ever had in Illinois, but it took a closer look at the 13 inmates freed from Death Row and exonerated.

Most did not have solid evidence. We had cases where jailhouse snitches were the key witnesses. Another case where a drug addicted witness sent a man to death row. DNA freed several inmates. Some were convicted because of overzealous police and prosecutors. Some had inadequate representation at trial.

My commission concluded that its recommendations will significantly improve the fairness and accuracy of the Illinois death penalty system.

But it also concluded, and I quote:

"No system, given human nature and frailties, could ever be devised or constructed that would work perfectly and guarantee absolutely that no... innocent person is ever again sentenced to death."

That's a powerful statement.

It is one that I will ponder.

In the meantime, I do know this:

I said two years ago, and I say now, until I can be sure that everyone sentenced to death in Illinois is truly guilty until I can be sure with moral certainty that no innocent man or woman is facing a lethal injection, no one will meet that fate.

We all want to punish the guilty.

But in so doing, we must never punish the innocent.

And with our mistake prone system in Illinois, we were doing just that.

Chairman Feingold, I know you are proposing a federal moratorium. We've had the pleasure of discussing our mutual concerns about capital punishment a number of times in the past couple of years. I want to commend you for your passion for truth and justice.

I have not studied the federal system, but I do know, especially after September 11th, that the United States of America must be a model for the rest of the world. And that means our justice system should be the glowing example for the pursuit of truth and justice. It must be fair and compassionate.

We must safeguard individual liberties while keeping our communities safe.

And we must protect the innocent. It is fundamental to the American system of justice.

Thank you.