

Illinois death penalty report reveals widespread abuse

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27 April 2002

On April 15, the Illinois Governor's Commission on Capital Punishment issued a detailed report on the imposition of the death penalty in that state. The report was commissioned two years ago when Republican Governor George H. Ryan instituted a moratorium on the death penalty following a string of revelations of wrongful convictions in capital cases.

There are currently 160 people on death row in Illinois. Since capital punishment was reinstated in 1977, the state has handed down 263 death sentences and executed 12 inmates. During this same period, 13 individuals have been exonerated and released from death row after they were shown to have been wrongfully convicted. Of the 263 death sentences, about 60 percent were reversed due to police or prosecutorial misconduct, inadequate counsel or mistaken identity.

One of these condemned men, Anthony Porter, came so close to execution that he had already ordered his last meal. Porter's case prompted Governor Ryan to impose the moratorium, commenting that no one in the state would be executed until he had "moral certainty that no innocent man or woman is facing a lethal injection."

The commission's 207-page report—far from guaranteeing that no innocent person faces execution—exposes a system rife with misconduct on the part of police and prosecutors. It details conditions where suspects—who are overwhelmingly poor and minority—lack adequate access to counsel and are frequently railroaded to death row with little or no substantiating evidence. The report, however, stops short of recommending abolition of the death penalty. While the 14-member panel voted 8-5, with one abstention, to recommend abolishing the barbaric practice, it chose not to include this, saying it was beyond the commission's framework.

The report makes 85 recommendations for reform of the death penalty system in Illinois. [The complete text of the commission's report can be found at: www.state.us.il] In almost every instance, the recommendations are prompted by the exposure of gross misconduct on the part of state and law enforcement authorities, laws which favor the police and prosecution, and inadequate funding and training of state-appointed defense attorneys.

While the scope of the panel's study and proposals are limited to capital cases, numerous studies have shown that the

violations of basic democratic rights and constitutional protections documented in the report occur throughout the criminal justice system; not just in Illinois, but across the US.

Some of the most important recommendations of the commission are highlighted below:

* *"After a suspect has been identified, the police should continue to pursue all reasonable lines of inquiry, whether these point towards or away from the suspect."* The commission identifies a common practice among law enforcement authorities—referred to as "tunnel vision"—"where the belief that a particular suspect has committed a crime often obviates an objective evaluation of whether there might be others who are actually guilty." This "tunnel vision" played a key part in the convictions of a number of the 13 men who were exonerated and released from death row in Illinois.

* The panel recommends that *"representation by the public defender during a custodial interrogation should be authorized by the Illinois legislature when a suspect requests the advice of counsel, and where there is a reasonable belief that the suspect is indigent."* This basic right to prompt appointment of counsel is guaranteed by the Bill of Rights, but frequently violated in Illinois, particularly in Cook County (where Chicago is located). Often a court-appointed attorney is not made available to an indigent suspect until after a confession has been extracted by interrogators.

* *"Custodial interrogations of a suspect in a homicide case occurring at a police facility should be videotaped ... not merely the statement made by the suspect after interrogation."* The report points to numerous examples, including cases of death row inmates who were subsequently proven innocent, where a videotaped confession played a key role in conviction. Many police departments oppose videotaping the entire interrogation process because it would expose "psychological coercion and trickery" as well as "physical coercion" used by police to extract confessions from suspects, according to the commission.

* *The panel calls on Illinois to "adopt a statute which prohibits the imposition of the death penalty for those defendants found to be mentally retarded."* Such a statute would contradict the US Supreme Court, which ruled in 1989 that executing the mentally retarded does not violate the Eighth

Amendment's ban on cruel and unusual punishment. Eighteen states currently forbid the execution of the mentally retarded.

* *"If a suspect is determined to be mentally retarded, the police should be limited to asking nonleading questions and prohibited from implying that they believe the suspect is guilty."* Suspects with limited mental capacities often confess to crimes they did not commit, and many are convicted on this basis, according to the panel.

* *"The mitigating factors considered by the jury in the death penalty sentencing scheme should be expanded to include the defendant's history of extreme emotional or physical abuse, and that the defendant suffers from reduced mental capacity."* The panel suggests that special consideration should be given when a "defendant's background includes a history of extreme emotional or physical abuse," or when a "defendant suffers from reduced mental capacity."

* Police agencies *"should include within their training curricula information on consular rights and the notification of obligations to be followed during the arrest and detention of foreign nationals."* The 2000 Illinois case of a Polish national who was denied his consular rights is cited. The US has been criticized by the International Court of Justice and human rights groups for widespread disregard for the consular rights of foreign nationals. Of the more than 3,700 inmates currently on death row in the US, an estimated 118 are foreign nationals. Five foreign nationals have been put to death since 1993. The Death Penalty Information Center reports that "there is overwhelming evidence that prompt notification of [consular] rights across the United States remains the exception rather than the rule" in these cases.

* *"An independent state forensic laboratory should be created, operated by civilian personnel, with its own budget, separate from any police agency or supervision."* Such a laboratory would handle key DNA evidence, which has been the basis of freeing a number of wrongly convicted death row inmates. The panel acknowledges that across the country "in some highly publicized cases, it has been alleged that incompetence or even intentional misconduct has resulted in defendants being accused or convicted of crimes they did not commit."

* The commission recommends that the *"current list of 20 eligibility factors [of crimes punishable by death] should be reduced to a smaller number."* Since 1977, the list of crimes eligible for the death penalty has been continuously expanded so that "nearly every first degree murder in Illinois could be eligible for the death penalty under one theory or another," according to the report. The panel recommends reducing to five the number of "aggravating" factors that make a murder a capital offense.

* The commission calls on the state to adopt a statute which would prohibit death sentences based on *"the uncorroborated testimony of an in-custody informant witness"* or *"convictions for murder based upon the testimony of a single eyewitness or*

accomplice, without any other corroboration." A significant number of individuals have been sentenced to death solely on the basis of such uncorroborated testimony—from jailhouse "snitches" and accomplices seeking reduced sentences—without any material evidence.

Despite the damning evidence revealed by the commission's study, it is unclear what its impact will be. Amnesty International called on Governor Ryan to extend the Illinois death penalty moratorium until all 85 recommendations of the panel are adopted. Ryan commented that it might be "weeks or months" before he submits a legislative package based on the report. "I'm not going to act in haste," he said. He has the authority to commute any or all of the state's death sentences to life in prison without parole before he leaves office at the end of the year.

Any proposed changes in laws governing the death penalty would face opposition in the state legislature, where many politicians want to preserve their "tough on crime" image, and are hesitant to back a costly plan under conditions where the state is already facing a budgetary crisis. State Senator Kirk Dillard, a Republican, commented that much of the plan "is headed for the trash can."

Revelations of wrongful convictions, and US flouting of international law by executing the mentally retarded, foreign nationals and individuals sentenced to death for crimes committed while they were juveniles have given rise to unease and growing opposition to the death penalty among the American population. The abuses documented in the Illinois Governor's Commission on Capital Punishment further expose the brutal methods used by police and prosecutors in the pursuit of convictions and death sentences.

Many death penalty opponents, however, have expressed the legitimate concern that Illinois may enact piecemeal reforms that address some of the inequities in the system, but keep the execution machine grinding. The *Christian Science Monitor* quotes David Lane, a Denver defense attorney with two clients currently facing the death penalty. "What I'm afraid of," he said, "is Illinois will lead the country in a 'new and improved' death penalty."



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