THE ROLE OF THE EXECUTIVE IN ADMINISTERING THE DEATH PENALTY[†]

*Gov. George H. Ryan**

Thank you very much Professor Margaret Etienne for that introduction. And thank you as well to University of Illinois College of Law Dean Heidi Hurd and to Chancellor Nancy Cantor. I thank you for the invite and for your dedication to developing the life of the mind here at the law school. And I thank the students who have come out today. This is also a proud day for the students of U of I law school. Not only are they taking time out from the pressures of final exams and planning for the holidays, today they can see hope for the future.

My Deputy Governor for Criminal Justice and Public Safety, Matt Bettenhausen, is here. He is from the law school class of 1985. Not only did he graduate, he is gainfully employed. That may happen to you some day if you are not careful. But in all seriousness, Matt has played a key role as a lawyer and more importantly a policy advisor on serious issues of criminal justice. What job could be a greater challenge to a lawyer than working on reviewing and reforming the entire capital punishment system.

To the future lawyers and judges and law professors in this room, the people who will make a difference in the future, welcome. These are exciting times for a law student interested in criminal justice. We are examining major issues of fairness and justice. In October, the Illinois Prisoner Review Board wrapped up more than two weeks of clemency hearings for more than 140 death row inmates requesting their sentences be commuted from death to life without parole. These hearings are the culmination of a review of the capital punishment system in Illinois that began, for me, in January of 2000. Back then, for the thirteenth time since 1977, a death row inmate was cleared by the courts and released from death row. All thirteen men were found to have been wrongfully convicted.

† *Presented at the University of Illinois College of Law on December 18, 2002.*

* *Governor, State of Illinois, 1999–2003.*

We had thirteen innocent men who came perilously close to being put to death for crimes the courts said they did not commit. In one case a man came within two days of being executed. The clemency hearings were not for the squeamish. Raw emotions of surviving family members were on display. No one wanted to see the families of the victims go through any more pain, least of all me. What they have been through is unimaginable. I didn't want family members to once again relive their stories, certainly not in public hearings. But the law left us little choice after prosecutors demanded hearings.

Because the family members of murder victims wanted to be sure they had expressed their concerns directly to me, many did decide to once again discuss their painful experience with me in a private meeting last week in Chicago, and the week before that in Springfield. Without question, every single one of the murders for which nearly 160 inmates have been sentenced to die is a horrendous crime. They are grisly, painful, and tragic. Left behind are loved ones who will forever have a hole in their hearts. All murders are tragic and unnecessary. But we have had some murders that are truly horrible. We had a case where a mother was killed and a baby was ripped from her womb. In that case and in at least one other, children saw their parents killed. In other cases children were tortured. In one case, innocent motorists were brutally killed along a highway.

But my review of capital punishment over the past three years is not about the heinous nature of the crimes committed. My review is of the mistakes made in the system that put innocent people on death row—and nearly in the execution chamber. I would guess there is only one thing worse than losing someone you love to murder. That would be to wrongly convict and execute an innocent person for that crime. So we are reviewing every case. I have to tell you I never thought I would be standing before you today to speak about such a difficult topic. I never planned on being involved in the capital punishment system. Capital punishment to me was something I thought of only in the abstract. I was from a small community only about forty miles away from Chicago, but a million miles away in terms of lifestyle. Kankakee, Illinois is still a small, Midwestern town. It was also the home of the Ryan Family Pharmacies where my father, brother, and I made a living as pharmacists.

We didn't think about capital punishment. When we did, it was because we heard of a notorious crime and we wanted the police to find the bad guy, lock him up, and throw away the key. And if he could get the chair for what he did, all the better.

Years later, in 1977, I was a legislator in Springfield, and I voted to reinstate the death penalty in Illinois. I vividly remember an opponent of capital punishment who challenged those of us who voted for capital punishment: How many of you were willing to throw the switch? I pondered that and I knew I would never want to kill anyone. But I sup-

ported putting the tough on crime law back on the books—like a lot of legislators.

More than two decades later, in September of 1998, I was busy campaigning for the office of Governor. Just two days before he was scheduled to die—forty-eight short hours—the Illinois Supreme Court temporarily stayed the execution of a man named Anthony Porter. The court allowed time for a hearing. He was being represented by Northwestern University's Center on Wrongful Convictions headed by Professor Larry Marshall, a man I respect for his zeal and dedication to the cause of justice. He was trying to save Anthony Porter's life by arguing that with an IQ of around fifty-one, he was not mentally fit to be executed.

Mr. Porter was sentenced to die for a double-murder in a park on the south side of Chicago in August of 1982. He was someone who probably was a nuisance to police. I would imagine he was one of the usual suspects. But police said witnesses saw him commit the double murder. And he went to death row!

Mr. Porter had ordered his last meal and had been fitted for his burial suit. Yet, at the eleventh hour, the court granted a delay so that a hearing could be held with regards to his competency. In the meantime, some journalism students at Northwestern University had begun looking into Mr. Porter's case. The delay gave them new hope that they could uncover evidence proving his innocence. They had a great teacher, a journalism professor named David Protess, another man I have come to know and respect as a powerful advocate for justice. The students teamed up with a private investigator, Paul Ciolino, and tracked down the eyewitness who had helped convict Mr. Porter. That witness recanted his testimony, and the case against Mr. Porter began to fall apart.

Witnesses recanted. The mother of one of the victims—who had said for some time that she believed Anthony Porter was innocent—was finally heard. The trail led to a man named Alstory Simon in Milwaukee. The private investigator obtained a videotaped confession from Simon that he, and not Mr. Porter, had killed the couple in the Chicago Park in 1982. Simon admitted he killed them in an argument over drug money. Incidentally, Simon is now trying to say his videotaped confession was coerced by the private eye and journalism students. Not only did Simon confess on videotape, his ex-wife was ready to testify against him. His lawyer saved his life by negotiating a plea bargain in which Simon accepted a thirty-seven-year sentence for the same double murder for which Mr. Porter had been sentenced to die.

All of this proves once again that the system is really screwed up. I'm not sure if that is a legal term, but it is the only way I can describe our system of justice. The innocent Mr. Porter was freed in February of 1999.

Just weeks earlier, I had taken the oath of office as Governor and I was upset by the news. Everything I had believed was now coming into question with the botched conviction of Mr. Porter. What if those journalism students hadn't taken up Mr. Porter's case? What if they hadn't uncovered the false testimony or found the real killer? I couldn't tell whether Mr. Porter's case was an aberration or the norm. And I didn't have a lot of time to think about it. In the same month as Anthony Porter's celebrated case, the Illinois Supreme Court vacated the conviction of Steven Smith, saying that his conviction for a 1985 murder hinged on a drug-addicted witness. Smith was the eleventh death row inmate to be released since 1977. Then came the first case where I had to decide if someone would be executed. I had to decide if convicted murderer Andrew Korkoraleis would live or die. He had been convicted of a monstrous, unspeakable crime. Korkoraleis was part of a gang that kidnapped, assaulted, tortured, and killed young women. There were multiple victims, but he was specifically convicted and condemned to die for the murder of a young suburban woman in 1982.

Family members of his twenty-one-year-old victim, Lorry Ann Borowski, came forward, sharing their painful stories with the public to see to it that the killer of their child was executed. Local-elected officials from Lorry Ann's community joined in the call for the execution of Korkoraleis. At the same time, the supporters of the condemned man came forward. Lawyers claimed that while he was a murderer, he was innocent of this crime. Religious leaders appealed to me to spare his life on moral grounds. Although I had never doubted his guilt before, after seeing what happened with Mr. Porter's case, I began an extensive review of the Korkoraleis case file.

There were many unanswered questions. I learned some new things about our court system: rather than resolving issues, they frequently apply procedural rules to dismiss claims as waived or forfeited. Some might call these technicalities. I pored over the Prisoner Review Board notes and the reports on the trial and conviction. I called in trusted friends who were criminal lawyers to have them review the case files from top to bottom. I talked to defense lawyers; I talked to investigators; I talked to prosecutors. I agonized. But after weeks of thorough review, there was no doubt of his guilt and the fairness of his trial. I made the right decision. But I was concerned about the system. A system I believed in.

Although I made the right decision based on the facts, I felt even less certain about the system of justice that put the decision in my hands. I am a pharmacist who had the good fortune to be elected Governor. Now, suddenly, I shouldered the burden of making the decision about whether to kill a man or woman. Instead of filling orders for life-saving drugs, my job now as Governor was to decide whether injections of lethal poisons should be given to people ordered to die by the courts. A punishment authorized by the General Assembly. Should they live, or

should they die? Governors have the last word. It is the most difficult decision a Governor can face.

In the Spring of 1999, as we finished a legislative session in Springfield, Cook County prosecutors dropped charges against a man named Ronald Jones while they were preparing to retry him. He had spent eight years on death row. Now DNA tests exonerated him of the rape and murder for which he had been sentenced to die. He was the twelfth person freed from death row!

That summer, I signed into law the Capital Litigation Fund, one of the positives that emerged from Anthony Porter's case. It provides funds for the defense and prosecution of capital cases. But, in my heart I questioned whether it was enough. By now, most people concerned with this issue of justice know the findings made by a Chicago newspaper in November, 1999. It was groundbreaking reporting by Steve Mills and Ken Armstrong of the Chicago Tribune. Half of the nearly 300 capital cases in Illinois had been reversed for a new trial or resentencing. Nearly Half! Fifty percent! 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. I might add, we even had a lawyer representing a death row inmate in the clemency hearings who fell asleep while his case was being heard. These are lawyers that we wouldn't want representing us in traffic court, let alone a capital case.

Of the more than 160 death row inmates, thirty-five 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 are African American. Forty-six inmates were convicted on the basis of testimony from jailhouse informants. I'm not a lawyer, but I don't think you need to be one to be appalled by those statistics. Our sad arithmetic continued. We had two more exonerations, two more examples of the system failing. By January of 2000, we had thirteen death row inmates exonerated. The thirteenth was a death row inmate named Steve Manning. He was no angel, a corrupt ex-cop implicated in other crimes and facing prison time for an unrelated charge in Missouri. But a judge ruled that he had been sentenced to die in Illinois based on the testimony of a jailhouse informant, one of the most notorious and unreliable forms of evidence. If you are going to put a man to death, it better be based on something more than the testimony of a jailhouse snitch!

We now had more people exonerated from death row than the twelve we had executed. Is that justice when we send thirteen innocent people to die? These are cases where the accused were convicted by a jury beyond the shadow of a doubt. Their convictions were upheld by appellate courts, in some cases the U.S. Supreme Court.

Three innocent men were saved not by judicial review but by twenty-year-old journalism students. Mr. Porter's story was not the first time Northwestern University students saved an innocent man.

In the case of the Ford Heights Four, in Cook County, four men were convicted, and two sent to death row on the basis of the coerced testimony of a poor, African American teenager named Paula Gray. She had been so deprived in her life that despite the fact that she lived in this Chicago suburb her whole seventeen years, she had never seen Lake Michigan. She was deemed mentally challenged from her earliest days in grade school.

Years later, journalism students and lawyers for the Ford Heights Four proved they were innocent. They got statements from informants who admitted they lied. They found Paula Gray and she told them how her testimony had been coerced, first by police who held a gun to her head, and later by prosecutors who told her she could get out of jail free if she testified against her former friends. That information led to DNA tests which freed all four individuals. They were absolutely innocent. The DNA tests pointed to the real killers, one of whom committed another murder in the interim.

Twenty years later, after every one of the Ford Heights Four was found innocent, the Cook County State's Attorney's office went to the appellate court to argue that the perjury conviction against Paula Gray should stand. When did she perjure herself? When the policeman's gun was held to her head and she was told she would be assaulted if she didn't implicate her friends? Was it when her conscience made her come clean to a grand jury and she told the panel her statements had been coerced and absolutely false? Or was it when she was offered freedom after more than eight hellish years serving time in prison?

She was separated from her family and frequently assaulted by other inmates. That's a nightmare. I finally put an end to it last month when I pardoned Paula Gray. The justice system may have wanted to continue to torment this poor woman; I don't know why. It was an outrage, and I put a stop to it.

As students, as future lawyers, you ought to share in that outrage. People without means frequently don't stand a chance in our justice system. I really did the only thing I could do when I called a halt to executions in Illinois. I could not imagine how our system became so flawed. I could not comprehend how the justice system in which I had so much confidence could prove to be so fraught with error. It was chilling that we could come so close to the ultimate nightmare. I said 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. I meant it then, and I mean it now. Over the past three years, I have learned more about cases that were a combination of all of these problems. Rolando Cruz and Alex Hernandez were twice convicted and sentenced to death row. They were nearly convicted a third time in DuPage County, Illinois. They were accused of a terrible crime, the rape and murder of a little girl. The theory

of the prosecution changed for each trial. New evidence and witnesses appeared from nowhere.

Jailhouse informants were used against Cruz and Hernandez. Like Porter, they were the type of guys who were a nuisance to the police. Now jailhouse informants could help put them away. There was no physical evidence linking them to the crime. No confession. Just the alleged statement of a dream in which Mr. Cruz supposedly shared details of the crime with investigators. Later, DNA evidence cleared Cruz and Hernandez. Finally, the case completely collapsed when a police officer admitted he gave false testimony regarding the existence of the so-called dream statement, in which Cruz allegedly discussed a dream and revealed details of the murder only a killer would know. Cruz and Hernandez were eventually freed. DNA evidence conclusively points to another convicted child killer who has also offered to confess. To date he has not been charged.

Over the past three years I have studied the case of another of our exonerated men, Gary Gauger. Gary is a wonderful, good-hearted guy. Imagine this nightmare. He found his parents dead at their rural McHenry County Farm and Motorcycle shop. Their throats were slit.

McHenry County Sheriff's investigators quickly zeroed in on Gary as a suspect. They questioned him as a "witness" without a lawyer for more than eighteen hours, all day and night, after he experienced the shock of finding his parents dead.

After hours of questioning, investigators encouraged Gauger to "hypothetically" talk about how he could have killed his parents. Gary said he must have blacked out because he couldn't have done such a thing. But the investigators led him to make a "vision statement" of how it could have happened anyway. These statements were never committed to writing and no physical evidence was ever presented linking Gary to the crime. Nonetheless he was quickly convicted and summarily sentenced to die. He spent more than nine months on death row, more than thirty months in prison. But Gary Gauger was innocent. But you don't have to just take his word for it. An appellate court ruled the so-called confession was not obtained properly. Without the confession, Gary was freed.

But prosecutors still said publicly he was the real killer. A statement that was finally proved false a few years later. The Federal Bureau of Alcohol, Tobacco and Firearms was investigating the Outlaw motorcycle gang on an unrelated case in Wisconsin. Gang members were caught on an undercover tape bragging about how they killed the Gauger couple and how their son had been convicted for the gang's heinous crime. Imagine spending one day on death row for a crime you did not commit. Imagine being falsely accused of killing your parents.

There is another case on my desk involving a murder of a young woman in Oak Park named Karen Ann Phillips. A young man, Steven

Linscott, approached the Oak Park Police to help. His friends had urged him to share with investigators a dream he had about a similar murder. Investigators quickly zeroed in on him as the suspect. The Illinois Appellate Court, ten years later, reversed the conviction, ruling that prosecutors "invented" the blood evidence used to convict Linscott.

Three men, three statements described as visions or dreams that were used against them to wrongfully convict them. But the only vision they saw was of a justice system run amok, of their dreams being dashed and ruined by the criminal justice system. Thankfully, all three are free men today. But they have requested pardons because their records still have the stain of their arrest and conviction. That is until today. As Governor, with the constitutional power vested in me, I am pardoning Rolando Cruz, Gary Gauger, and Steven Linscott. It is the least the state can do for them this holiday season. All three have tried to rebuild their lives the best they can. They are courageous men and I wish them well. They've been through hell.

After I declared the moratorium, I appointed fourteen of the smartest, most dedicated people I know to serve on a commission to review the system from top to bottom. It was chaired by former Federal Judge Frank McGarr and cochaired by former Senator Paul Simon and former U.S. Attorney for the Northern District of Illinois Thomas Sullivan. Deputy Governor Matt Bettenhausen was a member of the commission and was also the executive director for the commission. They came up with eighty-five recommendations to improve the caliber of justice in the Illinois capital punishment system. They called for police and prosecutors to share more evidence. The number of eligibility factors for the death penalty should be dramatically reduced. The interrogation process should be videotaped. Lineup procedures should be changed. Lineups should be done sequentially, to prevent bias or confusion. The panel recommended a statewide standard for capital punishment. A statewide review committee should review death penalty eligible cases before they go to trial. It would drastically limit the use of jailhouse informants.

The commission's reforms are languishing in Springfield, our state capital. We talked to a lot of parties in putting together our recommendations. We met with citizens and lawyers representing different perspectives—including that of law enforcement. On the eve of the clemency hearings, we had a full court campaign of criticism against our efforts to review these cases.

In the October 14, New York Times, a representative of the Cook County State's Attorney showed a reporter some of the cases of death row inmates and said: "'They shouldn't kill this guy, . . . they should tear his fingernails off one at a time.'"[1] I think that comment speaks for itself.

1. Jodi Wilgoren, *Illinois Moves to Center of Death Penalty Debate*, N.Y. TIMES, Oct. 14, 2002, at A12.

In the same article, the State's Attorney said: "'If there's a fair trial, the appeals were handled appropriately, that's what you should be looking at, not some reforms you came up with 15 years later.'"[2]

I suppose as long as journalism students, college professors, and committed private investigators keep dedicating themselves to investigating cases of death row inmates, we should be fine. Perhaps that is someone's idea of the system working, but I find no such responsibilities spelled out for those students or private eyes in my copy of the state and federal constitutions.

My intentions are pretty simple. I am not trying to release heinous killers. I don't want to punish the families of victims. I just don't want to execute an innocent person. Over the past three years, I have always said there is enough blame to go around for everybody—prosecutors, defense lawyers, police officers, judges, and even the General Assembly. But it is a great disappointment to me that forces aligned against reform have banded together and stopped any of my efforts to pass a bill reforming our capital punishment system.

The General Assembly, however, did find the time to pass a law and override my veto so that they could expand our broken death penalty system even further. They have now added an extra eligibility factor, that of death for the crime of terrorism. I suppose there is no harm done in such grandstanding. If Osama bin Laden is finally caught, I can guarantee you he will not be tried in Champaign County Circuit Court. But it's the principle of the thing, and principle seems to be something in short supply when it comes to move from talking about reform to actually making reforms a reality. Instead of rolling up our sleeves and working together, all of us—the governor, legislators, lawyers, police departments, prosecutors, and judges—we instead have experienced delays, distortion, and detours on the road to a more perfect justice system.

At the clemency hearings, Terry Hoyt, a mother of a murder victim in Decatur, Illinois, said the man sent to death row for the murder of her daughter should be pardoned. You probably didn't see a lot of news coverage of that. She believes Montell Johnson, who claims innocence, did not kill her daughter, especially because a codefendant agreed to a plea-bargain of fifteen years in turn for testimony against Johnson. Two of the convicted killers in the same case are now on the streets and Montell Johnson sits on Death Row. This mother courageously testified: "If you are going to do justice like that, then let Montell go." Truer words were never spoken. We shouldn't do justice like that.

So I leave the students and faculty of this law school with this. Soon I will be leaving office and our talk today will only be a memory. My ability to reform the criminal justice system will be limited, although I will preach from the pulpit every chance I get. But you here today offer

2. *Id.*

hope for the future. Remember the law is bigger than any man or woman. Remember that America is at its finest when the justice system seeks to be a shining beacon of fairness and justice. And remember most of all that as lawyers, you should be engaged in a passionate search for the truth instead of a relentless quest for courtroom victories. The victory notches on your gun belt will some day wear away, but the scars on the justice system and on the lives left in its furrows, will never heal.

Thank you.