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# Capital Punishment in the Twenty-First Century: Introduction to Death Penalty Symposium

by Jeffrey L. Kirchmeier\*

Beginning in the mid-1990s, there was a shift in support for the death penalty in the United States.<sup>1</sup> One study shows that support for capital punishment declined by fifteen percent between 1994 and 2000.<sup>2</sup> Several factors have contributed to this drop in support, such as the discovery of several innocent individuals on death rows across the United States and a growing concern about inequities in the system that determines who will be executed by the government.<sup>3</sup>

Two major events illustrate the growing concerns about the death penalty in America at the turn of the century. First, in 1997, the American Bar Association adopted a resolution calling upon each death penalty jurisdiction to impose a moratorium on executions until the jurisdictions could “ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and . . . minimize the risk that innocent persons may be executed.”<sup>4</sup> Second, on January 30, 2000, Illinois Republican Governor George Ryan, concerned about problems with the implementation of the death penalty, ordered a moratorium on executions in his state and called for a special panel to review the state’s death penalty system.<sup>5</sup>

Later that year, on October 12, Governor Ryan, ABA President Martha Barnett, Professor Anthony Amsterdam, Rosalyn Carter, and others gathered at the Carter Center in Atlanta, Georgia, the state that is home to the two Supreme Court cases that ushered in

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<sup>1</sup> See generally, Jeffrey L. Kirchmeier, *Another Place Beyond Here: The Death Penalty Moratorium Movement in the United States*, 73 U. COLO. L. REV. 1 (2002).

<sup>2</sup> Gallup polls showed a drop in support for the death penalty from eighty percent in 1994 to sixty-five percent in 2000. Julie Cart, *Impending Execution Rends*, L.A. TIMES, Nov. 4, 2001, at A1.

<sup>3</sup> See Kirchmeier, *supra* note 1, at 21-74.

<sup>4</sup> See Leslie A. Harris, *Report with Recommendations No. 107*, 1997 A.B.A. SEC. INDIVIDUAL RTS. & RESP. 1, available at <http://www.abanet.org/irr/rec107.html>; see also *A Gathering Momentum: Continuing Impacts of the American Bar Association Call for a Moratorium on Executions*, 2000 A.B.A. SEC. INDIV. RTS AND RESP. 9.

<sup>5</sup> Ken Armstrong & Steve Mills, *Ryan: 'Until I Can Be Sure'; Illinois Is First State to Suspend Death Penalty*, CHI. TRIB., Feb. 1, 2000, at 1.

the modern era of the death penalty: *Furman v. Georgia*<sup>6</sup> and *Gregg v. Georgia*.<sup>7</sup> Fortunately, that important conference, entitled *Call to Action: A Moratorium on Executions*, is documented here as a permanent record, where one can read the transcripts of the speakers discussing the emerging death penalty moratorium movement. The day culminates with a call by ABA President Barnett to support the formation of a National Coalition for a Moratorium.

Since that conference, much has happened to American society, but the call for a moratorium on executions continues. In May 2002, Maryland Governor Parris N. Glendening imposed a moratorium on executions in his state pending the completion of a study regarding racial bias in the capital punishment system.<sup>8</sup> Additionally, numerous local jurisdictions — such as the cities of Philadelphia and Atlanta — have passed moratorium resolutions, and states continue to study problems with the death penalty system.<sup>9</sup> As Governor Ryan now prepares to leave office, he is reviewing the death sentences in his state,<sup>10</sup> and the majority of candidates to replace him as governor have pledged to keep the Illinois moratorium in place.<sup>11</sup> Recently, after two years of research and study, the Illinois panel appointed by the governor issued the *Report of the Governor's Commission on Capital Punishment*,<sup>12</sup> recommending 85 reforms to the criminal justice system to address concerns about exe-

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<sup>6</sup> 408 U.S. 238 (1972) (holding that death penalty statute giving full discretion to sentencing jury violated the Eighth Amendment). At the time, the Court's decision in *Furman* prevented the execution of all the current death row prisoners in the United States. See FRANKLIN E. ZIMRING & GORDAN HAWKINS, *CAPITAL PUNISHMENT AND THE AMERICAN AGENDA* 37 (1986).

<sup>7</sup> 428 U.S. 153 (1976) (holding that death penalty itself does not violate the Eighth Amendment and that statute that limited discretion of a sentencing jury was constitutional).

<sup>8</sup> Lori Montgomery, *Maryland Suspends Death Penalty; Glendening Awaits Report on Racial Bias on Murder Prosecutions*, WASH. POST, May 10, 2002, at A01.

<sup>9</sup> See *Toward Greater Awareness: The American Bar Association Call for a Moratorium on Executions Gains Ground: A Summary of Moratorium Resolution Impacts from January 2000 through July 2001* (August 2001), 3-25, available at <http://www.abanet.org/irt/finalreport.doc> (last visited March 12, 2002); William Claiborne, *Philadelphia City Council Backs Halt of Executions*, WASH. POST, Feb. 11, 2000, at A02.

<sup>10</sup> Kari Lyderson, *Death Penalty Foes See Progress in Illinois; Governor's Pledge to Review All Cases Called Latest Sign of Shifting Sentiment*, WASH. POST, March 11, 2002.

<sup>11</sup> Kevin McDermott, *7 of 8 Candidates for Governor Would Prolong Execution Freeze*, ST. LOUIS POST-DISPATCH, Oct. 29, 2001, at A1.

<sup>12</sup> Report of the Governor's Commission on Capital Punishment (State of Illinois, April 15, 2002), available at [http://www.idoc.state.il.us/ccp/ccp/reports/commission\\_reports.html](http://www.idoc.state.il.us/ccp/ccp/reports/commission_reports.html) (last visited April 30, 2002) [hereinafter "Report of the Governor's Commission"].

cuting innocent persons.<sup>13</sup> A majority of the members of that commission ultimately concluded that the death penalty should be abolished.<sup>14</sup>

The words spoken at the Carter Center at the ABA conference in October 2000 will remain relevant as American society continues to struggle with the death penalty issue. As Governor Ryan noted at this conference, it is the people who gathered at the Carter Center on October 12, 2000, and people like them “in courtrooms, law schools, and newsrooms across the country whose passionate search for the truth has overtaken those guided by a passionate quest for execution.”<sup>15</sup> That search for truth continues today.

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<sup>13</sup> Jodi Wilgoren, *Panel in Illinois Seeks to Reform Death Sentence*, NY TIMES, April 15, 2002, at A1.

<sup>14</sup> Report of the Governor's Commission, *supra* note 11, at iii.

<sup>15</sup> Governor Ryan, address at the Call to Action: A Moratorium on Executions, Presented by the American Bar Association (Oct. 12, 2000), in 4 N.Y. CITY L. REV. 1, at 49.

