

Chicago Sun-Times October 23, 2002

Death no option if we can't find right men guilty

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No caring person can possibly be indifferent to the intense pain experienced by the families of murder victims. When family members ask us to kill the person convicted of causing such grievous harm, the urge to carry out their wishes can be overwhelming.

History tells us, though, that if we do this, we will be killing some innocent defendants as well as others who are guilty but were not properly sentenced to death. No caring person should be indifferent to that reality either. The Illinois capital punishment system has betrayed the families of murder victims. Throughout the 1980s and the 1990s, the system promised accurate, trustworthy determinations of who killed their loved ones and promised just and fair assessments of appropriate sentences. Tragically, the system failed to deliver on these promises.

After two years of intense study, the Governor's Commission on Capital Punishment concluded that the system was seriously flawed. The commission -- made up of prosecutors, police officials, former judges, defense lawyers and a lay leader -- identified 85 reforms critical to restoring confidence in capital verdicts and sentences.

But even if all 85 reforms are accepted for future cases, what are we to do about the 160 individuals who were sentenced under the prior system? Given the more than reasonable doubts about that system's accuracy and fairness, surely we must err on the side of not carrying out executions based on that system's decisions. Is it not better that 10 guilty murderers remain in prison for life as opposed to executing even one prisoner who should not be executed?

Most everyone agrees with this general premise. Some claim, though, that we can accurately distinguish the problematic cases from those presenting no issues of innocence or unfairness. History clearly shows that we cannot.

Consider the case of Anthony Porter, who came within two days of execution before a series of miracles led to his exoneration. Not only had 12 jurors found Porter guilty beyond a reasonable doubt, but dozens of judges had signed off on his execution. Even some of Porter's own lawyers assumed he was guilty.

Sixteen years after Porter was convicted, journalism students went to the crime scene and saw that a fence rendered it impossible for the eyewitness to have seen the murders as he claimed. The ensuing investigation not only led to Porter's exoneration, but also led to the conviction of the true killer.

Porter's case easily could have gone the other way. Had the fence been removed during the intervening 16 years, the students never would have questioned the eyewitness's account. Porter would have been executed amidst certainty of his guilt. All because no defense lawyer or investigator ever visited the crime scene before Porter's trial.

When a trial or sentencing was not conducted properly, it is impossible to reconstruct years later what the evidence would have looked like had the system worked back when it should have. Critical witnesses die. Evidence gets lost or destroyed. Claims of mental retardation or illness become much harder to assess retroactively. It is simply unrealistic to pretend that by looking closely at the cold record in a case, we can achieve sufficient confidence in the conviction and sentence to support an execution.

We will not always be as lucky as we were in the Porter case or in the cases of the other 12 men who have been freed after having once been condemned to die. In each of these cases, members of victims' families wanted these defendants to die. Mercifully, the truth emerged before we carried out the ultimate judgment.

We cannot possibly be confident about our ability to accurately identify equally innocent people on Death Row today. No caring person should be indifferent to that reality.