

THE MOMENT OF TRUTH FOR AMERICA'S DEATH PENALTY

By Nick Gier

Murder and capital punishment are not opposites that cancel one another, but similars that breed their kind.

--George Bernard Shaw

The thieves selected the moment when the strangled man was swinging above them as the happiest opportunity.

--Arthur Koestler, *Reflections on Hanging*

The moment of truth has finally arrived for the death penalty in America. There is now proof that the State of Texas executed an innocent man in 2004. Cameron Willingham and Ernest Willis were both convicted of murder by arson, the first in 1987 and the second in 1992. Willingham died by lethal injection on February 17, 2004, but Willis was pardoned on October 6, 2004.

A panel of five arson experts concluded that the Texas deputy fire marshal had "grossly misinterpreted" the facts of both cases. They concluded that the fires were tragic accidents not arson. Governor Rick Perry was privy to these objections, and put an innocent man to death.

The Innocence Project has now verified that, since the reinstatement of the death penalty, 176 people on America's death rows have been found innocent. The most dramatic instance of this was the discovery in 2003 that 13 people on Illinois' death row were not guilty as charged.

Then Governor George Ryan, a supporter of the death penalty, declared a moratorium on executions in Illinois. He did it because, as he said, "our capital [punishment] system is haunted by the demon of error: error in determining guilt and error in determining who among the guilty deserves to die." Why is it that Governor Perry of Texas has not instituted a similar ban on executions in his state?

Our criminal justice system is bedeviled by another error and that is the myth that the death penalty convinces others not to kill. Over the past 160 years 200 studies have been done to discover if capital punishment is a deterrent.

In 1846 Robert Rantoul did a comparative study of European countries and concluded that "murders have rapidly diminished in those countries in which executions are scarcely known." Nearly all of the studies since then have confirmed Rantoul's findings. Over the years, critics have said that these studies did not control for enough

variables, but finely tuned statistical analyses have continued to demonstrate that, if anything, capital punishment actually leads to more killings.

In 1975 Isaac Ehrlich published a highly sophisticated article that was summarized by the slogan "Every execution prevents seven or eight murders." Close scrutiny of Ehrlich's method and data, however, revealed that his study was flawed. A panel at the National Academy of Sciences went over Ehrlich's data and found that it did not prove his thesis.

Some studies have proved the "brutalization" thesis, which means that capital punishment, as George Bernard Shaw once quipped, breeds more murder. State sanctioned murder begets more violence and violent emotions. Not only did past public executions prove to be a field day for pickpockets, blithely undeterred by the fact that theirs was a capital crime, but it also fueled the fires of the most uncivil emotions.

According to an FBI Uniform Crime Report, far fewer police officers are murdered in states without the death penalty. From 1989-1998, 292 police were killed in the South, where 90 percent of all executions occurred in 2000, while only 80 were killed in the Northeast, where there are 1 percent of national executions.

The case for deterrence appeared to strengthen as murder rates dropped in the 1990s while executions kept their pace. However, from 1990 to 2004 the murder rates in states without the death penalty declined much more—from 9.16 to 4.02 per 100,000— than those states with capital punishment—from 9.5 to 5.71 per 100,000.

Some critics say that the long delays in executing capital prisoners undermine the deterrent effect. Executions were certain and quick in the 19th and early 20th Centuries, but the early studies, confirmed by more recent ones, demonstrate that this cannot be the case. In 1980 William Bailey did a thorough study across death penalty states focusing on the certainty, the severity, and the quickness of the punishment and he found "no evidence that speedy executions discourage murder."

Ernest Willis received \$430,000 from the State of Texas for the 17 years he spent in prison, and a federal jury ruled that Earl Washington, after 18 years behind bars, should have \$2.25 million from the investigator who made up the evidence that falsely convicted him.

The other 174 others who have been exonerated may not fare as well in a country that has been justly criticized by many Europeans, who have long abolished capital punishment, who have made their prisons more humane, who have reduced their crime rates, and who are returning far fewer people to their prisons. One could say that the abolition of the death penalty is one of the major achievements of a civilized country.

Postscript on Abortion: Some who know my views on abortion would charge that I'm a gigantic hypocrite for granting the right of women to terminate their

pregnancies up to 25 weeks. My answer is that only legal persons can be murdered, and our moral, legal, and religious traditions have consistently held that the early fetus is not a person. Read my article on abortion at www.class.uidaho.edu/ngier/abortion.htm.

Nick Gier taught religion and philosophy at the University of Idaho for 31 years. The author is indebted to Mark Costanzo's *Just Revenge* and Hugo Bedau's *The Death Penalty in America*.