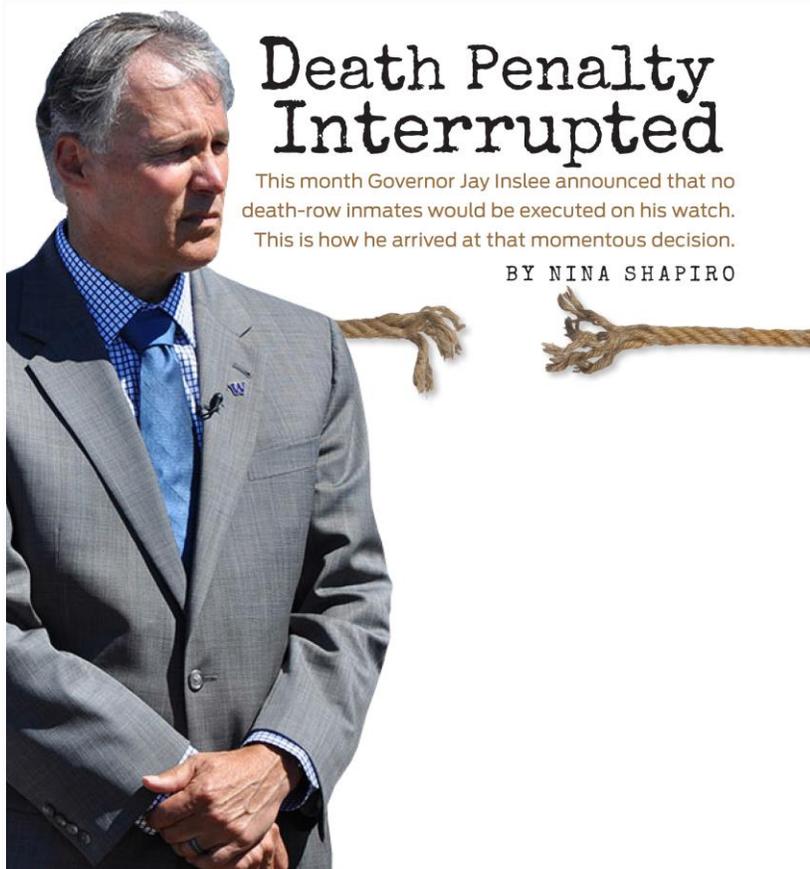


Death Penalty, Interrupted

This month Governor Jay Inslee announced that no death-row inmates would be executed on his watch. This is how he arrived at that momentous decision.

By Nina Shapiro Tue., Feb 25 2014 at 06:01PM, Seattle Weekly



Last March, a young, Harvard-trained attorney named Nick Brown began settling into his job as general counsel for the state's newly elected governor, Jay Inslee. Brown (whose unusual resume includes a stint on the reality TV show *Survivor* while in law school) had in the past focused on criminal work. He had most recently served as a prosecutor in U.S. Attorney Jenny Durkan's office, and before that had worked as an Army defense attorney in Iraq. So as he assessed his myriad new duties, he naturally took a keen interest in the criminal-justice matters facing the governor.

There was a big one, Brown recalled one day last week in his modest, windowless office in Olympia's Capitol Building. Jonathan Gentry, who had been on death row since 1991 after being convicted of killing a 12-year-old girl, was nearing the end of his appeals. It was deemed likely that Gentry's stay of execution would be lifted sometime in 2014.

If that were to happen, Inslee would join just a handful of Washington state governors in the modern era who have been directly faced with the death penalty and the many moral and political questions that surround it. In the past 50 years, there have been but five executions.

“Look you’re going to be faced with these issues,” Brown says he told Inslee. “All right, well, get me up to speed,” the general counsel remembers his boss instructing him. “It wasn’t like, ‘Hey, I want to get rid of the death penalty.’”

If anything, Brown might have guessed that Inslee supported capital punishment. The only time Inslee voted on the matter was as a Congressman representing a district in eastern Washington in 1994. Faced with a bill that would have substituted life imprisonment for the death penalty, Inslee voted no. In a phone interview last week, the governor didn’t elaborate on his earlier views, saying only “I thought it was the right vote at the time.”

A lot of people did. 1994 was the year that support for the death penalty was at an all-time high, according to Gallup pollsters. Eighty percent said they were in favor. Not coincidentally, Gallup recently observed, in that year “Americans consistently named crime as the most important problem facing the United States.”

Meanwhile, politicians had absorbed a key lesson from the 1988 presidential campaign of former Massachusetts governor Michael Dukakis, who dispassionately expressed his opposition to the death penalty when asked during a debate what his response would be were his wife to be raped and murdered. The lesson drawn from the widespread mocking of Dukakis that ensued and his ultimate loss to George H.W. Bush: You’re risking your political life by opposing capital punishment.

“A lot has happened in the state since 1994,” Inslee says. Indeed, a lot has happened in the country, which has caused what state Rep. Reuven Carlyle, a Seattle Democrat, calls a “profound shift” in views on capital punishment. Last year, with a much lower crime rate than 1994’s, Gallup found 60 percent of Americans supported the death penalty—still a majority, but the lowest number in four decades. Even more strikingly, six states have abolished the death penalty since 2006, bringing the total to 18. Seven more have imposed moratoriums through either gubernatorial or court decisions.

Washington, of course, is now one of them. On February 11, Inslee announced that he would issue a reprieve to any prisoner scheduled for execution during his term in office. His reasoning taps into growing concerns about the death penalty nationwide. At the same time, the governor’s decision came as a shock. Even several people who had met with him just the day before to discuss capital punishment had no idea a moratorium was on the table. “He’s a good poker player,” says Eldon Vail, a former state Department of Corrections secretary who was in on that meeting. As it happened, Inslee was at the very end of a process that he and Brown had been engaged in for months.

“It really started to ramp up last fall,” Brown explains. In addition to researching current death-row cases and the larger issues surrounding capital punishment, the 36-year-old general counsel launched a series of meetings.



Above: Nick Brown

He traveled to the Washington State Penitentiary in Walla Walla, where all the state’s executions take place. He had the prison superintendent, Stephen Sinclair, walk him through every stage of an execution, from when an inmate leaves his cell to the moment that he either hangs or receives a lethal injection. Along the way, Brown learned, some 100 DOC staffers participate in the process: those who accompany the condemned out of his cell, those who stay with the families of the inmate and the victims, escorts for the media, the prison superintendent who watches the condemned man die.

“To a T,” Brown says, everyone he spoke with about the process emphasized the often-deep emotional impact on those staffers—something the general counsel says is “an aspect of the death penalty so rarely talked about.”

Later the governor took the same Walla Walla tour, following it with the early-February meeting that included Vail and another former DOC secretary, Joe Lehman, both of them opposed to capital punishment. Vail says he told the governor that, during a couple of executions, his staffers were so visibly distressed that the condemned men were moved to comfort those tasked with killing them.

Inslee says these conversations made him more aware of the impact of executions on staffers, and noted in his press conference on the moratorium that all of the state’s

retired DOC secretaries oppose the death penalty (including Chase Riveland, who preceded Vail and Lehman).

Brown, and later the governor, also talked with family members of victims. Brown calls a conversation with four such family members “one of the most difficult and emotional things” he’s ever done as a lawyer.

The conversation had been arranged by Lew Cox, head of a Tacoma group called Violent Crime Victim Services. Cox had told Brown that most family members start out wanting the death penalty, but many, after years of emotionally draining appeals, end up just wanting to get the case over with. Cox, as he later explained in an interview, lays blame not on capital punishment itself but on what many families believe is an excessively lengthy appeals process. But Brown says the conversation with Cox, himself the father of a murder victim, and the other family members “shone a light on the pain and frustration” felt in drawn-out death penalty cases.

Brown was also struck by a story told by a murdered man’s daughter, who had visited the killer in prison. The woman had shown the killer a series of family pictures, showing him his victim surrounded by loved ones. And the killer, who had already expressed deep remorse, started to cry. At the end of the visit, the woman told Brown, she hugged the man. (Cox says the woman no longer supports the death penalty for that killer, although she does for a far less remorseful co-defendant.)

Inslee says less about the family members he talked to, except that he learned that their views vary. Some fully support the death penalty. Others feel that a worse punishment would be to “spend the rest of your life in a small cell,” Inslee says. Frank Holden, the father of Gentry’s 12-year-old victim, whom Inslee called the night before he announced his moratorium, stands in the former camp. (For more on Holden’s experience, read “Vengeance Denied,” [here](#).)

In early February, Inslee met with Russ Hauge, the prosecutor in Kitsap County, where the Gentry case was tried. Hauge says he told the governor that if he wanted to make a statement about the death penalty, this case was not the one to do it over. In decades of appeals, no doubt about the child-killer’s guilt, nor any mitigating circumstances, had emerged.

Inslee, as he made his moratorium announcement, stressed that he does not doubt the guilt of any of the nine men on death row, nor would he give them “mercy.” He could have commuted all their sentences to life in prison, but chose not to.

Whether the conversation with Hauge played into that decision is hard to say. Indeed, while Inslee mentions many of the conversations he and his staffers had during his lengthy deliberative process, one gets the sense that he was ultimately most swayed by some of his research. He says he read a Washington State Bar Association report on the death penalty twice. That report, published in 2006, calls attention to the tremendous costs of death-penalty cases. Inslee says the figures in the report are not as definitive as he would have liked; estimates range from \$125,000 to \$2 million extra per case. But

the point was made—and Inslee says he knows that some cases, like the Carnation murder of six that has racked up at least \$7 million in expenses so far, cost far more.

“What I learned is that the application [of the death penalty] is wildly disproportionate,” Inslee adds. Only a small number of counties that can afford to prosecute capital cases do so. As he talked to friends and families about the issue, someone said to him that whatever your moral position on the death penalty, it did not seem justifiable that two people would be prosecuted differently for the same crime depending on where they lived. “I thought this was one of the more interesting insights,” Inslee says. In fact, while the governor has generally avoided bringing morality into the discussion, he says he came to conclude that this inequitable prosecution was “an immoral act.”

Finally, Inslee says he looked at the high number of death-penalty convictions that had been overturned: 19 of 32 imposed since our current death-penalty law was implemented in 1981—a reversal rate of 60 percent, he points out. So all those millions spent, all the inequitable prosecutions, were happening in a system that Inslee determined had to be “called into question.”

Inslee resists discussing any particular cases. But one doesn’t have to look far to find some that might have influenced him. Last year was a “remarkable” one for the Innocence Project Northwest, relates director Jacqueline McMurtrie. The Project saw five exonerations in cases it handled, including one that came down just this past December: Seattleite Brandon Olebar was released after 10 years in prison on convictions of robbery and burglary. The Innocence Project tracked down three of the real assailants, who signed sworn statements saying Olebar was not involved.

Also last year, Alan Northrop testified in the legislature about the 17 years he spent in prison for a Clark County rape. He was set free in 2010 after DNA evidence proved his innocence. Northrop’s testimony about the impact of spending so many years in prison for a crime he did not commit—delivered in favor of a wrongful-conviction compensation bill—“jolted the legislature to its core,” Carlyle recalls. Legislators passed the bill, which was then signed into law by Inslee in May.

None of these cases involved capital punishment, but they highlighted the possibility of wrongful conviction that is so especially frightening in death-penalty cases. The country’s understanding of this issue crystallized in the 1990s as DNA testing came into its own, observes Richard Dieter, executive director of the Death Penalty Information Center in Washington, D.C. In 2000 a Republican governor of Illinois, George Ryan, imposed the country’s first moratorium on executions after courts had overturned 13 death-penalty convictions. In 2011, Illinois joined a wave of other states in permanently abolishing the death penalty.

Will Washington now do the same? Carlyle, who has in the past introduced several bills that would substitute a sentence of life in prison for the death penalty, says Inslee’s action is a “game-changer” for a bill he plans to introduce in 2015.

Inslee has indicated he wants to jump-start a debate rather than be out in front crusading on the issue. But he says he will continue to talk to the public, which has already shown him “surprising” support. He maintains the responses he’s heard to the moratorium have run 4 to 1 in favor.

Meanwhile, Dukakis, talking by phone from Los Angeles and still clearly irritated by the 1988 debate that he admits he bungled, notes that U.S. Attorney General Eric Holder announced in late January that federal prosecutors will seek the death penalty for Boston Massacre defendant Dzhokhar Tsarnaev. What that means, Dukakis predicts, is that we’re going to have another national debate on the death penalty.

If so, Inslee’s announcement seems perfectly timed.

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