

she said, "I think we do have to slow down and really take a look at what's going on here."

The resolution (see box) cites the targetting of the poor and minorities for capital punishment, and points to its rejection by the majority of democratic nations around the world.

Both Preate and Miller told *EIR* that they thought the moratorium issue should be raised in the Presidential debate, as Lyndon LaRouche, a life-long opponent of capital punishment, alone among the candidates, has done.



Donna Reed Miller

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## Interview: Ernie Preate, Jr.

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# Former death penalty backer urges moratorium

*Ernie Preate, Jr. was Attorney General of Pennsylvania during 1989-95, and District Attorney of Lackawanna County during 1978-89. As District Attorney, Preate supported the creation of the Pennsylvania Death Penalty Statute in the late 1970s. During the 1980s, he not only spoke out in favor of capital punishment, but also, as District Attorney, sought its application in seven cases; in five of those cases, juries rendered the death penalty. As Attorney General, Preate successfully argued the constitutionality of the state's death penalty statute before the United States Supreme Court. As chairman of the Criminal Law Committee of America's Attorneys Generals, he wrote a 272-page book, The Prosecution of a Death Penalty Case, and was a frequent lecturer in support of the death penalty in national prosecution training sessions and on panels in the American Bar Association and the Pennsylvania Bar Association.*

*Then, in 1995, Preate's life changed. He pleaded guilty to Federal mail-fraud charges involving \$20,000 in campaign contributions, and served one year in a Federal prison in Duluth, Minnesota. That same year, the American criminal justice system, particularly as it affected capital cases, began to undergo a vast change, with passage of the Anti-Terrorism and Effective Death Penalty Law, and other measures enacted by the Gingrich Congress.*

*In this interview, Preate, now a lobbyist in Scranton,*

*speaks about what changed his view of capital punishment, and why he is today a leading spokesman in the movement for a moratorium on executions in America. He organized testimony for the Feb. 22 Pennsylvania Senate hearings on SB 952, which would impose a two-year moratorium, and delivered testimony himself, which he summarizes here. Preate was interviewed by Marianna Wertz on March 27.*

**EIR:** I first read about your recent testimony for a two-year moratorium on executions before the Pennsylvania Senate on the website of the Death Penalty Information Center. What is it that made you change your mind?

**Preate:** It's in my testimony. There's been a change in the rules, basically, from where we were when we established the death penalty in Pennsylvania in the late 1970s, and amended it a couple of times in the '80s.

**EIR:** What do you expect to happen in the legislature with respect to SB 952?

**Preate:** We're expecting that we will get, this year, funding to set up a capital resource center for death-row defendants. We're looking for funding in the neighborhood of \$500,000. That's going to be important, because there isn't one existent now. The Federal funds were gutted in 1997. They had a dozen of them around the United States, and they were all de-funded.

**EIR:** Will there be any action on a moratorium per se?

**Preate:** I don't know. That's a big political question. People are saying nothing is going to happen, but circumstances can change to make it happen, as they did in Illinois.

**EIR:** Right, which sparked everything else.

**Preate:** So, what looks like it might be slim to attain right now, could, in a year, turn out to be very attainable. You don't know. In the meantime, we're going to be pursuing the creation and funding of an appellate capital resource center. We're also going to be pursuing passage of a DNA law similar to that which Illinois and New York have.

**EIR:** So, this is along the lines of the Innocence Protection Act of 2000 at the Federal level?

**Preate:** That's exactly right. It's Senator [Patrick] Leahy's [D-Vt.] Innocence Protection Act.

**EIR:** Have you spoken with Governor Ridge about this?

**Preate:** No.

**EIR:** I know that Governor Ridge was interviewed on the issue last week, and he said that he opposes a moratorium. So, even if it passed, he would not sign it.

**Preate:** Well, again, we're just in the beginning stages. The bill (SB 952) was just introduced last spring, not even a year ago. We had one vote on it; it was turned down.

**EIR:** So it predates Illinois.

**Preate:** Exactly. There was a vote on it in the Pennsylvania Senate. It was sponsored by Sen. Edward Helfrick and co-sponsored by Sen. Vincent Fumo and three others. It was bipartisan. It came up for a vote in October and was defeated 41-8. However, they amended it on the floor, and they said, all right, we'll take off the moratorium and let's have a study of the death penalty, and that garnered 20 favorable votes, out of 49.

Then, after that, there was a lot of phone calls, a lot of letters written, a lot of visits made to legislators, a lot of prayers were said, and finally, in December, Sen. Stewart Greenlee, the chair of the Senate Judiciary Committee, announced that he would have a hearing in February.

Now, you have to get the sequence of this. In January, Illinois took place. So, we were well along, before Illinois took place. That gave us new momentum.

Then, I was asked by Senator Helfrick to put together a list of witnesses and to gather these people, so that they could present testimony at the Feb. 22 hearing. And I did. I brought some very compelling testimony forward, from people such as Anthony Cardinal Bevilacqua—the first time a Roman Catholic Cardinal has ever testified before the Pennsylvania legislature.

I brought forward Prof. David Baldus, from Iowa, who had done a study of the death penalty in Philadelphia in the last decade, and found that if you were black and poor, you were four times more likely to get the death penalty, than a white person. He had done an initial study of the death penalty and found it racially and economically skewed against poor and blacks and Hispanics.

I brought forth Prof. Larry Marshall, from Northwestern University Law School, who was one of the lawyers for Anthony Porter, who was freed from Illinois death row last fall. The crux of his testimony was that he thought Illinois had a great regime of laws and cases that would allow the court system to discern whether an individual was factually innocent and received a fair trial. That's what he believed, he said. So, all of a sudden, in the 1990s, all these people were being freed, not by the court system that he thought was infallible, but by journalism students, by newspaper reporters, by DNA testing.

We had two witnesses who testified from Murder Victims Families for Reconciliation. Bud Welch from Oklahoma City—his daughter was killed in the bombing there. He testified that he was opposed to the death penalty. We also had



*Ernie Preate, Jr.*

Jane Seigel Greene, Executive Director of Barry Scheck's The Innocence Project. She testified about the numbers of people who are factually innocent on death rows around America, and about DNA in particular, how important that is, to clear [someone charged], and also to make sure that you've got the right person. It works both ways.

**EIR:** Do you still support a death penalty?

**Preate:** Well, I don't talk in those terms anymore, whether I support a death penalty or not. I suppose that my position is best described as saying that, if we do not take steps to ensure the fairness of death penalty cases, that there's no racial or class bias in these cases, and that people have the opportunity to present all their evidence and have these issues reviewed by the appellate courts, instead of being *blocked* by the appellate courts; if we don't do all of those things, then we shouldn't have the death penalty, because we can't be certain that we're *not* going to execute an innocent man.

So, what happened, in my view, is that we started out with a death penalty statute, and some appellate procedure statutes, that were to allow the courts to do the kind of oversight review that would ensure that the individual got a fair trial, and that this is the right individual, he's factually guilty. But we *changed the rules*, in the mid-1990s. With the passage of the Anti-Terrorism and Effective Death Penalty Law, in 1995, as the result of the hysteria over the Oklahoma City bombing—

**EIR:** And the new Congress—

**Preate:** And the new Congress, as a result of that, we had so gutted Federal *habeas corpus*, that it's almost non-existent now. It's very hard for the Federal courts to perform their normal oversight role on state death penalty cases.

At the state level, in Pennsylvania, as in other states, with the mid-1990s, they passed companion legislation, which effectively gutted state *habeas corpus*. The effect of these statutes was to impose inordinately short time limits for filing of appeals. It imposed technicalities of filing, procedural bars, new rules on waiver of issues. The combination of all that was to effectively gut the ability of a court, state and Federal, to *hear* claims of factual innocence, to hear claims of substantial due process prejudice.

Then, on top of that, the one group of people that were bringing these kinds of cases to the state and Federal courts, were these capital resource defense centers, and they *defunded them*.

So, these people, who are poor, mostly black and Hispanic, with an average sixth-grade education, are now thrown into this minefield of time limits, procedural bars, and waivers, without anybody to guide them. And they have to do it on their own.

**EIR:** The forgotten men and women.

**Preate:** The forgotten men and women. That's why I think we need to have a moratorium.

**EIR:** Politically, the real change that has occurred in recent months, which seems to also be shifting popular opinion on this issue, is that Republicans (including Illinois Gov. George Ryan) and Catholics have been taking a stand against the death penalty. And that has shifted the political perception as to who opposes it.

**Preate:** Yes, and I think that a lot of credit has to go to the Pope, who has in recent years, forcefully and publicly, repeatedly—all three words: forcefully, publicly, and repeatedly—expressed opposition to the death penalty, no matter what, without any exceptions.

Two years ago, when we were just talking about this moratorium, when he spoke in Rome and he spoke in Missouri, and he asked the Governor to pardon that one individual [Darrel Mease], and the Governor did—do you remember that?

**EIR:** Sure, we wrote about it at the time.

**Preate:** He came to America for 24 hours, and the one thing that everybody remembers about it is that he asked the Governor to pardon the guy on death row. So, my thinking is that when the Pope took such a public and courageous stand, it was probably shocking to a lot of Catholics.

But the leadership of the American Catholic Conference,

that is, the cardinals and the bishops, they had to take their cue from the Pope. So, you started to see, in the last several years, more and more statements from cardinals and bishops around the United States, stating their opposition to the death penalty.

**EIR:** Let me ask you about the Presidential elections. You know I support Mr. LaRouche's campaign.

**Preate:** Right.

**EIR:** Both Vice President Al Gore and Texas Gov. George W. Bush support the death penalty—Bush in a very obvious and open way. Clinton came into office executing a man who was mentally retarded. Gore has, as far as I know, never spoken out on the issue, but I presume that he takes the same stand as Clinton. What do you see about the importance of getting this issue before the voters? Mr. LaRouche has opposed the death penalty his entire life, and made it an issue politically.

**Preate:** And rightfully so. It's right and proper for this issue to be a part of the national debate, because it goes to the heart of fairness and equality and compassion in our justice system. People forget that the justice system is supposed to not just dispense justice, but also dispense mercy. It's not just punish-

## Scalia, 'vox populi,' and the death penalty

In a 1992 death penalty case, *Morgan v. Illinois*, U.S. Supreme Court Justice Antonin Scalia, joined by Clarence Thomas and William Rehnquist, invoked the Roman imperial concept of *vox populi* for the right to murder. The case involved an Illinois trial, in which the trial judge excluded from the jury, individuals who said they would automatically impose the death penalty, if they found the defendant guilty. The majority of the Supreme Court upheld this decision, saying that a juror who would automatically impose the death penalty was not impartial. Scalia, Rehnquist, and Thomas dissented, saying that "an Illinois juror who would always impose the death penalty for capital murder was not 'partial' for purposes of the Constitution's Sixth or Fourteenth Amendments."

In his dissent, Scalia displayed his Roman imperial (fascist) mind-set, in denouncing the Court's earlier abolition of the death penalty:

"Sixteen years ago, this Court decreed by a sheer act of will, with no pretense of foundation in constitutional text or American tradition, that the People (as in We, the

People) cannot decree the death penalty, absolutely and categorically, for any criminal act, even (presumably) genocide; the jury must always be given the option of extending mercy. *Woodson*, 428 U.S., at 303-305. Today, obscured within the fog of confusion that is our annually improvised Eighth-Amendment, 'death-is-different' jurisprudence, the Court strikes a further blow against the People in its campaign against the death penalty. Not only must mercy be allowed, but now only the merciful may be permitted to sit in judgment. Those who agree with the author of *Exodus*, or with Immanuel Kant, must be banished from American juries not because the People have so decreed, but because such jurors do not share the strong penological preferences of this Court. In my view, that not only is not required by the Constitution of the United States; it grossly offends it."

Scalia supplies a footnote: "See *Exodus* 21:12 ('He that smiteth a man, so that he die, shall be surely put to death'); I. Kant, *The Philosophy of Law*, 198 [1796] (W. Hastie, trans., 1887) ('[W]hoever has committed Murder, must die. . . . Even if a Civil Society resolved to dissolve itself with the consent of all its members[,] . . . the last Murderer lying in the prison ought to be executed before the resolution was carried out. This ought to be done in order that every one may realize the desert of his deeds. . .')." "

ment, it's *justice*. It doesn't say the punishment system, it says the justice system. And justice involves an evaluation of all factors, including compassion and mercy. We forget that. We think that the justice system is all pure punishment and vengeance, an eye for an eye. That is not what our justice system is about.

Our Founding Fathers specifically set up a commutation process, giving to the President and to the governors, as part of their supreme executive power, the power to commute, the power to dispense mercy. It seems to me that the system has failed to exercise the mercy part, the compassionate part, that is such an integral part of it. It has ignored it.

**EIR:** What you've said is very, very important.

**Preate:** Why?

**EIR:** Because there are very few people in this country who have done what you've done and then thought through the consequences of it and publicly made clear that you were wrong and now what you are doing is right.

**Preate:** I don't profess to be a leader. Like Mr. LaRouche, I went to prison.

**EIR:** Yes, I know. So did my husband.

**Preate:** So, you know the pain that we've all felt about our justice system. And we've seen it from the inside, and it is not a pretty picture. I saw that first-hand. So did my family.

**EIR:** Where were you in prison?

**Preate:** I was up in Federal prison camp in Duluth, Minnesota. They took me as far away from my family as they could possibly get me. I didn't mind going to jail, I had to do the time. I violated the law, I admitted it, I accepted personal responsibility for it. I filed an incorrect campaign expense report, under \$20,000. I did a year in prison for that. When I got to prison, the guys laughed at me. They said, you did what? These are all guys doing time for robbery and drug-pushing and drug-smuggling. And they were reading at the same time about Clinton and Gore violating the election laws to the tune of tens of millions [of dollars].

**EIR:** Well, you can imagine what happened to LaRouche and his associates, who were innocent.

**Preate:** Sure, I'm not trying to maximize my situation. But, when they put me out at Duluth, 1,500 miles from my family, they punish my family then.

**EIR:** A lot of people in your situation just shut their mouths and stop doing anything, because of fear. You didn't, so that's why I think it's important.

**Preate:** I think it's incumbent upon us that when we see the republic being threatened, that we have to speak up. Because the course on which we are now going has grave social consequences.

# Al's pal Tony Coelho, and 'honest graft'

by Scott Thompson

Former Rep. Tony Coelho (D-Calif.), now the general chairman of Vice President Al Gore's bid for the Democratic Presidential nomination, may soon face prosecution. According to an article by Bill Hogan in the March 23 *National Journal*, a team of "criminal investigators-special agents" (the official designation of the investigative team under Brian Hess) from the U.S. State Department Office of the Inspector General (OIG) is conducting an investigation of Coelho that may lead, in the near future, to a referral to the Department of Justice for criminal prosecution.

Before examining the current charges that are being investigated by the OIG team, having to do with Coelho's role as General Commissioner (with the rank of Ambassador) overseeing U.S. participation in the 1998 World Exposition in Lisbon, Portugal, it is important to situate Coelho's amorality as a politician. It is this guttersnipe quality that has made him "thick as thieves" with Gore.

Joining the House of Representatives in 1979, Coelho has played a key role in destroying the FDR-JFK constituency base of the Democratic Party. Before he "skipped town" in 1989 in the face of serious ethics charges, Coelho had built a money-making juggernaut that turned politics into a business of selling "access" to the wealthiest corporate and individual "special interests," rather than mobilizing the traditional Democratic constituencies among the disenfranchised lower 80% of the family-income brackets in the United States. Coelho unabashedly stated that he viewed politics as "a business," according to *Wall Street Journal* writer Brooks Johnson, in his book *Honest Graft*. Such an outlook has made Coelho a perfect partner for Gore, one of the leading promoters within the Clinton administration of the 1996 Welfare Reform Act, which has thrown the poorest of the poor on the human scrap heap.

Ironically, Coelho is not being brought to justice for such political crimes. But he may be on the verge of being tripped up by the investigation into his role in the Lisbon Expo '98.<sup>1</sup>

## Coelho's kleptomania

According to Hogan, the OIG criminal investigation of Coelho followed within a month after the OIG's Audit Division report was released in September 1999. The report "had

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1. For more on Coelho's amoral political history, see "Campaign Manager Tony Coelho: Al Gore's Kindred Spirit in Avarice," *EIR*, Aug. 13, 1999.