

Testimony of

The Honorable Russ Feingold

June 12, 2002

This hearing will come to order. Good morning. Welcome to this hearing of the Senate Judiciary Committee, Subcommittee on the Constitution. I want to thank everyone for coming here so early this morning. We are starting an hour earlier than usual in order to complete this hearing by 11 am, when a Joint Session of Congress will be convened to hear an address from the Prime Minister of Australia.

This hearing will explore the bold, unique, yet entirely reasonable response by Governor George Ryan and the people of Illinois to flaws in the current administration of the death penalty, most notably, the risk of executing innocent people.

Earlier this year, our nation hit a very troubling milestone: the 100th innocent person in the modern death penalty era was exonerated and released from death row. A few weeks later, we hit 101. During this same period, there have been close to 800 executions at the state and federal levels. This means that the system is so fraught with error that, for every eight executions, there has been one person on death row later found innocent in the modern death penalty era. Of course, for every innocent person wrongfully convicted, a guilty person has likely gone free and may still be able to commit more crimes.

The 100th death row inmate to be exonerated is Ray Krone. Mr. Krone was wrongfully convicted and served ten years in the Arizona prisons for a murder he did not commit, before he finally walked out a free man. Faulty forensic analysis and circumstantial evidence led to Mr. Krone's conviction. But a DNA test set him free and points to another man as the killer. Mr. Krone is in the audience today. Mr. Krone, thank you for joining us today.

Two other men who share the same dubious distinction are with us today, Kirk Bloodsworth and Juan Melendez. Mr. Bloodsworth served 9 years in the Maryland prisons, including some time on death row, for a rape and murder he did not commit. Mr. Bloodsworth was convicted primarily on the basis of faulty eyewitness testimony. Like Mr. Krone, a DNA test was the key to his freedom.

Mr. Melendez sat on death row in Florida for almost two decades before a court finally overturned his murder conviction. The court cited the prosecution's failure to provide the defense with critical evidence and the lack of physical evidence linking him to the crime. After the court's decision, state prosecutors announced they would drop the charges against him. Mr. Melendez was released earlier this year. Mr. Bloodsworth and Mr. Melendez, thank you for joining us.

These men -- Mr. Krone, Mr. Bloodsworth, Mr. Melendez - and the other 98 innocent former death row inmates are the reason we are having today's hearing. These are not abstractions, they are real people, innocent men who suffered for years under the very real possibility of being put to death for crimes they did not commit.

There is no question that those who perpetrate heinous crimes should be punished and punished severely. And there is no question that the family and friends of murder victims bear an awful, painful burden for the rest of their lives. Society owes them our most steadfast effort to bring the perpetrators to justice and sentence them severely. But society also has a responsibility to ensure that only the guilty are convicted and punished.

This hearing will explore the steps that one state - Illinois - has taken to address this difficult dilemma. In Illinois, after 13 death row inmates were exonerated and released, as compared with the 12 executions carried out after the death penalty was reinstated in 1977, a consensus emerged among both death penalty opponents and proponents that the state's death penalty system was broken. Two years ago, on January 31, 2000, Governor Ryan took the courageous step of placing a moratorium on executions in Illinois.

Governor Ryan then created an independent, blue ribbon commission of present and former prosecutors, public defenders, a former federal judge, and distinguished Illinois citizens, including one of our former colleagues, Senator Paul Simon. Governor Ryan instructed this commission to review the state's death penalty system and to advise him on how to reduce the risk of executing the innocent and ensure fairness in the system. Governor Ryan's decision to suspend executions and create a commission sparked a national debate on the fairness of the current administration of the death penalty.

After two years of work, the Illinois Governor's Commission on Capital Punishment completed its task and released its report in April of this year. The Commission set forth 85 recommendations for reform of the Illinois death penalty system. These recommendations address difficult issues like inadequate defense counsel, executions of the mentally retarded, coerced confessions, and the problem of wrongful convictions based solely on the testimony of a jailhouse snitch or a single eyewitness. The Commission's work is the first comprehensive review of a death penalty system undertaken by a state or federal government in the modern death penalty era. We will hear more about the Commission's work and its recommendations in this hearing.

The risk of executing the innocent and other flaws in the administration of the death penalty are not unique to Illinois. The 101 innocent people who were sent to death row and later exonerated come from 24 different states. In addition to Illinois, exonerations of people sentenced to death have occurred in Alabama, Arizona, California, Florida, Georgia, Idaho, Indiana, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, and Washington.

Just last month, Governor Parris Glendening of Maryland placed a moratorium on executions in his state to allow a study on racial disparities he ordered two years ago to be completed. I commend Governor Glendening for his leadership, and I hope that other governors follow the lead of Governor Ryan and Governor Glendening.

But I also believe Congress has an important responsibility to ensure that innocent people are not executed and that constitutional protections are respected in the administration of capital punishment across the country.

I have introduced a bill that would apply the Illinois model to the rest of the nation. The National Death Penalty Moratorium Act, S. 233, would enact a moratorium on federal executions and urge the states to do the same, while a National Commission on the Death Penalty examines the fairness of the administration of the death penalty at the federal and state levels.

I do not expect our witnesses today to discuss or debate the provisions of my bill. Rather, this hearing is intended to educate Congress and the American people about the Illinois experience with a moratorium and review of the death penalty system.

This morning, we will have two panels of witnesses. Illinois Governor George Ryan is the sole witness on panel I. On panel II we have three members of the Illinois Commission, as well as outside experts and prosecutors from Illinois and South Carolina. To accommodate Governor Ryan's schedule, however, we will proceed first with panel II. At approximately 10am, we will take a brief break from panel II, and turn to Governor Ryan. Following Governor Ryan's statement and any questions for the Governor, we will return to panel II. I want to thank my colleagues and the panel II witnesses for their flexibility.

Let me now turn to the ranking member for his opening remarks.