

Testimony of

The Honorable Patrick Leahy

June 18, 2002

It has been a year since our full committee held a hearing to examine the need for reform of the capital punishment system. Since then, like waves piling sand on the shore, more and more evidence has accumulated, exposing a death penalty system that is broken. A year's time also has exposed more of the toll that this broken system is taking in the lives of the wrongfully convicted.

? A year ago, I spoke of 96 exonerated capital prisoners. Now we have reached 101. Ray Krone, the 100th capital prisoner to be exonerated, is here today. After serving ten years in prison, three of them spent on death row, Ray Krone was proven innocent. DNA evidence pointed squarely to the real killer in that case, a man who went on to sexually assault another woman while Ray Krone served time for the murder he committed. On its front page today, USA Today tells Ray Krone's story and reports on how shabbily our federal and state laws often treat exonerees like Ray for their time lost behind bars. After more than a decade in state prison, Ray Krone got an apology from the prosecutor and fifty dollars, and he was sent on his way. Now, the official reporter transcribing this hearing and those watching on C-SPAN might not believe what they just heard, so I will repeat it. After wrongfully spending ten years, three months and nine and a half days in prison, Ray Krone was given the sum of fifty dollars to start his life over.

? Governor Ryan of Illinois, who showed great courage two years ago by announcing a moratorium on executions in his state, recently announced the results of the commission he appointed to study problems in the Illinois system of capital punishment. The commission recommended 85 changes and improvements, a significant number of which have been embraced by even those who steadfastly support the death penalty. Senator Feingold chaired a hearing on the Ryan Commission Report just last week in the Constitution Subcommittee, and I commend him for the excellent work he has done to explore and illuminate the findings of that report.

? In May, the State of Maryland announced a moratorium on executions to investigate concerns about racial and geographic disparities in that state's capital punishment system.

? Just two weeks ago, the Supreme Court let stand the Fifth Circuit Court of Appeals' decision in the "sleeping lawyer" case. The Fifth Circuit correctly held that "unconscious counsel equates to no counsel at all."

These events reflect and reinforce the momentum building in Congress for legislative action. For more than two years, I have been working to pass a bill called the Innocence Protection Act. I introduced this bipartisan bill in February 2000. A few months later, Congressman Bill Delahunt of Massachusetts and Congressman Ray LaHood of Illinois introduced the Innocence Protection Act in the House of Representatives. Today we have 26 cosponsors in the Senate and 233 in the House, including a wide array of Democrats and Republicans, supporters and opponents of the death penalty. It is not easy to get 233 cosponsors on a National Love Your Puppy Day

resolution, let alone on a third-rail issue like death penalty reform, and once again I want to publicly commend and thank Congressman Delahunt and Congressman LaHood for their commitment to this work and for the masterful way they have handled it. Reflecting the strong and growing interest in these reforms, House Judiciary Committee Chairman Sensenbrenner and Crime Subcommittee Chairman Smith have scheduled a hearing on the bill, which will take place this afternoon.

The incredible momentum generated in support of reform does not guarantee that all reformers speak with the same voice. Among the members of this committee, four of us - Senators Specter, Feinstein, Feingold, and myself - have drafted legislation proposing different types of changes to the system. What is most significant is not the differences between these bills, but the fact that each of us know, and all of our cosponsors agree, that reform is needed before more innocent defendants are wrongfully convicted and sentenced to death.

In addition to Ray Krone, we are joined today by Kirk Bloodsworth, who was wrongfully convicted of the rape and murder of a young girl. This was a heinous crime, but Kirk Bloodsworth did not commit it. It took him nine years to prove his innocence. Both of these cases were ultimately solved by DNA evidence, showing the need to provide access to testing where available to those who have a credible claim of innocence. What causes innocent men to be convicted in the first place? In June 2000, Professor Jim Liebman, who will testify today, and his colleagues at the Columbia Law School released the most comprehensive statistical study ever undertaken of modern American capital appeals. They found that serious errors were made in two-thirds of all capital cases. The most common problem they found was grossly incompetent defense lawyering. That study was recently updated but, unfortunately, the results show no improvement.

And so the waves continue to pile new evidence at our feet. They also call us to duty. We owe it to exonerees like Kirk Bloodsworth and Ray Krone to ensure that more innocent defendants are not convicted and sentenced to death for crimes they did not commit. We owe it to the American people to find the real killers and keep them off the streets before the real criminals find new victims. And we owe it to our democratic system of government and to the way of life we cherish to prevent the erosion of public confidence in our criminal justice system.

We welcome our witnesses today and look forward to their testimony.

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