

Testimony of

The Honorable William D. Delahunt

June 18, 2002

Mr. Chairman, on behalf of the 236 House cosponsors of the Innocence Protection Act, I want to thank you for convening this hearing and for inviting me to testify today. I have been proud to sponsor this bill, together with you, Mr. Chairman, Senators Smith and Collins, and my distinguished colleague, Congressman Ray LaHood, who will shortly speak for himself.

I know that you have been working closely with Senator Specter and other members of the committee to reach an agreement on this legislation. And I am pleased to report to you that we are pursuing a similar effort in the House. This afternoon we have a hearing before the Crime Subcommittee. And I am hopeful that we will be able to reach an agreement with our chairman that can be reported out of committee.

This bill is not about the death penalty. It's about the quality of justice in America. Congressman LaHood and I have differing views on capital punishment, but we agree that a just society does not deprive innocent people of their life or their liberty.

Over the past 25 years, 782 people have been executed in the United States. During the same period, 101 have been exonerated after spending years on death row for crimes they did not commit. Some came within days or hours of being put to death.

Two of those people are here with us today: Kirk Bloodsworth, who spent nine years in prison in Maryland, including two years on death row; and Ray Krone, who spent 10 years in prison in Arizona, three of them on death row.

It's cases like theirs that have caused conservative judges like Justice O'Connor to express concern that the system, and I quote, "may well be allowing some innocent defendants to be executed." It's cases like theirs that convinced Governor George Ryan--a longtime supporter of the death penalty--to suspend executions in Illinois. And caused Governor Glendening of Maryland to take a similar step just last month.

As he will shortly testify, Professor Liebman looked at 4,500 capital sentences handed down over a 23-year period, and discovered that the courts had found serious, reversible error in 68 percent of those cases. That's an error rate of nearly seven in 10. Seven in 10. A failure of such magnitude calls into question the fairness and integrity of the American justice system itself.

Some suggest that the high rate of reversals shows that the system is working. That is nonsense. We cannot know whether the appeals process is catching all the errors or not. But we do know that the errors are not being caught at trial. Innocent people like Kirk Bloodsworth and Ray Krone are serving lengthy sentences for crimes they did not commit, while the real perpetrators go free.

The Innocence Protection Act focuses on the two most effective steps we can take to ensure greater fairness and accuracy in the administration of justice: access to post-conviction DNA testing, and the right to competent counsel in death penalty cases.

These reforms have been endorsed by leading jurists, prosecutors and legal experts, including seven former State attorneys general and Judge William Sessions, a former director of the FBI. And by commentators from across the political spectrum, including Bruce Fein and George Will.

DNA has exonerated 12 of the people freed from death row, and another 96 who were wrongfully convicted of serious crimes. In at least 16 of these cases, the same test that exonerated an innocent person has led to the apprehension of the real perpetrator.

Yet access to testing is often opposed by prosecutors and must be litigated, sometimes for years. Evidence that might have established innocence has been misplaced or destroyed. Our bill would help ensure that biological material is preserved and DNA testing is made available in every appropriate case.

But DNA is not a "magic bullet" that will eliminate the problem of wrongful convictions. Even when it is available--even when it exonerates an inmate after years of imprisonment--it cannot give back the life that he or she has lost.

We must take steps to prevent wrongful convictions in the first place. And the single most important step is to ensure that every indigent defendant in a capital case has a competent attorney. The Innocence Protection Act would encourage States to develop minimum standards for capital representation, and would provide them with resources to help ensure that lawyers are available who meet those standards.

I was a prosecutor for over 20 years. And I know that the adversarial process can find the truth only when the lawyers on both sides are up to the job.

We cannot tolerate a system that relies on reporters and journalism students to develop new evidence that was never presented at trial. We cannot tolerate a system in which chance plays such a profound role in determining whether a defendant lives or dies.

Some have suggested that our society cannot afford to pay for qualified counsel in every capital case. The truth, Mr. Chairman, is that we cannot afford to do otherwise, if our system of justice is to have the confidence of the American people.

Thank you.