

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Chairman, Senate Judiciary Committee
On "The Adequacy of Representation in Capital Cases"
April 8, 2007

I thank Senator Feingold and the Subcommittee on the Constitution for holding this hearing on such an important issue for the Committee and for the country. Senator Feingold has worked for many years with me and others to try to ensure that our criminal justice system reflects the fairness and protections that our Founders intended.

In 2000, I introduced the Innocence Protection Act, which aimed to improve the administration of justice by ensuring that defendants in the most serious cases have access to counsel and, where appropriate, access to post-conviction DNA testing necessary to prove their innocence in those cases where the system got it grievously wrong. That legislation and this Committee have attempted to ensure that our system gets it right, particularly when the stakes are as high and the results as final as they are in capital cases. The conviction of innocent defendants is a tragedy that our system of criminal justice is designed to prevent. With it comes the corresponding criminal justice nightmare that the actual wrongdoer remains undiscovered, and possibly at large, committing additional crimes.

It took hard work and time, but in 2004, Congress passed the Innocence Protection Act as an important part of the Justice for All Act. Congress recognized the need for important changes in criminal justice procedure and forensics despite resistance from the current administration. It was an unprecedented, bipartisan piece of criminal justice reform legislation intended to ensure that law enforcement has all the tools it needs to find and convict those who commit serious crimes, but also that innocent people have the means to establish and prove their innocence. It was the most significant step Congress had taken in many years to improve the quality of justice in this country and to restore public confidence in the integrity of the American justice system.

According to the Death Penalty Information Center, more than 120 innocent people have now been freed from death row - a truly alarming number. And it is in everyone's interest for the guilty parties to be found and punished. Addressing those imperatives was the purpose of the Justice for All Act. Now, more than three years later, this Committee is working to make sure that the letter and the spirit of that law are being followed, and that our justice system is working as it should.

In January, this Committee held its first hearing of the year to look at key parts of the Justice for All Act, including the Kirk Bloodsworth Post Conviction DNA Testing grant program. That program was intended to provide grants for states to conduct DNA tests in cases in which someone has already been convicted - but key DNA evidence was not tested. Exactly that kind of evidence exonerated Kirk Bloodsworth, who was a young man just out of the Marines when he was arrested, convicted, and sentenced to death for a heinous crime that he did not commit. I was troubled to find then that more than three years after the passage of the Act, with Congress having appropriated almost \$14 million to the Bloodsworth program, not a dime has been released to the states for this worthy purpose.

That hearing in January and our oversight appears to be having an effect. The day before that hearing, the Department of Justice issued a new solicitation for states to apply for Bloodsworth grants. We understand that more states have applied for the grants than in the past, and Department officials assure us that they are working hard to see that money is given out and that the Act's statutory requirements are interpreted in a meaningful way so that states will preserve important evidence, but not in such an extreme way as to exclude every state from qualifying for the program. I have been heartened by the positive steps the Department has taken on the Bloodsworth program, but I will be watching closely to make sure that the Department follows through on the promise of these good first steps.

I hope the Department will also work to correct an important problem with the Paul Coverdell Forensic Science Improvement Grants Program, which also came out in that January hearing. The Department must make sure that states have an independent check in cases of lab misconduct to maintain the integrity of the important forensic work funded by that key program.

Today, Senator Feingold is leading the way in following up on a different and equally important aspect of the same issue. If we sanction the use of a penalty as final as capital punishment, we must be sure that the system is working properly. The catastrophe of executing an innocent person is not one that we can ever tolerate. Unfortunately, the number of innocent people freed from death row to date illustrates that this is not an idle concern.

The best way to ensure that justice is done is to have exceptional counsel on both sides of these cases. As a prosecutor, I always knew that it was better to have good opposing counsel. With properly trained attorneys and appropriate resources on all sides, we can have much more confidence in our system of justice. Unfortunately, our track record on representation of capital defendants has not been good.

Despite some important first steps in the Innocence Protection Act, I fear that our system of representation in capital cases is still far from adequate. We need a clear-eyed assessment of the current situation, and I thank Senator Feingold for taking on this important issue.

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