

Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing on
"Protecting the Innocent: Ensuring Competent Counsel in Death Penalty Cases"

June 27, 2001

I want to welcome all of the witnesses and thank you for coming today. I am particularly pleased to welcome Senator Smith and Senator Collins, as well as our lead House cosponsors, Congressman Bill Delahunt and Congressman Ray LaHood. I thank them for their commitment to our legislation, the Innocence Protection Act of 2001.

We now have 19 cosponsors in the Senate. That includes three members of this committee: Senator Feingold, Senator Kennedy, and Senator Cantwell. I am grateful to each of them for their support. I also want to thank Senator Feinstein and Senator Hatch for the interest that they have shown in this issue.

I could not be more delighted with the progress that the IPA has been making in the House. There are now more than 200 House cosponsors, including Republicans and Democrats from all parts of the country, conservatives and liberals, supporters and opponents of the death penalty.

That is how it should be, because this is not a partisan issue; it is an issue of conscience and confidence in our criminal justice system. I may disagree with some of my friends on this committee on some issues, but none of us disagrees with the principle that someone on trial for his life deserves a fair trial and a competent defense lawyer. I appreciated Senator Specter's comment on Sunday that competent counsel is "fundamental."

Let's look at what has happened while the Innocence Protection Act has been pending in the Congress. In the last six months, more than a dozen people have been cleared of the crimes that sent them to prison or, in six cases, to death row.

- Jerry Frank Townsend, sentenced to 7 concurrent life sentences in Florida in 1980;
- Joaquin Martinez, sentenced to death in Florida in 1997;
- Gary Drinkard, sentenced to death in Alabama in 1995;
- Jeff Pierce, sentenced to 65 years in Oklahoma in 1986;

- Danny Brown, sentenced to life in Ohio in 1982;
- Richard Danziger, sentenced to 99 years in Texas in 1990;
- Kenneth Waters, sentenced to life in Massachusetts in 1983;
- Earl Washington, sentenced to death in Virginia in 1984;
- David Pope, sentenced to 45 years in Texas in 1986;
- Peter Limone, sentenced to death in Massachusetts in 1968;
- Christopher Ochoa, sentenced to life in Texas in 1988;
- Michael Graham and Albert Burrell, sentenced to death in Louisiana in 1987;
- Gerald Harris, sentenced to 9-18 years in New York in 1992;
- Frank Lee Smith, sentenced to death in Florida in 1986.

What should we learn from these cases? Some have argued that these cases, in which innocent people were cleared after years and sometimes decades in prison, show that the system is "working." To them, I have only one thing to say: Listen to Michael Graham testify today about his 14 years on death row. Then ask yourself whether his case represents a triumph of our judicial system. We must do better.

The Innocence Protection Act proposes some basic, common-sense reforms to our criminal justice system. The goal of our bill is simple, but profoundly important: To reduce the risk of mistaken executions.

We have listened to a lot of good advice and made refinements to the bill since the last Congress. Again and again, the experts in the field have told us that ensuring competent counsel is the single most important thing we can do to get at the truth and protect innocent lives. So let me briefly describe our proposals regarding counsel.

The bill would establish a national commission, which would consist of distinguished American legal experts who have experienced the criminal justice system first hand - prosecutors, defense lawyers, and judges. The commission would formulate reasonable minimum standards for ensuring competent counsel at each stage of a capital case - something that the Conference of Chief Justices has been calling for many years.

The IPA uses a "carrot and stick" approach to ensure that counsel standards are met. The "carrot" is more than \$50 million in grants to help put the new standards into effect.

As for the "stick": States that fail to meet the standards would have their death sentences given less deference and subjected to more rigorous federal court review, because we will not have the confidence that comes from knowing that competent counsel represented the defendant. These States would also forfeit some federal prison grant funding over time.

I want to stress the importance of these enforcement mechanisms. Without them, standards developed under the IPA would merely gather dust on a shelf like the many other voluntary counsel standards developed over the last decade.

Critics of the bill have raised two arguments against its mandate for competent counsel in death penalty cases. I will address these arguments briefly.

The first argument I have heard is that there is no real problem because the states are already providing decent defense counsel in capital cases. The facts show otherwise. The problem is real, it is urgent, and it is well-documented.

It has been more than a decade since the U.S. Judicial Conference and the ABA issued reports on the widespread problem of incompetent and underfunded capital defense counsel.

It has been eight years since this committee held a hearing on "Innocence and the Death Penalty," where witness after witness described the same problem.

In March 2000, the Justice Department released a report on indigent defense services across the country. The report concludes that "indigent defense in the United States today is in a chronic state of crisis," resulting in "legal representation of such low quality to amount to no representation at all, delays, overturned convictions, and convictions of the innocent."

In June 2000, Professor Jim Liebman 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: Grossly incompetent defense lawyering.

Today in Alabama, there are 42 prisoners on death row who have no lawyer to pursue

appeals. Today in Texas, one out of every four death row inmates was defended by a lawyer who has been disciplined, suspended, or disbarred. Today in America, there are people awaiting execution whose lawyers slept through parts of their trials. This is unjust, shocking and unacceptable.

The other argument I have heard against our bill goes something like this. "Maybe some states could do a better job providing counsel for indigent defendants. Maybe some states do skimp on funding. Maybe this has resulted in a few innocent people being sentenced to death here and there. But that is no reason for the Congress to get involved."

In fact, it is a reason for Congress to get involved. I would go farther than that. I think that we have a duty to get involved - to try to contain the crisis - before an innocent person is put to death.

Congress has a duty to get involved because the crisis is national in scope. Since 1973, 96 people who were sentenced to death have been exonerated -- one for every seven or eight who have been executed. These 96 exonerations span 22 different states, which is a substantial majority of the states that have the death penalty.

In Illinois, the Republican governor imposed a moratorium on executions because of the state's dismal record of sending innocent people to death row. But this is not just an "Illinois problem" or a "Texas problem." This is a national problem.

It is a problem that calls into question the legitimacy of criminal convictions and undermines public confidence in the integrity of the criminal justice system as a whole. If mistakes occur when a life is at stake, what happens when the crimes and penalties are less severe? Witnesses, juries and judges become more skeptical about how well the police and prosecutors are doing their jobs. That skepticism makes their jobs harder.

We must also remember that when an innocent person is put in prison, then the person who committed the crime stays free. In 1985, Rolando Cruz and Alejandro Hernandez were wrongly convicted and sentenced to death for the murder of a 10-year-old girl. DNA tests ultimately linked another man to the little girl's death, but only after he had committed another murder.

This is a national problem, and as a nation, we need to step up to the plate and deal with it.

The question is not whether Congress should act, but when. Last year, we passed the Paul Coverdell National Forensic Sciences Improvement Act. I was proud to cosponsor this bipartisan legislation, which aims to improve the quality and credibility of our

nation's crime labs. Many of us are still working to fully fund this new law.

When the Senate took up the Paul Coverdell bill, I proposed a Sense of Congress amendment, which the Senate adopted. In it, we resolved to work with the states to improve the quality of legal representation in capital cases through the establishment of counsel standards.

Congress has already gone on record in recognizing what has to be done. Now it is time to do it.