Prepared Statement of Senator Chuck Grassley of Iowa

Ranking Member, U.S. Senate Committee on the Judiciary

Hearing on “Justice for All: Convicting the Guilty and Exonerating the Innocent”

Wednesday, March 21, 2012

Mr. Chairman, thank you for holding today’s hearing. The debate surrounding crime and punishment has been around long before the United States. When our Founding Fathers drafted and ratified the Constitution and the Bill of Rights 225 years ago, at the forefront of their minds was ensuring the protection of individual liberty from the power of the government. However, the Founders did recognize that at times there are citizens that break the social contract of our civil society and need to be punished, provided they are afforded due process. While not strictly defining what due process was required, the Constitution and years of court cases have outlined that process which has worked to ensure a baseline set of standards at both the state and federal level for criminal prosecutions.

Over time, these baseline procedures have been supplemented with statutory law, model rules, court rules, and standards of professional responsibility that are designed to ensure the fair and impartial administration of criminal justice. Unfortunately, despite the adherence to the Constitution, laws, regulations, rules, and procedures, there is the possibility that an innocent person could be afforded all this due process yet still be convicted. Mr. Haynesworth is here today after spending 27 years in prison for a crime he didn’t commit. In December he was declared an innocent man by the Virginia Court of Appeals. His case presents us with a personal example of why we must continue to ask questions about the criminal justice system and not become complacent.

Cases like Mr. Hayensworth’s make us realize that no system involving humans is perfect. This is a sad, unfortunate and emotional reality that we must recognize. However, we must also examine the issue in an informed way that doesn’t threaten to destabilize the entire criminal justice system.

Chief among the issues to discuss today is the question of how many innocent men and women may have been convicted over the years and how do we effectively review those cases, correct injustices, and apply what we learn so those injustices are not repeated. This is not an easy task. So, the question becomes - how do we determine which cases should be reviewed and how do we allocate the limited resources of the government to review these cases?

It is important to note that there is a real discrepancy in the number of individuals in prison who are actually innocent. For example, some argue that cases where truly innocent individuals were exonerated are just the tip of the iceberg. However, others argue that the number of true exonerations is small because many of the statistics on exonerations include cases where convictions were overturned on procedural grounds, even though the individual was not found factually innocent. Furthermore, they argue that the number of exonerations is going down each year as technological advances, such as DNA testing, eliminate many wrongful convictions from even occurring because DNA testing is being routinely used to prove factual innocence earlier in the investigative process. Getting a better understanding of how many cases are out there will not only inform us about whether reforms are needed, but also what types of reforms would provide the best help.

Further, we need to be cognizant of the fact that in addition to the federal criminal justice system, there are fifty different state justice systems each with their own constitutions, laws, rules, regulations, and procedures. As Justice Jackson, who was then-Attorney General Jackson, said in his famous speech The Federal Prosecutor, “[O]utside of federal law each locality has the right under our system of government to fix its own standards of law enforcement and morals.” This statement is particularly important today given the current fiscal situation the federal government faces. We do not have the resources at the federal level to provide funding to states to review every single criminal case after each case has exhausted all appellate remedies. Nor, should we interfere in the day-to-day intricacies of state criminal justice systems.

As written testimony submitted by Judge Hervey points out, the state of Texas, via the Court of Criminal Appeals has established the Texas Criminal Justice Integrity Unit to review their criminal justice system and propose reforms where needed. As states are already undertaking this effort on their own, our role in Congress should be to examine the federal criminal justice system and not to reform every state system. We should not go down a path of attempting to correct problems in state criminal justice systems. Instead, as the recent report on prosecutorial misconduct in the Ted Stevens case points out, we should expend our limited resources ensuring that the federal criminal justice system works as it should.

That said, we have a panel of witnesses here today to discuss this important topic and I look forward to their testimony. Thank you.

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