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July 20, 2005

Via facsimile 202-224-9516

The Honorable Patrick J. Leahy  
Ranking Minority Member  
Senate Judiciary Committee  
SD-224 Dirksen Senate Office Building  
Washington, DC 20510-6275

Re: The Streamlined Procedures Act (S. 1088)

Dear Senator Leahy:

I write to express concern regarding claims made by U.S. Sen. Jon Kyl regarding S. 1088. The statements were contained in an op-ed piece published in the Arizona Daily Star newspaper this week. I respect Sen. Kyl and since one of his sons-in-law is a long time friend of mine I hesitate to criticize his position. However, the stakes are too high to remain silent.

As you are aware, S. 1088 seeks to severely limit the federal courts' ability to fully review habeas corpus cases involving state prisoners. In his column, Senator Kyl alludes generally to delays in habeas corpus cases, and he specifically cites the case of Donald Beaty as an example of unwarranted delay.

Mr. Beaty was convicted and sentenced to death for the murder of Christy Fornoff. After his conviction and death sentence, Mr. Beaty pursued the appeals available to any person convicted of a crime in the Arizona state courts. The state courts denied relief, and he timely sought federal court review of his state conviction and sentence.

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Senator Kyl decries the seven-year period this particular case was litigated and reviewed by a federal district court judge. However, Senator Kyl omits some important facts. For example, during the first four years the parties litigated issues raised by Mr. Beaty, neither the state nor the defense objected to the course of the litigation. During the balance of this seven-year “delay,” the litigants were awaiting the judge’s decision.

Senator Kyl does not mention that the federal judges in the District of Arizona, including the judge in Mr. Beaty’s case, have heavy dockets and workloads. The District of Arizona encompasses the entire state, and the judges preside over a wide variety of cases, including immigration, drug-related crimes and crimes that occur on the state’s sprawling Indian reservations. This is in addition to run-of-the mill civil and criminal cases.

Moreover, the federal judge who presided over the Beaty case also presided over a protracted and complex criminal trial involving Arizona’s former governor. Senator Kyl describes the delay in this case as decades long. However, he conspicuously does not explain that the court of appeals reversed, in part, the district court’s decision and remanded the case for an evidentiary hearing on constitutional violations that occurred in the case.

Senator Kyl ignores the significant constitutional issues pending in Mr. Beaty’s case. For example, evidence has been uncovered that the key witness who testified against Mr. Beaty, Angel Bello, may be the true perpetrator of this crime. Known to the prosecution but not disclosed to the defense at trial was the fact that Bello – who lived in Mr. Beaty’s apartment immediately prior to Beaty – had been convicted of attempted rape. When his intended victim resisted, Bello attempted to strangle her. Christy Fornoff, whom Beaty was convicted of raping and murdering, was also asphyxiated. The prosecutor also failed to disclose to the defense that Bello was a prime suspect in the rape and asphyxiation of yet another girl, Tina Reed.

It’s true that some of the delay in Mr. Beaty’s case is inexplicable. However, the Arizona District Court has already adopted new procedures that shorten the time the court has to review a case. As a result, there is no reason to amend or rewrite the habeas statutes based on one case, and on a problem that has already been corrected.

I do not come to this debate as simply a lawyer who concentrates his practice in the area of criminal defense. For more than twelve years I served as a prosecutor, first as a deputy Pima County attorney, then First Assistant U.S. Attorney and finally as U.S. Attorney for the District of Arizona. I had a reputation as tough but fair prosecutor. I have also been employed as a policeman while in law school and learned first hand that mistakes are made by police officers even those acting in good faith. As a prosecutor I also learned that despite one’s best efforts the position being advanced by the government was not always correct. Prosecutors sometimes forget that their job is to seek justice and even when doing so are not without error.

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Attempts to limit habeas corpus cases to state prisoners will do nothing to enhance our criminal justice system if our intent is to do justice. Also there are so many other changes which could occur to our justice system which would speed up the ultimate search for truth and justice and which would better protect our citizens in the process. Unfortunately, S. 1088 neither serves the search for truth and justice nor does it protect our citizens.

Very truly yours,

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