

July 27, 2005

The Honorable Arlen Specter
Chairman
Senate Judiciary Committee
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Patrick J. Leahy
Ranking Minority Member
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The Honorable James Sensenbrenner, Jr.
Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Minority Member
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B-351C Rayburn House Office Building
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Re: The Streamlined Procedures Act (S. 1088 & H.R. 3035)

Dear Senators and Representatives:

The undersigned individuals are former prosecutors, law enforcement officers, and Justice Department officials who have served at the state and federal levels. Some of us support capital punishment and some of us oppose it. While we applaud efforts to improve the functioning of our courts and to assist crime victims and their families, we strongly oppose the proposed Streamlined Procedures Act. We believe the bill would eviscerate federal habeas corpus review of state convictions, lead to protracted litigation and delays, and prevent the federal courts from correcting wrongful convictions in cases of actual innocence.

The Streamlined Procedures Act is counterproductive to our goals of ensuring public safety and fairness, achieved when the guilty are convicted and the innocent acquitted. The bill's jurisdiction-stripping provisions turn a blind eye to the recurrent problems – such as incompetent or nonexistent counsel – that often thwart full consideration and correct determination of claims in state post-conviction proceedings. The bill's purported exception for prisoners who are actually innocent – which requires clear and convincing evidence of innocence and facts that could not have been discovered previously through the exercise of due diligence – creates a hurdle that few innocent prisoners will be able to overcome. As such, the bill will result in the wrongful incarceration or execution of innocent persons.

Expediting the federal post-conviction process at any cost – especially at the cost of wrongfully convicting or executing innocent people while the guilty parties remain free to commit more crimes – is, we believe, something that the American people will not countenance. Nor should they.

But the Streamlined Procedures Act does not expedite the process. In reality, it will engender years of litigation to resolve its inconsistencies with the Anti-Terrorism and Effective Death Penalty Act (AEDPA), enacted fewer than ten years ago in response to the same concerns expressed by the sponsors of this bill. The AEDPA includes strict, detailed procedures for screening federal habeas corpus petitions, including a one-year statute of limitations. After years of litigation, the federal courts have resolved most major interpretive issues raised by the law. The proposed legislation is also inconsistent with the Justice For All Act, which became law less than a year ago.

The AEDPA took care of whatever problems there were with systemic delays. Statistics maintained by the Administrative Office of the United States Courts indicate that the number of federal habeas petitions has declined significantly over the past five years and habeas cases are resolved more quickly than other civil proceedings (most often on procedural grounds pursuant to the AEDPA). There is no reason to

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throw the system into disarray with another dramatic and potentially unconstitutional reworking of federal law.

We have spent part of our careers seeking justice for crime victims, and we know from firsthand experience the issues that victims face in the judicial system and the impact that their experience has on their lives. However, we do not think the anecdotal evidence about delay cited by the bill's proponents justifies these extreme measures, and we fear that the bill will have exactly the opposite effect of what the proponents intend. It will cause significant delays in the processing of these cases, to the detriment of the legitimate concerns of crime victims.

It is important to consider the interests of victims and their families in the judicial process, but we believe the Streamlined Procedures Act would do a disservice to those persons and would eviscerate the means by which federal courts ensure that innocent persons are not mistakenly convicted of crimes they did not commit. Certainly, Congress should not rush to judgment on this bill, and any changes to current procedures should be undertaken only after significant study, deliberation, and input from experts and interested persons and groups. Thank you for considering our views on this extremely important matter.

Sincerely,

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cc: Members of the House and Senate Judiciary Committees