

***SAMPLE LIST OF INNOCENT PEOPLE ON DEATH ROW  
GRANTED RELIEF IN FEDERAL COURT  
WHO WOULD HAVE BEEN EXECUTED HAD THE  
STREAMLINED PROCEDURES ACT OF 2005 BEEN IN EFFECT\****

**1. Ernest Willis -- Texas**

Ernest Willis spent 17 years on death row for a crime he did not commit. He was sentenced to death in 1987 for killing two young women in a house fire. He was released last year after a different district attorney than the one who had originally prosecuted him dismissed the charges. The new district attorney assigned two highly-qualified arson experts to re-examine the case after the federal district court ordered a new trial. The experts concluded that the fire was accidental and not the result of arson.

Under either the Kyl version of the SPA or the Specter Amendment, the federal courts would have been denied the power to review Mr. Willis's case. Section 4 of the SPA would have barred the federal courts from reviewing a claim that the State forcibly administered a daily dose of powerful anti-psychotic drugs to Mr. Willis – even though he had no history or symptoms of mental illness. The Texas Court of Criminal Appeals denied relief on this claim, concluding that trial counsel had failed to preserve the claim with a timely objection to the medication. Under Section 4, a federal court cannot consider a claim that has been denied in state court based on a state procedural requirement. Mr. Willis would have been unable to meet the narrow exceptions to Section 4, because he could not have shown by clear and convincing evidence that no reasonable juror would have found him guilty if the juror had known he had been forcibly medicated. Nor could he have shown that the factual basis of the claim could not have been previously discovered through the exercise of due diligence; his lawyers noticed the effect of the medication on him, but did nothing to investigate what caused it.

Section 6 of the Kyl version of the SPA would have prevented the federal courts from considering Mr. Willis's claim that the prosecution hid a psychologist's favorable report about his lack of future dangerousness. The Texas Court of Criminal Appeals concluded that the psychologist's report was not favorable and that Mr. Willis had failed to show the harm necessary to prevail on a claim of suppressed evidence. Section 6 deprives federal courts of the power to consider any claim related to a prisoner's sentencing that the state courts hold is not harmful. Consequently, even though the state court judgment was both contrary to, and an unreasonable application of, clearly established Federal law as determined by the Supreme Court, it would have stripped the federal court of jurisdiction to consider the prosecution's suppression of evidence bearing directly on the central question before Mr. Willis's jury during the sentencing phase.

Finally, Section 9 of the Kyl version of the SPA would have stripped the federal courts of jurisdiction to review the case. Mr. Willis could not have met Section 9's narrow exceptions, because his claims did not rest on new, retroactive rules of law, nor did they rely on previously

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\* This document was excerpted from the testimony of Barry Scheck, Co-Founder of the Innocence Project at Cardozo Law School in New York, and was submitted to the Senate Judiciary Committee on July 13, 2005.

undiscoverable evidence. If the SPA had been in effect, Texas would have executed an innocent man.

Fortunately, under current law, the federal courts had the authority to review Mr. Willis's claims. The federal district court found that the state court had unreasonably erred in denying relief. In 2004, the federal judge ordered a new trial because (1) the State violated Mr. Willis's due process rights by forcibly medicating him; (2) Mr. Willis received ineffective assistance of counsel at both the guilt-innocence stage and at sentencing; and (3) the prosecution suppressed favorable, material evidence at sentencing.

## **2. Ronald Keith Williamson -- Oklahoma**

Mr. Williamson spent 11 years on death row for a crime he did not commit. He was sentenced to death in 1988 for the rape and murder of a young woman. After the federal courts ordered a new trial, Mr. Williamson was exonerated by DNA testing. The charges against him were dismissed, and his primary accuser -- who turned out to be the real killer -- was convicted of the crime.

Under Section 4 of both the Kyl version of the SPA and the Specter Amendment, the federal courts would not have had the power to review Mr. Williamson's claims, because his claims failed to meet specific state law procedural requirements. Mr. Williamson would not have been able to satisfy the exceptions to this provision, because the facts in support of his claims could have been discovered previously through the exercise of due diligence. The critical facts were not discovered, however, precisely because the State provided him with constitutionally ineffective trial counsel.

For similar reasons, Mr. Williamson would not have been entitled to federal review under Section 9 of the Kyl version of the SPA. Section 9 prohibits the federal courts from reviewing "any claim" unless the factual basis of the claim could not have been previously discovered or the claim relies on a new, retroactive rule of constitutional law. Mr. Williamson would have been unable to meet either exception. The facts in support of his claims could have been uncovered with diligent investigation. Moreover, his claims did not rely on new, retroactive rules. Under the SPA, no competent investigation of his innocence would ever have taken place, and he would have been executed.

Fortunately, federal review of Mr. Williamson's claims was available. The federal courts ordered a new trial based on trial counsel's ineffectiveness in failing to seek a mental competency hearing. The federal courts held that the state procedural rule on which the Oklahoma courts had relied to deny relief was not a proper basis for prohibiting federal consideration of the merits of the claim. In addition, the U.S. Court of Appeals found that trial counsel had been ineffective for failing to investigate leads that Mr. Williamson was actually innocent and that his primary accuser may have committed the crime. This, indeed, turned out to be the case, as later DNA testing proved.

### **3. Nicholas Yarris -- Pennsylvania**

Nicholas Yarris spent 21 years on death for a crime he did not commit. He was sentenced to death in 1982 for murder, kidnapping, and rape. While the merits of his case were pending in federal court, he obtained DNA testing of biological material in the possession of the State and was exonerated.

The federal courts would have been unable to review the merits of Mr. Yarris's claims under either the Kyl or Specter versions of the SPA. Section 2 of the SPA would have required the federal courts to deny Mr. Yarris's claims that were not presented and exhausted earlier in state court. Furthermore, because the claims contained in Mr. Yarris's first federal habeas petition could have been presented in state court initially, he would have been unable to meet Section 2's exception for claims relying on facts that could not have been discovered previously with the exercise of due diligence.

Section 4 of the SPA would also have tied the federal court's hands, because the Pennsylvania Supreme Court relied on a state procedural timeliness requirement to deny the petition. Section 4 deprives the federal courts of jurisdiction to entertain claims that are denied in state court in this manner. With an exception identical to the one found in Section 2, Mr. Yarris would have been unable to show that the facts underlying his claims could not have been discovered in state court with the exercise of diligence.

For similar reasons, Section 9 of the Kyl version of the SPA would have stripped the federal courts of jurisdiction to consider any of Mr. Yarris's claims. He could not have shown that the claims were based on a new, retroactive rule of constitutional law, or that the factual predicate of his claims could not have been discovered previously with the exercise of diligence. Mr. Yarris would have been executed without the benefit and safeguard that federal habeas review provides.

Fortunately, the federal district court did have jurisdiction to review his claims. The federal court held that the time bar imposed by the Pennsylvania Supreme Court was not an adequate and independent state procedural rule that prohibited federal merits review. While the federal district court was considering the merits of his claims, Mr. Yarris obtained DNA testing that exonerated him.

### **4. Eric Clemmons -- Missouri**

Eric Clemmons spent 13 years on death row before he received a new trial and was acquitted in less than three hours. He was originally sentenced to death in 1987 for murdering a fellow inmate while serving a life sentence. In state court proceedings after his conviction, he discovered an eyewitness memo that the prosecution had suppressed at trial. The memo described an interview with a witness who stated that a different person had stabbed the victim. The state courts denied relief without discussing the claim or considering it on appeal.

If either the Kyl version of the SPA or the Specter Amendment had been the law when the Missouri courts rejected Mr. Clemmons's claims, he would have never received a new trial in federal court, and he would have been executed. Because Mr. Clemmons's appellate counsel failed to abide by state procedural requirements to preserve his claims, Section 4 would have stripped the federal courts of jurisdiction to hear such "procedurally defaulted" claims. Mr. Clemmons would have been unable to take advantage of the narrow exceptions to procedural default set out in Section 4: Neither claim relied on a new, retroactive rule of constitutional law, and neither claim relied on facts that could not have been previously discovered through the exercise of diligence.

Similarly, if Section 9 of the Kyl version of the SPA had been in effect at the time Mr. Clemmons completed state habeas corpus review, the federal courts would have had no jurisdiction whatsoever to consider his claims. After the state proceedings ended, he discovered no new evidence and developed no new facts. Consequently, Mr. Clemmons would have been unable to demonstrate that the facts in support of the claims were previously unavailable or that his claim rested on a new, retroactive rule of law. The SPA would have presented an absolute bar to federal review, and Mr. Clemmons would have been executed.

Fortunately, the SPA was not the law when Mr. Clemmons entered federal court. The U.S. Court of Appeals eventually concluded that Mr. Clemmons's state appellate counsel had been ineffective in preserving the eyewitness memo claim and a Confrontation Clause claim. The Court found that counsel's ineffectiveness provided a reason for the federal courts to excuse the failure to follow the state procedural requirements for preserving the claim. Based on its review of the merits, the Court of Appeals granted Mr. Clemmons a new trial.

## **5. Ricardo Aldape Guerra -- Texas**

Ricardo Aldape Guerra spent 15 years on death row for a crime he did not commit. The State dismissed the charges against him in 1997, after the federal courts ordered a new trial. Mr. Aldape Guerra was sentenced to death in 1982 for the murder of a police officer. Although overwhelming physical evidence pointed to Roberto Carrasco Flores as the killer, the State prosecuted Mr. Aldape Guerra, because Carrasco had been killed in a shoot-out with the police. In federal habeas proceedings, the district court found repeated instances of police and prosecutorial misconduct, including witness intimidation, the suppression of exculpatory evidence, and the intentional use of highly suggestive and misleading techniques to taint witness testimony.

Had Section 9 of the Kyl version of the SPA been in effect, Mr. Aldape Guerra would have been executed without any federal review of his claims. Because Mr. Aldape Guerra's lawyers uncovered in state court the factual bases supporting the claims of prosecutorial misconduct, and the claims did not rely on a new, retroactive rule of law, the claims would not have met the narrow exceptions to Section 9's absolute bar to federal habeas review. Mr. Aldape Guerra would have been executed without any federal consideration of his compelling constitutional claims.

Fortunately, the federal courts did have the ability to address the merits of his claims. The federal courts found that the numerous instances of prosecutorial misconduct violated Mr. Aldape Guerra's due process rights and entitled him to a new trial.

## **6. Curtis Kyles -- Louisiana**

Curtis Kyles spent 14 years on death row before the U.S. Supreme Court ordered him to be retried. He was released in 1998 after the State dismissed the charges against him. Mr. Kyles was sentenced to death for robbing and killing a woman in a grocery store parking lot. An informant named "Beanie" led the police to focus on Mr. Kyles. Beanie was driving the victim's car, knew that Mr. Kyles's trash would contain items stolen during the murder, and was linked to other crimes committed at the same grocery store and another murder with similar facts. Beanie also gave numerous conflicting statements to the police and prosecutors, none of which were turned over to the defense. Nonetheless, the police never considered him a suspect.

Had Section 9 of the Kyl version of the SPA been in effect, the federal courts would have lacked jurisdiction to consider Mr. Kyles's claims. Mr. Kyles would have been unable to meet Section 9's exceptions. His claims did not rely on a new, retroactive rule of constitutional law. Moreover, the facts in support of his claims were previously discovered and presented in the state court proceedings. Mr. Kyles would have been executed instead of released.

Because the federal courts did have the power to review Mr. Kyles's claims on the merits, the U.S. Supreme Court eventually granted habeas relief. The Supreme Court held that the numerous items of evidence suppressed by the State raised a reasonable probability that the outcome of the trial would have been different if the favorable evidence had been revealed to the defense. In 1998, after three unsuccessful attempts to convict Mr. Kyles, the State dropped the charges and Mr. Kyles was released.

## **7. Federico Martinez-Macias -- Texas**

Federico Martinez-Macias spent 9 years on death row before he was released. After the federal courts ordered a new trial, a grand jury refused to re-indict him and the State dismissed the charges. Mr. Martinez-Macias was sentenced to death in 1984 for a murder committed during a robbery. His lawyers failed to put on available evidence of an alibi defense and evidence that undermined the testimony of a key state witness, and also failed to present mitigating evidence about his good character. His trial lawyers were paid at the rate of \$11.84 an hour. As the U.S. Court of Appeals for the Fifth Circuit stated, "[T]he justice system got only what it paid for." *Martinez-Macias v. Collins*, 979 F.2d 1067 (5<sup>th</sup> Cir. 1992).

Had Mr. Martinez-Macias's case been subject to Section 9 of the Kyl version of the SPA, the federal courts would have lacked jurisdiction to consider his claims. His claims were not based on a new, retroactive constitutional rule, and the facts in support of his claims were

available and presented to the state courts. Instead of being exonerated and released, Mr. Martinez-Macias would have been executed.

Because the federal courts did have the power to review his claims, Mr. Martinez-Macias avoided execution. The federal district court ordered the state to hold a new trial based on the abysmal performance of Mr. Martinez-Macias's counsel during the guilt-innocence and penalty phases of his trial, and the U.S. Court of Appeals affirmed the decision.

**SAMPLE LIST OF WRONGFULLY CONVICTED AND FACTUALLY INNOCENT  
PERSONS WHO WOULD NOT HAVE BEEN EXONERATED UNDER THE  
STREAMLINED PROCEDURES ACT (SPA)\***

**1. Timothy Brown – Florida**

Timothy Brown, who has an IQ of 56, spent nearly 12 years in prison for a crime he did not commit. Brown was convicted of murdering a police officer when he was 14 years old. He was sentenced to life in prison without possibility of parole on the basis of a statement by a purported codefendant and by a statement of his own, despite the fact that even the police had said that he acted "like clay" in the hand of interrogators during a prior interview. The codefendant later recanted his accusation. Many years after Brown's conviction was affirmed, it was discovered that the murder case had been reopened as a result of inculpatory statements made by an unrelated third party to undercover police officers, as well as to a police informant. Brown ultimately received habeas relief in federal court on a claim that his own statement had been admitted at trial in violation of the Constitution. A Miami Herald investigation discovered that at least 37 other false or questionable confessions to murder, all obtained by the same sheriff's department that interrogated Brown, have been thrown out since 1990.

The claim on which Brown won in federal court would have been barred by multiple provisions of SPA, either as originally proposed by Senator Kyl or Congressman Lungren, or with Senator Specter's amendments. The claim for relief on which Brown prevailed had been procedurally defaulted due to his failure to raise it in state court. Current law allows a defaulted constitutional claim to be heard in federal court if, among other things, the prisoner presents evidence of innocence showing that it is more likely than not that the prisoner would not have been convicted had the newly discovered evidence been presented at trial. Brown met the current standard with his evidence of detailed and consistent admissions by the third party.

Under both proposed bills, a showing of innocence is the only way by which a prisoner can have a procedurally defaulted claim heard in federal court. Further, a court's consideration of innocence evidence is limited to "facts underlying the claim" upon which the petitioner seeks relief, and the prisoner must also show that those facts could not have been discovered earlier. A heightened burden of proof -- clear and convincing evidence that no reasonable juror would have found him guilty -- is also imposed. Applying these provisions to Brown, he would have been required to meet a higher burden of proof, and do so without the benefit of the strongest evidence of his innocence because the third party confession evidence was not directly related to his constitutional claim. He would not have prevailed and would instead remain incarcerated for a crime he did not commit.

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\* This document was submitted on September 7, 2005 to Senate Judiciary Chairman Arlen Specter and Senate Judiciary Ranking Member Patrick Leahy by Talbot 'Sandy' D'Alemberte, the American Bar Association President 1991-1992.

## 2. Rodney Bragg - Arkansas

Rodney Bragg spent approximately six years in prison after being convicted of distributing crack cocaine, a crime he did not commit. At his trial, the prosecution relied almost entirely on the testimony of Agent Keith Ray, an undercover officer for the Arkansas South Central Drug Task Force. Bragg was sentenced to life imprisonment. After his trial, Bragg discovered evidence that Agent Ray had fabricated key portions of his testimony, in clear violation of the United States Constitution. A federal district court granted habeas relief to Bragg. The State did not appeal, and Bragg was immediately released.

Had either the Kyl/Lungren or Specter bill been the law, Bragg would likely remain incarcerated today based on the testimony of a police officer who ultimately admitted to perjuring himself and who resigned in disgrace. This is because Bragg's winning claims were found to be procedurally defaulted in federal court due to Bragg's failure to raise them in state court. Federal habeas corpus relief was nevertheless granted to Bragg under current law because he was able to convince the district court that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt had Agent Ray's lies been exposed at trial. In contrast, under the Specter and Kyl bills, in order to overcome the procedural default, Bragg would be required to present facts "sufficient to establish **by clear and convincing evidence** that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2254(e)(2)(B) (emphasis added). It is doubtful that Bragg could have met this exceedingly high standard.

Further, even if Bragg had presented clear and convincing evidence of his innocence, SPA would probably still bar relief. When a claim has been procedurally barred in state court, the Kyl and Specter bills require not only compelling proof of innocence, but also a showing that the underlying evidence could not have been discovered earlier "through the exercise of due diligence." Here, the evidence of Agent Ray's perjury *was*, in fact, discovered before Bragg's state-court remedies had expired. He failed to assert the claims in state court because he was, like most prisoners, proceeding without the benefit of counsel.

## 3. Algie Crivens – Illinois

Algie Crivens spent approximately eight years in prison for a murder he did not commit. Mr. Crivens was found guilty despite proffered testimony that another man had confessed to the crime. The key evidence against Crivens was the testimony of an eyewitness. Six years after his trial, Crivens discovered that the prosecution had failed to disclose its star witness's criminal record, which demonstrated his propensity to lie to police officers, prosecutors, and even judges. After receiving habeas relief from the federal courts, the prosecutor elected to retry Crivens. At the close of the State's evidence, the judge took the highly unusual step of granting Mr. Crivens' motion for a directed verdict of not guilty. The Illinois Governor thereafter granted Crivens a pardon based on innocence, entitling him to automatic compensation for the many years he unjustly spent in prison.

Under SPA, the federal courts would have lacked jurisdiction even to hear Crivens's claim of constitutional error and he still would be in prison despite his innocence. Crivens's winning claim was added by amendment to the federal petition after the suppressed evidence was finally discovered. Because it was never presented to the state court, his claim was procedurally defaulted. Under current law, however, the default was excused. Both the Kyl and Specter bills, in contrast, would preclude a federal court from considering Crivens's claim unless the stringent requirements of section 2254(e)(2) are satisfied. Crivens would have failed this standard because his claim was not one "that could not have been previously discovered through the exercise of due diligence." As noted by the federal court, Crivens' trial counsel could have, but did not, cross-examine the prosecution witness about his criminal history at trial. Moreover, the "facts underlying the claim" likely could not constitute "clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty," because the suppressed evidence impeached the witness rather than directly exculpated Crivens. Crivens's claim also would have been barred by provisions of the two bills which substantially limit the ability of prisoners to amend their petitions. For persons in Crivens's position, they would have to satisfy section 2244(b)(2), which is substantially identical to section 2254(e)(2). Thus, amendment would have been precluded for the reasons discussed above.

#### 4. **Ellen Reasonover - Missouri**

Ellen Reasonover spent sixteen years in prison for a robbery-murder she did not commit. The case against her was based on the testimony of two jail inmates who claimed Reasonover confessed while in the jail. After the jury fell one vote short of imposing a death sentence, Reasonover was sentenced to life in prison. Throughout state post-conviction and federal habeas corpus proceedings, Reasonover sought but was denied access to prosecution files and audio-tapes of her conversations which had been referenced in reports, but never produced to the defense. After Ms. Reasonover's first federal habeas corpus petition was denied and all appeals expired, a tape surfaced which corroborated her claim of innocence. Additional evidence was discovered showing that one of the informants likely received an undisclosed deal in exchange for her testimony against Reasonover, and that the other informant had lied. Based on this new evidence, a federal judge ruled that the murder trial of Ellen Reasonover was "fundamentally unfair," and that she was factually innocent. *Reasonover v. Washington*, 60 F. Supp. 2d 937 (E.D. Mo. 1999). The State of Missouri did not appeal that judgment, nor did it attempt to retry Reasonover, as there was no evidence whatsoever suggesting any involvement in the crime

Had either the Kyl or Specter bill been the law at the time Reasonover was in federal court, she would likely remain in prison today. Because the state courts had relied on procedural default in rejecting Reasonover's claim that the prosecution suppressed exculpatory evidence, SPA would have precluded federal court jurisdiction under SPA Sec. 4. This provision would place on Reasonover the burden to show *both* due diligence *and*, by "clear and convincing" evidence, that no reasonable juror would find her guilty. Because Reasonover did not even attempt to invoke the state court post-conviction procedure, she could not satisfy the "due

diligence” prong of the innocence exception. Thus, SPA would preclude relief for Reasonover in spite of her innocence.

5. **Glen "Buddy" Nickerson - California \*\***

Glenn “Buddy” Nickerson was sentenced to life imprisonment for two murders based on a key eyewitness’s testimony. Three other men were also convicted of the crimes and at various times, all have acknowledged that Nickerson had nothing to do with the killings. After Nickerson’s trial, the key eyewitness recanted his testimony. The mistaken identification of Nickerson as one of the killers resulted from the State’s misconduct in influencing the key eyewitness. This misconduct resulted in the granting of *habeas* relief to Nickerson by a federal district court.

Had SPA or the Specter Amendment been the law, Nickerson would likely have been denied relief because his misconduct claim was found to be procedurally defaulted by the state court. The federal district court reviewed his claim because it found that Nickerson had met the innocence exception to the procedural default doctrine as it exists under current law. The Kyl and Specter bills strip the federal courts of jurisdiction to hear procedurally defaulted claims unless the petitioner meets an even more stringent actual innocence exception. Because Nickerson was unable to fully develop the facts supporting his assertion of innocence in state court, the misconduct claim would likely have been denied by the federal court without any opportunity for Nickerson to establish that he met the exception to the procedural default provision. Further, it is questionable whether Nickerson could meet the heightened innocence test in the two bills given that much of his evidence of innocence was not directly related to his claim of misconduct. Both SPA and the Specter Amendment require a prisoner to show that the facts underlying the defaulted claim themselves establish by clear and convincing evidence that no reasonable factfinder would have found the prisoner guilty.

6. **Thomas Goldstein – California**

An uncertain eyewitness identification, coupled with testimony from a notorious jailhouse informant, led to the wrongful conviction of Vietnam veteran Thomas Goldstein, who spent decades confined for a murder he did not commit. He received *habeas* relief from a federal district court after he established that his trial attorney was ineffective in failing to interview the only eyewitness to the crime, and that the State both suppressed evidence that could have exonerated him and utilized testimony it knew to be false.

If SPA or the Specter Amendment had been the law when Goldstein requested relief from the federal courts, he would likely be in prison today. Goldstein was able to win his freedom

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\*\* The California sample cases were submitted to Senate Judiciary Committee Chairman Arlen Specter and Senate Judiciary Committee Member Dianne Feinstein by the California and Hawaii Innocence Projects based at the California Western School of Law in San Diego on July 27, 2005.

only because the district court appointed counsel to represent him and granted him leave to return to state court to pursue newly developed claims for relief. SPA and Specter make it virtually impossible for a prisoner to develop new claims or to return to state court to present them as required by the exhaustion rule.