Steamlined Procedures Act of 2005

The implications of the Streamlined Procedures Act of 2005, introduced in the U.S. Senate by Sen. Jon Kyl (R. AZ) on May 19, 2005, and in the U.S. House by Rep. Daniel Lungren (R. CA) on June 22, 2005, are so profound for restricting access to federal court by state prisoners, that the following two articles are being published to provide an overview of how extensive those effects will be.

The courts of many, if not most states, have maintained the appearance of providing a source of relief from an unjust conviction, while in practice they have effectively ceased to do so. In California, e.g., the reversal rate is about 1%. Consequently, federal courts can be a safety value for blatant miscarriages of justice. The SPA will alter that situation by severely limiting access to federal court for those defendants who are not now shut out by failing to meet a procedural requirement, such as missing a filing deadline. The current one-year rule is so overly restrictive that two of the stories in this issue of *Justice:Denied* involve defendants who missed that deadline — Nancy Smith and Joseph Allen, and Bruce Lisker.

The SPA was on the fast track to be voted on by both the House and Senate when it hit the speed bump of a firestorm of opposition from a broad coalition of concerned individuals and activist groups. Some of the SPA's opponents supported enactment of the Anti-Terrorism and Effective Death Penalty Act in 1996, but they recognize that while the AEDPA limited state prisoner access to federal court — the SPA is intended to all but close the door.

A striking feature of the SPA's provisions is not just that they are so one-sided in limiting the situations in which a federal judge will be able to review a state criminal conviction and/or sentence — but that they are so expertly written to accomplish that objective. It was obviously written by lawyers intimately familiar with how best to subvert state prisoner access to federal court review while preserving the appearance that that access is still available. In an effort to find out the genesis of the SPA and who wrote it, *Justice:Denied* contacted Senator Kyl's office in Washington D.C. The Senator's press spokesperson said the SPA was a collaborative effort, but he was unable to identify who any of the collaborators were. *Justice:Denied* then contacted Representative Lungren's office in Washington D.C. The Representatives press spokesperson was very adamant that Lungren was the sole author of the SPA, pointing out that he is the former Attorney General of California. That is true, but it is unreasonable to believe that Lungren single-handedly wrote the SPA — or even a single word or it — since the bill he introduced in the House was identical to the bill introduced *more than a month earlier* in the Senate. Additionally, being California's AG didn't provide Lungren with the precise knowledge of federal habeas law possessed by the SPA's author(s).

The U.S. Department of Justice is a much more likely source of the SPA, since it is written with the same precision and in the same manner as the Patriot Act and the Homeland Security Act - both of which were written by DOJ attorneys. Since the SPA has DOJ fingerprints all over it, *Justice:Denied* has filed a Freedom of Information Act request for all DOJ documents related to the participation of DOJ personnel in any capacity during any stage of the SPA's creation.

The SPA is on Justice:Denied's website at, http://justicedenied.org/streamlined.htm . It can be read, downloaded, or printed out.

Streamlining Injustice

By Vivian Berger

The deceptively titled Streamlined Procedures Act of 2005 (SPA), now pending in Congress (S. 1088, H.R. 3035), would codify the wish list of radical habeas haters-whose appetite for "reform" of the writ remains unslaked even after enactment of the draconian Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Neither streamlined nor truly procedural, the SPA threatens to make the dauntingly complicated area of post-conviction litigation more complex and dilatory, while depriving prisoners of the means to enforce their substantive constitutional rights.

Derailing it will take more courage than legislators typically display on criminal justice matters. Indeed, the Senate version, offered by Senator Arlen Specter, R-Pa., and awaiting markup by the Senate Judiciary Committee, is almost as noxious as the earlier version, which is before the House. (In any case, it may eventually lose to the House bill in conference.) Only continued strong lobbying by opponents-who have included many former judges and prosecutors-can succeed in thwarting its passage this fall.

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All Aboard For The Death Penalty Express

Bill In Congress Will All But Kill State Prisoner Appeals To Federal Court

By Jordan Smith

If a contingent of congressional Republicans have their way, federal law governing criminal appeals by state prisoners to federal court will be gutted – opening up an express lane to the Texas death chamber and making it inevitable that an innocent person will be executed. The proposed legislation, the Streamlined Procedures Act of 2005 (HR 3035 and S 1088), would eliminate federal court jurisdiction over the vast majority of habeas corpus appeals – through which state defendants challenge the constitutionality of their convictions in federal court, a process that is at the heart of the growing number of exonerations nationwide — leaving state courts of appeal as the final arbiters of justice.

Illustration by Doug Potter, The Austin Chronicle

In Texas, the proposed legislation would leave decisions of life or death in the hands of the Court of Criminal Appeals – a court whose death penalty rulings have come under attack not only by reformers and advocates but also by the U.S. Supreme Court. If the draconian legislation becomes law, "it would end federal habeas corpus in Texas," says Jim Marcus, executive director of the nonprofit Texas Defender Service.

At issue are congressional limits on criminal appeals to the federal courts – where, for example, questions of ineffective counsel and claims of prosecutorial misconduct are adjudicated, and, more often than not, lay the groundwork for claims of innocence, new evidence testing, or the granting of a new trial. The rules governing the process were last modified nearly a decade ago with the passage of the Antiterrorism and Effective Death Penalty Act of 1996 – a notoriously complex scheme of statutory hoops through which inmates and their attorneys must jump in order to have their cases heard in federal court. The complexity of the process – which can toss a case back and forth between federal and state courts – is often lengthy, a circumstance that, ostensibly, prompted Sen. Jon Kyl, R-Arizona, to introduce the SPA in the Senate this spring. "Many federal habeas corpus cases require 10, 15, or even 20 years to complete,"

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