

## Who Wrote The Streamlined Procedures Act of 2005?

The Streamlined Procedures Act of 2005 (SPA) is currently being reviewed in the U.S. Senate Judiciary Committee and the House Committee on the Judiciary. Senate and House committee hearings concerning the SPA were held in November 2005, but as of mid-December neither has voted on whether to send it for a vote by the full House and Senate. Efforts to quickly send the SPA out of those committee's so it could be voted on and promptly enacted were thwarted by intense opposition from politically influential people who normally support "law and order" proposals. The accompany article by Marcia Coyle outlines some of the opposition to the SPA.

Federal courts have been an important avenue for a state prisoner to get relief from a wrongful conviction after state courts refused to do so. (See e.g., \$662,000 Awarded Man Imprisoned 5 Years For Phantom Rape of Woman "Sick Of Men", in this issue of *Justice:Denied*.) Because the SPA would more profoundly affect the accessibility of federal court to an innocent state prisoner than any legislation in U.S. history, its genesis and who wrote it is of interest to *Justice:Denied*.

The SPA was introduced in the Senate by Senator Jon Kyl (R. AZ) and in the House by Representative Daniel Lungren (R. CA). As reported in *Justice:Denied* Issue 29, the office of Senator Kyl's office in Washington D.C. was contacted in an effort to find out the authorship of the SPA he introduced. The Senator's press spokesperson told *Justice:Denied* the authorship of the SPA was a collaborative effort. However, when requested he was unable (or unwilling) to identify any of the collaborators. *Justice:Denied* then contacted Rep. Lungren's office in Washington D.C. The Representatives press spokesperson was very adamant that Lungren was the sole author of the SPA. 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.

The SPA was carefully written by a person or persons possessing not only an intimate knowledge of the federal habeas statutes, but with the skill to deviously close the door to federal court in the face of state prisoners while maintaining the appearance that the door is still open. There are attorneys within the U.S. Department of Justice that possess both the specialized knowledge and the writing skills that were necessary to write the SPA.

If the chief judges of state and federal appellate courts, the organized national bar and a host of others say that a bill that would strip the federal courts of nearly all authority to review state convictions and sentences is a mistake, you'd think the bill's proponents might back down.

Think again.

Only a week after a second cautionary letter from the Judicial Conference of the United States — the Senate Judiciary Committee was prepared to vote [in October] on S. 1088, the so-called Streamlined Procedures Act of 2005, making the most sweeping changes in federal habeas review in a decade.

But lack of a quorum and strong objections by some Democratic senators forced a delay in the chairman's call to vote out the bill and deal with its problems later.

The bill's sponsor, Sen. Jon Kyl, R-Ariz., and supporters are expected to try again. But this time, a substitute measure — offered by judiciary Chairman Arlen Specter, R-Pa. — will be on the table, and Democratic committee members have pressed successfully for a public hearing.

### Specter's Substitute

Specter, who had sought unsuccessfully to get a vote on

Consequently, in August 2005 *Justice:Denied* filed a Freedom of Information Act request with the DOJ that requested in part:

"... access to and copies of any and all information related to assistance provided by any employee of the Department of Justice in the research, development and or drafting of The Streamlined Procedures Act of 2005 ..."

In early December 2005 the DOJ responded to *Justice:Denied*'s FOIA request by stating that no records could be found of any involvement

## More Fuel Added To Debate Over Federal Habeas Review

By Marcia Coyle

his substitute at the meeting in early October, said then that his version meets the concerns of the Judicial Conference. That's news to the policy-making body of the federal judiciary.

"Our people hadn't seen it by then," said Richard Carelli, a spokesman for the Administrative Office of the U.S. Courts. "I'm assuming we will have some reaction to it."

But the substitute amendment, by virtue of its very existence, fails to do the one thing that federal and state chief judges have urged the senators to do: conduct a study on whether there is any unwarranted delay in resolving habeas corpus petitions in the federal courts.

The Judicial Conference recently sent the committee the results of a preliminary review of statistical data on the federal courts' handling of non-capital and capital habeas cases filed by state prisoners.

Based on that analysis, "The Conference does not believe that the data as a whole supports the need for a comprehensive overhaul of federal habeas jurisprudence," wrote Leonidas R. Mechem, conference secretary and director of the Administrative

Office of the U.S. Courts, the management arm of the federal judiciary.

"We oppose the [Specter] substitute," said Kyle O'Dowd, the legislative affairs director for the National Association of Criminal Defense Lawyers. "We don't think it's a reasonable legislative proposal. Senator [Russell] Feingold [D-Wis.] said this is a solution in search of a problem. There needs to be some systematic study of the issue before we even talk about legislation."

But the Specter proposal is "a good and necessary" bill, said Kent Scheidegger of the Criminal Justice Legal Foundation. The Antiterrorism and Effective Death Penalty Act of 1996 "didn't accomplish what states wanted to see done," he insisted. "There's no confidence that is going to happen. The courts have had 10 years to implement AEDPA."

### Fast-Track Reform

The debate has now boiled down essentially to two problems that Kyl believes justify a habeas overhaul: delay — both in handling state prisoners' habeas corpus petitions and in carrying out death sentences — and a broken bargain under the 1996 AEDPA, which itself imposed sweeping limits on federal habeas review.

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by any DOJ employee in regards to the SPA. Of course, that only means that if DOJ employees were involved, they were smart enough not to leave an obvious paper or email trail.

U.S. Senators and Representatives are exempt from FOIA requests, so Senator Kyl and Rep. Lungren can stonewall written requests for information. So the mystery remains: Who wrote the SPA?

*Justice:Denied* is continuing its effort to obtain currently undisclosed information about the SPA that is of public interest.

