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

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

Dear Chairman Specter and Senator Leahy:

I write on behalf of the American Bar Association to express our strong opposition to S.1088, the Judiciary Committee-adopted substitute to the proposed "Streamlined Procedures Act of 2005" (SPA) expected to be considered this week by the Committee. S.1088 as amended retains a number of proposed sweeping changes to important habeas corpus protections that we objected to in our previous letter of June 28 and statement submitted at the July 13th Committee hearing. We believe that the Committee should heed the concerns expressed by a broad range of judges, prosecutors, defense counsel and organizations representing them that this proposed legislation is too broad and that further changes to recently-enacted reforms in federal habeas corpus law must be preceded by careful fact-finding and study.

Contrary to the claimed goals of SPA, this measure would create a host of new problems. The bill would overturn several Supreme Court decisions interpreting the Anti-Terrorism and Effective Death Penalty Act (AEDPA), a comprehensive reform of habeas corpus enacted fewer than ten years ago. It has taken almost ten years for the courts to resolve challenges and questions arising under AEDPA. We believe the constitutional questions and legal inconsistencies raised by S.1088 are more complicated and much more troubling than those posed by AEDPA when enacted:

- Although prisoners are already required to exhaust their state court remedies before pursuing a claim in a federal court, the bill would dismiss all claims which lack exhaustion "with prejudice," regardless of the circumstances, ending any possibility of federal court review. This would include claims

involving government misconduct and have the effect of rewarding such behavior by eliminating the possibility of additional review and correction.

- The bill inadequately protects the innocent by proposing virtually unattainable procedural and other requirements to establish innocence. These requirements will prevent many innocent prisoners from reaching federal court, where the majority of innocent and exonerated prisoners have found relief in past years.
- The bill would prevent federal courts from reviewing any claims which state courts refuse to consider on state procedural grounds. While current law already limits such claims to a meritorious few, this bill would strip jurisdiction from the federal courts altogether, leaving state courts at liberty to make erroneous or arbitrary decisions without oversight or possibility of correction.
- Poorly drafted provisions will invite years of litigation and create chaos while the meaning of such terms is resolved. Instead of “streamlining” the appellate process, the bill will create additional delay and uncertainty for families of crime victims.

Similar concerns about the provisions proposed in S.1088 recently led to the adoption of a joint resolution from the Conference of Chief Justices and the Conference of State Court Administrators opposing the legislation. They recommended that Congress authorize additional study and analysis of AEDPA to date before considering ... “appropriate targeted measures that will ameliorate the documented problems and avoid depriving the federal courts of their additional jurisdiction without more supporting evidence.”

We think this approach is prudent and appropriate. There is no demonstrated need for this bill. In the total absence of any studies on AEDPA or the cause of delays in the courts, the need for new legislation is premature at best. In the case of S.1088, a hastily drafted proposal for change should not be considered before a careful study which can identify discrete problems and alternatives is undertaken. We strongly support such a study by the Judicial Conference of the United States or other independent body and a report of its finding to Congress. This is a necessary step that must preclude any action on this legislation.

For all of the above reasons, we urge the members of the Judiciary Committee to set aside consideration of S.1088 or similar legislation.

Sincerely,



Robert D. Evans

cc: Members of the Committee