Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Committee On The Judiciary
Hearing On Habeas Corpus Proceedings and Issues of Actual Innocence
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It has been less than a decade since Congress overhauled federal habeas corpus law as part of the Antiterrorism and Effective Death Penalty Act of 1996, or AEDPA. Enacted as a bipartisan compromise, this law severely narrowed the scope of habeas jurisdiction by, for example, imposing strict new time limits and procedural bar rules.

I thought then, and continue to think, that AEDPA went too far. By drastically curtailing the ability of federal courts to adjudicate meritorious constitutional claims, it increased the risk that people who were wrongfully convicted would be left to rot in jail, and that the nightmare scenario -- the execution of an innocent American - would come to pass.

Of course, others thought AEDPA did not go far enough. That is the nature of compromise. During the floor debate on AEDPA, the Senator from Arizona offered an amendment to eliminate federal habeas except in circumstances where the state's justice system had proved incapable of enforcing federal constitutional rights. That extreme position was roundly rejected in the Senate, with every Democratic Senator and more than a dozen Republican Senators -- including several Republican members of this Committee -- voting against it.

The habeas bill that is now before the Committee, the so-called "Streamlined Procedures Act," would go much farther than AEDPA did, and it would unravel that bipartisan compromise. I will have more to say about the specifics of the bill when the Committee marks it up, but for now it will suffice to say that I can see little practical difference between this bill and the 1996 amendment that was defeated.

What has changed that might justify unraveling AEDPA now? I imagine that we will hear today anecdotal evidence about cases in which habeas proceedings have dragged on long after conviction. I would urge consideration first and caution against any rash judgments. We need to ask some questions before we rush to legislate based on such stories.

First and foremost, what caused the delays? Was federal habeas being abused? Or was it that most of the time between conviction and the end of habeas proceedings was taken up by either state habeas proceedings, or by delays attributable to the state itself? My understanding is that it is quite common in some states for a case to spend many years in state post-conviction proceedings. If that is right, there may well be something to be said for taking a close look at the rules that require state prisoners to exhaust state post-conviction remedies before they can bring a federal habeas petition. But there is nothing to be said for scape-goating the federal courts for a problem that is internal to certain state justice systems.

Second, if there are in fact instances of serious delay caused by real abuse of federal habeas, we need to ask if there is a systemic problem, or just a few isolated instances. Habeas corpus has protected the constitutional rights and freedoms of all Americans throughout our history. That is a vital protection that all Americans rely on. Let's not rush to dismantle it based on a few anecdotes about delay.

We must also bear in mind that a great deal of time has been spent litigating over the precise meaning of AEDPA's complex array of time limits and procedural bars. Those questions, which reflect the poor drafting of the law itself and not any abuse of habeas, are now largely resolved. Indeed, it is only in the last couple of years that the appellate courts have clarified the rules under AEDPA sufficiently to start generating information about how the law is actually working in practice.

What has really changed since AEDPA's enactment? Since 1996, we as a Committee have joined with the rest of the Congress and the Nation as a whole in taking a closer look at the realities of state criminal justice systems. And that closer look led us to a further consensus. Last October, President Bush signed into law the Innocence Protection Act of 2004 -- a package of criminal justice reforms aimed at reducing the likelihood that an innocent person would be executed. Congress passed this landmark legislation with overwhelming bipartisan support, including the strong support of Chairman Specter, former Chairman Hatch, and Senator DeWine.

It is important to remember why we joined together on the IPA, and why we must continue to work together to ensure that its funding promises do not go unfulfilled. The IPA reflects what we learned about the administration of the death penalty over years of hearings in this Committee. We learned that there is an unconscionably high rate of error in capital cases -- error so serious that it not only denies defendants their constitutional rights, but also undermines the reliability of the verdict. We learned of sleeping lawyers, drunk lawyers, suspended lawyers, and lawyers too overworked, underpaid, inexperienced, or indifferent to meet with their clients or conduct even the most cursory investigation. Most troubling, we learned of the more than 100 people who have been released from death row with evidence of their innocence.

The modern miracle of DNA testing has revealed what, because of its limited scope, can only be the tip of the iceberg, but that tip is tragically vast. Since the enactment of AEDPA in 1996, post-conviction DNA testing has cleared more than 150 wrongfully convicted individuals, including a dozen who had been sentenced to death.

A few of these individuals are here today, and I would like to welcome them:

? Kirk Bloodsworth was a young man, just out of the Marines, when he was arrested, convicted, and sentenced to death for a heinous crime that he did not commit. DNA evidence ultimately freed him and identified the real killer. I am proud to have come to know him and his wife, Brenda, through our work together on the Innocence Protection Act, which includes a program named in his honor.

? Dennis Fritz spent 12 years serving a life sentence until he was finally able to prove his innocence through DNA testing. He testified before this Committee five years ago, in support of the Innocence Protection Act, and I welcome him back.

? Darryl Hunt of North Carolina was convicted in 1984 for a murder he did not commit. He was freed in 2003, after DNA evidence ruled him out as the killer and identified the true perpetrator of the crime. The true perpetrator then confessed.

? Brandon Moon was convicted of rape in 1987, while a student at the University of Texas at El Paso. DNA testing cleared him of the crime just a few months

ago, and he was released with the apology of the District Attorney.

Three other exonerees are also in the audience - Thomas Goldstein, Gloria Killian, and Joseph Eastridge. Each was granted federal habeas relief after presenting substantial evidence of actual innocence. If S.1088 were the law, they would still be wrongfully imprisoned, or worse. So there will be no misunderstanding of what is at stake here, let me repeat that: If S.1088 were the law, exonerees such as these would still be wrongfully imprisoned, or worse.

That is what we have learned since AEDPA, and that lesson has involved saving innocent lives. And that is what apparently convinced President Reagan's first appointee to the Supreme Court -- and one of the strongest advocates of states' rights in the history of the Court -- that left without federal scrutiny, state criminal justice systems may pose unacceptable risks. In July 2001, Justice Sandra Day O'Connor acknowledged in a widely reported speech that "serious questions are being raised" about the administration of the death penalty. Her conclusion was chilling in its commonsense candor: "the system may well be allowing some innocent defendants to be executed." Tragically, we now know how prophetic those words appear to be.

Just this week, prosecutors in St. Louis, Missouri, reopened a murder investigation - 10 years after a man was executed for the crime. Larry Griffin was put to death on June 21, 1995, for a drive-by killing that he steadfastly maintained he did not commit. Now, new evidence has emerged to support his claim, and the victim's family is expressing concern that the wrong man was convicted and executed.

I sympathize deeply with victims and their families who seek closure. I hope they will take some comfort from the statistics showing that notwithstanding some scare-mongering rhetoric to the contrary, under AEDPA, habeas relief has effectively been reserved for a very small minority of truly problematic cases. But I will not vote to increase the risk that more innocent people will be executed.

The bill before us would greatly increase that risk, as well as the risk of lesser, but nonetheless life-shattering, injustices. And it would do so without any real evidence that the new regime we enacted less than a decade ago to limit federal habeas is not doing the job. AEDPA is not broken - at least, not in the way this bill would presuppose - and there is no need to "fix" federal habeas corpus by destroying it.