Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
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Statement of U.S. Senator Russ Feingold
At the Senate Judiciary Committee Hearing on
"Habeas Corpus Proceedings and Issues of Actual Innocence"

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Mr. Chairman, thank you for holding this hearing today. I am very pleased that these witnesses will testify on a bill, the Streamlined Procedures Act, that could have very serious implications for our criminal justice system, and in particular for the ability of death row inmates to have their constitutional claims heard in federal court. I cannot overstate the significance of this bill, about which I have grave concerns. It would not only rework federal habeas law, it would dramatically cut back on the jurisdiction of our federal courts.

I understand the concern about lengthy appeals in cases where prisoners bring federal habeas claims. But more than 115 people sentenced to die have been exonerated and released from death row, sometimes years after their convictions. And I have no doubt there are others we do not yet know about. Often, evidence of innocence does not come out until years after a conviction, and habeas is the only legal avenue that inmates have left to them.

Last year, a man in Texas was exonerated 17 years after he was convicted - and only after a federal court considering his case on a habeas appeal threw out the conviction. The prosecutor who could have retried him instead apologized, saying "I'm sorry this man was on death row for so long and that there were so many lost years." And just this week, the St. Louis Post-Dispatch reported that a local prosecutor has reopened an investigation into a 1980 murder because the evidence against the man convicted of the crime had fallen apart. That man had been sentenced to death, and he was executed by the state of Missouri 10 years ago. Yet now, 25 years after the crime and 10 years after his execution, very serious questions about his guilt are now being raised. These are extremely serious issues.

I am very seriously concerned about the effect this bill would have on inmates who argue they did not commit the crime of which they were convicted. But this is not just about claims of innocence. This bill also would prevent federal courts from evaluating serious constitutional flaws in cases where the ultimate punishment of death is at issue. One study found that 68 percent of all death penalty cases from 1973 to 1995 were overturned due to serious constitutional errors. A number of recent U.S. Supreme Court cases have found the proceedings by which an individual was convicted of a capital crime or sentenced to death to have violated the Constitution - and they have done so in the review of federal habeas proceedings. Under the law as this bill would revise it, the federal courts would not even have had the power to adjudicate these claims, and the errors would have gone unaddressed.

Finally, I am concerned about this bill because it would fundamentally realign the role of federal courts in criminal cases. Our legal system has long recognized the importance of reducing constitutional error when an individual's liberty or life is at stake, by allowing even state inmates to challenge the constitutionality of their imprisonment in federal court through habeas corpus. This bill would undo that fundamental premise, stripping federal courts of the ability to hear many federal claims. This bill would not make the habeas process more efficient, as its proponents claim. It would prevent federal courts from hearing a great number of potentially meritorious claims in cases where our justice system must be most careful.

I sincerely hope, Mr. Chairman, that this Committee will listen closely to these witnesses and consider this bill carefully and thoroughly. There is no reason to rush to judgment on this piece of legislation.