Supplementary Material

Chapter 10: The Reagan Era—Criminal Justice/Due Process and Habeas Corpus/Habeas Corpus

Legislative and Executive Efforts to Limit Habeas Corpus

Proposals to restrict federal habeas corpus were consistently on the national agenda during the Reagan years. Ronald Reagan in 1982 proposed the Criminal Justice Reform Act, which he declared would "ensure greater deference to full and fair State judicial proceedings and . . . limit the time within which habeas corpus proceedings may be initiated." Chief Justice Rehnquist gave numerous speeches endorsing similar proposals. Reagan, Rehnquist, and other opponents of Warren Court decisions expanding access to habeas corpus sought two reforms in particular.

- *Federal courts should respect "full and fair" state court proceedings, even if those proceedings in good faith misinterpreted or misapplied federal constitutional law.*
- *Prisoners should have only one shot at federal habeas corpus and, for capital prisoners, that opportunity should be taken advantage of almost immediately after their conviction became final.*

Conservatives took their best shot at restricting federal habeas corpus during the first Bush administration. Chief Justice Rehnquist appointed a blue ribbon commission headed by former Justice Lewis Powell, and charged that commission with proposing reforms to habeas corpus. That Commission recommended that capitally sentenced persons in states that provided counsel for post-conviction appeals be required to make all their appeals within six months of their final conviction and be denied the right to file a second, successive habeas petition except under extraordinary circumstances. The Bush Administration proposed similar reforms, adding a requirement that federal courts honor "full and fair" state court proceedings. Liberal Democrats proposed modifying the Powell Commission recommendations in ways that provided greater access to counsel, a longer time period to make a first habeas appeal, and greater rights to file a second petition.

Congress failed to pass any of these recommendations. Although conservatives beat back more liberal proposals, the House and Senate when debating reform legislation in the late 1980s could not agree on any habeas provision. President Bush expressed "deep disappointment" over the congressional failure to restrict habeas corpus petitions when he signed the Crime Control Act of 1990. When reading the materials below, compare the various proposals to reform federal habeas corpus. What are the main strengths and weaknesses of each proposal? What proposal would you recommend? Why do you think conservatives focused more on time limits than on substantive reform? How should the congressional failure to enact habeas legislation have influenced subsequent judicial decisions?

George Bush, "Message to Congress Transmitting Proposed Legislation to Combat Violent Crime" (June 15, 1989)

[T]he proposed bill would restore an appropriate degree of finality to State and Federal criminal convictions by curtailing abuses of the writ of habeas corpus. Under current interpretations of Federal statutes, defendants whose convictions have been affirmed by courts of appeals may nonetheless later seek to relitigate in Federal courts the claims previously raised or waived on direct appeal. Not infrequently, defendants with nothing to lose exercise this novel opportunity, which is afforded by no other civilized society in the world, through several rounds of litigation lasting many years and tying up our already overburdened Federal courts.

With the massive delays in many Federal districts occasioned by an overwhelming caseload, we can no longer afford the luxury of this system of excessive opportunity for review of "final" criminal

judgments. An effective justice system requires that final adjudications not be subject to continuous review. No innocent individual should be denied an avenue through which to petition the Federal courts to review his or her conviction. But at the same time, those persons who have been tried and found guilty, and whose legal claims have been rejected after full and fair consideration, should not be allowed to relitigate endlessly in the Federal courts.

Under the proposed amendments, the opportunity for certain kinds of collateral attacks upon a conviction would be limited by a time period of 1 or 2 years, with due exceptions for the assertion of rights newly created or facts newly discovered. Similarly, Federal courts would be admonished to give presumptive validity to any full and fair determination of a factual issue by a State court.

Ad Hoc Committee on Federal Habeas Corpus in Capital Cases Committee Report (1989)[1]

Studies of public opinion establish that an overwhelming majority of our citizens favors the death penalty for certain murders. The Supreme Court has made clear that the evolving standards of decency embodied in the Eighth Amendment permit imposition of this punishment for some offenders. Of course, both the Court and society have recognized that, because it is irreversible, death is a unique punishment. This realization demands safeguards to ensure that capital punishment is administered with the utmost reliability and fairness.

But our present system of multi-layered state and federal appeal and collateral review has led to piecemeal and repetitious litigation, and years of delay between sentencing and a judicial resolution as to whether the sentence was permissible under the law. The resulting lack of finality undermines public confidence in our criminal justice system. Of course, any system of review entails some delay. It is not suggested that the delay needed for review of constitutional claims is inappropriate. But much of the delay inherent in the present system is not needed for fairness. Adding to the problem is the fact that prisoners often cannot obtain qualified counsel until execution is imminent. The resulting last-minute rushed litigation disserves inmates, and saps the resources of our judiciary.

. . .

The Committee identified serious problems with the present system of collateral review. These many be broadly characterized under the heading of unnecessary delay and repetition. . . . Prisoners often spend significant time moving back and forth between the federal and state systems in the process of exhausting state remedies. Frequent litigation over motions for stays of execution is another example of an unnecessary step in the process. Under current procedures, a prisoner has no incentive to move the collateral review process forward until an execution date is set, and at this point additional litigation over a request for a stay of execution is inevitable.

The existing system also fosters piecemeal and repetitive litigation of claims. Because res judicata is inapplicable to federal habeas proceedings, many capital litigants return to federal court, with second—or even third and fourth—petitions for relief. Current rules governing abuse of the writ and successive petitions have not served to prevent these endless filings. . . .

Few would argue that the current state of death penalty administration is satisfactory. There are now approximately 2,200 convicted murderers on death row awaiting execution. Yet since the Supreme Court's 1972 Furman decision only 116 executions have taken place. . . . The length of the average proceeding was eight years and two months. The Committee does not believe eight years are required for the appropriate habeas review of state criminal proceedings.

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Contrary to what may be assumed, the Constitution does not provide for federal habeas corpus review of state court decisions. The writ of habeas corpus available to state prisoners is not that mentioned in the Constitution. It has evolved from a statute enacted by Congress in 1867, now codified at 28 U.S. Sec. 2254.

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[1] 135 *Congressional Record,* 101st Cong., 1st Sess. (1989), 24694–95.

A second serious problem with the current system is the pressing need for qualified counsel to represent inmates in collateral review. [P]rovision of counsel for criminal defendants is constitutionally required only for trial and direct appellate review. Because, as a practical matter, the focus of review in capital cases often shifts to collateral proceedings, the lack of adequate counsel creates severe problems. . . .

Capital inmates almost uniformly are indigent, and often illiterate or uneducated. Capital habeas litigation may be difficult and complex. Prisoners acting pro se rarely present promptly or properly exhaust their constitutional challenges in the state forum. This results in delayed or ineffective federal collateral procedures. The end result is often appointment of qualified counsel only when an execution is imminent. But at this stage, serious constitutional claims may have been waived. The belated entry of a lawyer, under severe time pressure, does not do enough to ensure fairness. In sum, the Committee believes that provision of competent counsel for prisoners under capital sentence throughout both state and federal collateral review is crucial to ensuring fairness and protecting the constitutional rights of capital litigants.

Another disturbing aspect of the current system is that litigation of constitutional claims often comes only when prompted by the setting of an execution date. Judicial resources are expended as the prisoner must seek a stay of execution in order to present his claims. Justice may be ill-served by conducting judicial proceedings in capital cases under the pressure of an impending execution. In some cases last-minute habeas corpus petitions have resulted from the unavailability of counsel at any earlier time. But in other cases attorneys appear to have intentionally delayed filing until time pressures were severe. In most cases, successive petitions are meritless, and we believe many are filed at the eleventh hour seeking nothing more than delay.

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In response to the problems described above, the Committee proposes new statutory procedures for federal habeas corpus review of capital sentences where counsel has been provided. . . . The Committee's proposal is aimed at achieving this goal: Capital cases should be subject to one complete and fair course of collateral review in the state and federal system, free from the time pressure of impending execution, and with the assistance of competent counsel for the defendant. When this review has concluded, litigation should end.

. . . The proposal allows a State to bring capital litigation by its prisoners within the new statute by providing competent counsel for inmates on state collateral review. Participation in the proposal is thus optional with the States. Because it is optional, the proposal should cause minimal intrusion on state prerogatives. But for States that are concerned with delay in capital litigation, it is hoped that the procedural mechanisms we recommend will furnish an incentive to provide the counsel that are needed for fairness.

The statute provides for a six-month period within which the federal habeas petition must be filed. The filing period begins to run only on the appointment of counsel for the prisoner, or a refusal of the offer of counsel. The filing period also is tolled during the pendency of all state court proceedings. . . .

Importantly, the statute provides for an automatic stay of execution, which is to remain in place until federal habeas proceedings are completed, or until the prisoner has failed to file a petition within the allotted time. This automatic stay ensures that claims need not be evaluated under the time pressure of scheduled execution. It should substantially eliminate the rush litigation over stay motions that is troubling for both litigants and the judiciary.

Federal habeas proceedings under the proposal will encompass only claims that have been exhausted in state court. With the counsel provided by the statute, there should be no excuse for failure to raise claims in state court. The statute departs from current exhaustion practice by allowing for immediate presentation of new claims in federal court in extraordinary circumstances. In the event the entire counseled state and federal collateral process concludes without relief being granted, the statute includes new mechanisms to promote finality. Subsequent and successive federal habeas petitions can no longer be the basis of a stay of execution or grant of relief absent extraordinary circumstances and a colorable showing of factual innocence.

The fundamental requirement of a criminal justice system is fairness. In habeas corpus proceedings fairness requires that a defendant be provided a searching and impartial examination of his claims. Fairness also requires that if a defendant's claims are found to be devoid of merit after such examination, society is rightfully entitled to have the penalty prescribed by law carried out without unreasonable delay.

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The Committee believes that its proposal will go far to rectify the current chaos in capital litigation—periodic inactivity and last-minute frenzied activity, scheduling and rescheduling of execution dates—which diminished public confidence in the criminal justice system. In sum, adoption of this proposal will significantly enhance fairness in death penalty litigation.

The Congressional Debate[2]

SENATOR JOSEPH BIDEN (Democrat, Delaware)

Mr. President, for some time now the Senate, on both sides of the aisle, has expressed its displeasure over the way our Federal courts review death penalty sentences imposed in State criminal trials. Some Senators have complained about the delays involved in these Federal habeas corpus actions, as they are known, and others have complained about the lack of adequate counsel available to capital prisoners who are seeking full and fair review of their claims; that is, people who have been convicted of a capital offense.

. . . Delay for delay's sake serves no one in the capital punishment system—a system that I do not oppose on moral grounds, have occasionally supported for specific death penalty cases, and generally have argued more safeguards should be built into the system when there is going to be a capital offense available to the prosecution.

It is, obviously, harmful to the system itself and to the families of crime victims and to all if, in fact, the system is allowed to be, shall we say, prostituted; allowed to be used and manipulated in a way that was never intended. But, less obviously, it does nothing for the capital prisoner, either.

The current system does much to delay the inevitable and does too little to help the prisoner with legitimate challenges to their sentences brought before the Supreme Court through habeas corpus.

The Powell quid pro quo, which I support, recognizes this. With some simple, but essential, changes, it should result in a system that is an improvement over the present system in all respects.

My bill adopts the structure and text of the legislation recommended by the Powell committee in many respects, but there are a number of areas in which I have made changes necessary, in my view, to ensure that this streamlined procedure is as fair as possible.

First, it is essential to the success of the Powell committee's approach that the counsel appointed to represent the defendant in State proceedings be qualified counsel. The Powell report included no standards governing the qualifications of attorneys appointed in capital cases, but yet spoke to the need for qualified counsel. My bill includes such standards, adopting the minimums enacted by Congress in the 1988 drug bill as part of the appointment of counsel requirement made applicable by that law.

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Second, the Powell report provides for a second Federal habeas corpus application in only the most narrow circumstances, when the claim of factual innocence was not previously presented due to State action or facts not available at the time. I believe that this safety valve provision should be broader than that recommended by the Powell Committee.

For example, in my bill, a prisoner can bring a second habeas corpus application in Federal court if—and I say if—it is necessary to avoid a miscarriage of justice, an established legal standard currently in place that ensures that in extraordinary cases justice will be done. The Powell plan repeals this

[2] 135 *Congressional Record,* 101st Cong., 1st Sess. (1989), 24685–66, 24692–93; 136 *Congressional Record,* 101st Cong., 2nd Sess. (1989), 27547–50.

miscarriage of justice exception. I believe it is necessary to provide the Federal court with the power to prevent unjust executions.

Third, the Powell report limits claims prisoners can raise in Federal court to those claims raised earlier in State court proceedings. While I understand the principles motivating this proposal, I believe that, if we are going to adopt the one-bite-out-of-the-apple approach, the single review provided in Federal court must be as thorough as possible. Keep in mind, Mr. President, what I am proposing here and what the Powell commission is proposing is a significant change in what is presently available.

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[M]y bill would allow a prisoner to present in Federal court any claim that bears on the legality of his death sentence, as long as the reasons that this claim was not presented in State court was due to ignorance or neglect of his attorney, or, again, if the court's failure to consider such claim would result in the miscarriage of justice.

So, notwithstanding the fact, Mr. President, I propose a claim may be brought that was not raised in State court in this one chance in Federal court, even under those circumstances I limit it, as does the Powell commission. It is limited only to circumstances where there was ignorance on the part of the attorney representing the person sitting on death row, and therefore it did not get raised, or, the second provision I put in my bill, there would be a miscarriage of justice resulting. Obviously, that is a judgment for the court to make, if there would be a miscarriage of justice.

Fourth, the Powell committee recommended that the time period for filing habeas corpus petitions should be limited to 6 months. Currently there is no time limit whatsoever. I agree that there should be some time limit on filing such petitions for otherwise a prisoner with no incentive to speed the arrival his State execution might delay the filing of his claim indefinitely. Six months, however, is too short a time for a qualified and presumably very busy attorney to drop what other work he or she might be doing, conduct a thorough investigation of the case, and prepare an appropriate filing for this one bite out of the apple.

For that reason, Mr. President, my bill would require the State habeas corpus petition to be filed within 1 year.

Finally, Mr. President, the Powell committee made no provision for capital prisoners who have the benefit of favorable Supreme Court rulings decided after their trial and direct appeals. My bill remedies this and instructs the court to apply the most recent Supreme Court ruling to the claims brought by capital prisoners where appropriate. Again, if we are going to speed the process under which the death sentences are reviewed, then it seems to me we must do all we can to ensure the review proceedings are complete.

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In sum, I believe the proposal I am introducing today is a reasonable compromise among the competing concerns in this area, balancing a prisoner's right to have full review of his claims with the State's interest in ending delay in capital sentences. Hopefully it will give us a system that is both faster and fairer for all concerned.

SENATOR STROM THURMOND (Republican, South Carolina)

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This Nation is facing a crisis in its criminal justice system. Federal habeas corpus and collateral attack procedures are in dire need of reform. This is evidenced by the glut of habeas petitions in the Federal system. The large increases in the number of habeas corpus filings, many of which are frivolous and used as a delaying tactic, require that legislation be enacted to address this problem.

Habeas petitions have grown by vast numbers in recent years. Last year, Federal district courts received an incredible 9,880 habeas petitions. The problem of these numerous filings is compounded by the extraordinary delay in habeas corpus filings. The result is a criminal justice system which is overburdened with piecemeal and repetitious litigation and years of delay between sentencing and a final judicial resolution of the criminal matter.

Mr. President, on August 3 of this year I took the floor and made a statement regarding the need for habeas corpus reform. In that statement I discussed a particular case which exemplifies the problem of habeas corpus abuse. In February of 1979, Ronald Wommer went on an 8-hour crime spree in South Carolina. By the time he was finished, four people were murdered. Woomer, who has never disputed his guilt, was convicted of murder and sentenced to death that summer. He was first sentenced on July 18, 1979—over 10 years ago—to die in the electric chair. He is still on South Carolina's death row. The *Woomer* case is a prime example of the obstruction of justice and inordinate delay surrounding these habeas corpus cases.

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Mr. President, it is appropriate that the Powell committee recommendations be before the Senate for consideration. This legislation I am introducing today proposes new statutory procedures for Federal habeas corpus review of capital sentences. The Powell committee proposal is aimed at achieving the following goal: Capital cases should be subject to one complete and fair course of collateral review in the State and Federal system, free from the time of impending execution, and with the assistance of competent counsel for the defendant. Once this appropriate, fair review is completed, the criminal process should be brought to a conclusion.

This proposal allows a State to bring capital litigation by its prisoners within the new statute by providing competent counsel for inmates on State collateral review. Participation in the new procedures is optional with the States. This legislation also provides for a 6-month period within which a Federal habeas petition must be filed. This 6-month period begins to run on the appointment of counsel for the prisoner and is tolled during the pendency of all State court proceedings. In addition, this legislation provides for an automatic stay of execution, which is to remain in place until Federal habeas proceedings are completed. This provision ensures that habeas claims not be considered by a court under the time pressure of an impending execution.

In summary, this proposal balances the need for finality in death penalty cases with the requirement that a defendant have a fair examination of his claims. Therefore, if the conviction and sentence are found to be appropriate, judicial proceedings will be at an end, absent any exceptional developments in the defendant's case.

In closing, we cannot continue to delay action on legislation to correct the growing problem in habeas corpus cases. Criminal cases must be brought to a close. Endless consideration of issues that have no merit in criminal cases and are filed only for purposes of delay must be eliminated from our judicial system. The principles of justice, upon which our criminal system is based, demands that we take action to address the habeas problem.

REPRESENTATIVE HENRY HYDE (Republican, Illinois)

The problem with habeas corpus is that it has been abused. It has been terribly abused in our country, so there is almost no finality to any criminal sentence.

Now, if you are sentenced to a term of years for a crime, you want a speedy hearing on your habeas corpus petition because you want to get out of there, but if you have been sentenced to death, you are fighting for time and you want delay and delay and more delay. The problem is these delays have frustrated the law and some people remain on death row for 8 years, for 12 years, and the law is made to look foolish and unenforceable and people develop contempt for the law.

REPRESENTATIVE CLAUDE HARRIS (Democrat, Alabama)

This House should adopt the Hyde amendment, which incorporates verbatim the Powell committee bill. Law enforcement adamantly opposes the habeas provisions now in the bill before the House and strongly supports the Hyde amendment.

The National Association of Attorneys General, by resolution adopted without a dissenting vote, strongly opposes any habeas legislation which would undermine or weaken the procedural default doctrine or broaden any exception to it; strongly opposes any legislation which would weaken the

nonretroactivity doctrine; and strongly opposes any legislation which would create new requirements concerning counsel. The bill before the House does all three of those things. The Powell committee bill, which is incorporated into the Hyde amendment, does not contravene the National Association of Attorneys General's statement of policy contained in the resolution. That is why that law enforcement organization opposes the bill as presently written and supports the Hyde amendment.

REPRESENTATIVE WILLIAMS HUGHES (Democrat, New Jersey)

What troubles me about Powell and Hyde, the Powell Commission report and Hyde, is that we are going to have in this country two basic systems, one for the very rich and one for the very poor.

States do not have to opt in and take advantage of the new reform rules.

We need to reform habeas corpus. They do not have to do that. The price for them to opt in is to appoint competent counsel.

That does not make sense, to have a fundamental process in this country that is going to see two standards, one for the rich and one for the poor.

That is bad enough, but what troubles me even more is that the Hyde amendment has a provision dealing with successive petitions that deny the defendant on death row to have a Federal court review his habeas corpus process even if it is based upon perjured testimony directed to the sentence. . . . If the defendant is sitting on death row and has exhausted his State habeas corpus process after the direct appeal and has gone through his review, and 180 days, his Federal habeas corpus review process, and newly discovered evidence suggests that the defendant was sentenced based upon perjured testimony, that is not reviewable under the Hyde amendment, not reviewable.

REPRESENTATIVE DON EDWARDS (Democrat, California)

Mr. Chairman, the habeas reforms in the bill will guarantee competent legal representation at the trial of capital cases. If you want genuine habeas reform, trial counsel is the key. The committee bill sets clear standards for the competency of trial counsel in capital cases. But the Hyde amendment does not address the issue of trial counsel at all. The Hyde amendment's counsel provisions apply only after trial. By then its too late—the errors have been made, and either you send a person to the electric chair who was unconstitutionally sentenced or you send the case back for a new trial.

My subcommittee held a hearing on the types of lawyers who currently represent capital defendants at trial. Here are some examples:

In one death case in Mississippi, the defendant was represented by a third-year law student.

In one Georgia circuit, capital cases were assigned to defense lawyers on a low bid system. The only qualification to submit a bid was membership in the Georgia bar. The lowest bidder got the case.

In four different capital trials in Georgia, at some point in the proceeding the defense lawyers referred to their clients as 'niggers.' The death sentence was imposed in all four cases.

There have been capital cases in Mississippi and Georgia where the defense attorney's first criminal jury trial was a capital trial.

Last year in Alabama, a capital case had to be stopped midtrial because the defense lawyer was drunk. He was held in contempt and sent to jail to dry out. The next morning he and his client were both produced from jail, the trial resumed, and the death penalty was imposed a few days later.

Lawyers like these would continue handling death cases under the Hyde amendment.

One reason for this scandalous situation is money. Alabama, Mississippi, and Arkansas limit the compensation of defense counsel in a capital case to $1,000. South Carolina pays up to only $1,500. Any lawyer who wants to do a good job ends up working for less than the minimum wage.

Would any Member in this body trust his life to a lawyer getting paid less than the minimum wage? Yet the Hyde amendment would allow States to continue appointing lawyers to represent capital defendants for less than minimum wage.

With legal representation like this, the death sentence becomes a lottery in which the death penalty is imposed not on the most horrendous offenders but on the defendants with the most horrendous lawyers.

Under the Hyde amendment, capital defendants would continue to be represented at trial by incompetent attorneys who failed to recognize and raise constitutional issues, and defendants would continue being sentenced to death not because of their culpability but because of the mistakes of their lawyers. In contrast, the Hughes reform provisions will provide competent counsel at trial, so trials are properly conducted at the outset and the death penalty is not a lottery.

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The truth is that the Powell proposal is the result of a plot by Chief Justice Rehnquist to enact his personal destructive agenda for habeas.

In 1988, ignoring the separation of powers principle, Rehnquist appointed an ad hoc committee of the Judicial Conference to write proposed habeas legislation.

The committee, chaired by former Justice Powell, was stacked with conservative judges from the two southern 'death circuits' where more than three-quarters of the executions since 1976 have taken place. Ignoring the wishes of the full Judicial Conference, the Chief Justice adopted their recommendations. This amendment is solely the work of the Chief Justice and his handpicked opponents of habeas corpus. It is not the neutral, responsible product Mr. Hyde claims.

REPRESENTATIVE HYDE

. . . Justice Powell, who chaired this committee, is against the death penalty. . . . To imply that Justice Rehnquist stacked the commission is outrageous.

Now do not destroy habeas corpus under the Hyde amendment. We must have competent counsel. Under the U.S. Constitution and Supreme Court cases, at the trial level there must be competent counsel. At the appeal level there must be competent counsel.

Then we go to habeas corpus in the State system, trial court, appeals court, Supreme Court. Now we move to the Federal courts, trial court, appellate court, writ of certiorari, to the Supreme Court. Twenty-seven judges have heard the case by this time, and my colleagues say that is murdering habeas corpus.

It is common sense. That is why the prosecutors are for my amendment. It is habeas corpus reform.

The amendment that the gentlemen want, do my colleagues know what it says? On page 208 it says that the application shall be dismissed unless the interests of justice would be served by reconsideration of claim. Mr. Chairman, that means endless, endless, endless delay.

I say to my colleagues, 'If you are convicted because of perjured testimony, your guilt or innocence is always open to be explored in successive petitions with a stay of execution, not the validity of your sentence after 27 judges have passed on it.' We want it to be final.

However, Mr. Chairman, I say, 'Then you go to the Governor and say, "Hey, I was sentenced on perjured testimony," but, as to your guilt or innocence, you can always raise that.'

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[T]he underlying goal of this strategy has nothing to do with fairness. It has everything to do with frustrating enforcement of the death penalty by excessive delay through redundant and repetitive habeas corpus appeals.

REPRESENTATIVE LAWRENCE COUGHLIN (Republican, Pennsylvania)

Mr. Chairman, I rise in strong support of the Hyde amendment which represents the genuine habeas corpus reform so desperately needed in our criminal justice system.

The committee bill before us today would overturn or seriously weaken numerous Supreme Court decisions that currently limit the delay and abuse of the judicial process. It greatly increases the opportunities for prisoners sentenced to death and all convicted offenders to abuse the judicial process

and thwart justice. It creates numerous obstacles of procedural delay and abuse that have absolutely nothing to do with a defendant's guilt or innocence. All in all, this bill does not address the abuse of habeas corpus that has virtually nullified the death penalty laws of the States and clearly makes an already intolerable situation even worse.

REPRESENTATIVE ROBERT MATSUI (Democrat, California)

H.R. 5269 would provide defendants the opportunity to appeal their case on the basis of the sentence. The language in the Hyde amendment limiting appeals to the conviction only is far too limited. This is an important distinction. Evidence shows that a disproportionate number of those on death row are minorities, particularly African-Americans. According to the General Accounting Office, individuals who were convicted of murdering a white victim were more likely to be sentenced to death than those who murdered a black victim.

The Hyde amendment is far too restrictive, because not all sentences are clear cut. But limiting appeals to challenging on the verdict and not the sentence ignores the reality that not all sentences are just.

The provisions in the bill requiring competent counsel to defendants are also of great importance. The language included in H.R. 5269 requires that competent counsel be provided at both the trial and appeal levels. These provisions are about fairness. Everyone deserves a fair trial and competent counsel, regardless of the crime of which he or she is accused or convicted. The Hughes amendment will ensure that competent counsel is provided to all defendants, regardless of their crime.