

Habeas corpus shredded in antiterrorism bill

by Edward Spannaus

On April 24, President Clinton signed into law the "Antiterrorism and Effective Death Penalty Act" of 1996, which was passed by the Senate on April 17 and by the House of Representatives on April 18. The bill contains significant changes from the administration's original proposals of last year. Freshmen Republicans, led by Rep. Bob Barr (R-Ga.), spearheaded an effort to weaken the provisions which would have given the federal government more power to deal with actual terrorism, while they inserted into the bill the so-called "habeas corpus reforms" which were a key element of their Contract with America. The habeas corpus provision of the U.S. Constitution, elaborated in the 1867 Habeas Corpus Act, provides for federal review of the constitutionality of a person's conviction on criminal charges.

The changes in habeas corpus procedures have little, if anything, to do with terrorism, since they only affect state court convictions, and most terrorism cases are brought in federal court. But, as numerous members of Congress pointed out during the floor debate, they are likely to result in the execution of innocent persons, since the bill forces federal courts to abandon their role in enforcing the U.S. Constitution, and compels them to defer to state court judgments, even where there are constitutional violations. The bill also sets strict time limits for federal review of state court convictions, and it severely restricts the ability of federal courts to hear factual evidence regarding state court convictions, even where the new or suppressed evidence could show that the death row inmate is factually innocent.

Below are excerpts from the debate on the floor of the House of Representatives on April 18. Included also are excerpts from a study on death penalty cases by the Association of the Bar of the City of New York.

Documentation

House debate on conference report on S. 735, "Antiterrorism and Effective Death Penalty Act of 1996."

Rep. Henry J. Hyde (R-Ill.): . . . Now, habeas corpus reform, that is the Holy Grail. We have pursued that for 14 years, in my memory. The absurdity, the obscenity of 17 years from the time a person has been sentenced till that sentence is carried out through endless appeals, up and down the State

court system, and up and down the Federal court system, makes a mockery of the law. It also imposes a cruel punishment on the victims, the survivors' families, and we seek to put an end to that. . . .

The survivors want the habeas corpus [reform]. Habeas corpus is tied up with terrorism, because when a terrorist is convicted of mass killings, we want to make sure that terrorist ultimately and reasonably has the sentence imposed on him or her. . . .

Rep. Melvin Watt (D-N.C.): Mr. Speaker and my colleagues, I hate terrorists. They are the scum of the Earth. There is nothing lower than a terrorist. . . . And if this bill were limited to terrorists, emotionally I would be doing exactly what my colleagues are proposing to do here. But this bill is not limited to terrorists; it goes well beyond terrorists to common ordinary citizens. . . .

Only 100 out of 10,000 habeas corpus issues come from death penalty cases. Even less come from terrorist cases. Yet this bill is not limited either to death penalty cases or to terrorist cases. It is depriving every single American, every single child, every single one of us, of our constitutional protections of habeas corpus. . . .

Rep. Helen Chenoweth (R-Idaho): . . . Mr. Speaker, this bill I feel does not just affect habeas corpus procedures for death row inmates, but it actually affects all of our rights to protections under the Constitution, that which habeas corpus has afforded. The rights to speak and assemble freely, to be ensured of due process of law, and to be protected against false imprisonment belong to all Americans. We cannot allow ourselves to be frightened into giving up these freedoms.

This, Mr. Speaker, is a line-on-line runout by the Congressional Research Service of all the Federal antiterrorist criminal laws. I asked for CRS to run this out. Mr. Speaker, this is 17 pages long. We have enough laws on the books already. The problem is that we are not enforcing the laws we have. This law abridges some of our very precious freedoms. . . .

Rep. Robert C. Scott (D-Va.): . . . Mr. Speaker, I rise to oppose the conference report because it will do little, if anything, to reduce terrorism, while at the same time it will, in fact, terrorize our Constitution. . . .

The so-called crown jewel of the bill, the habeas corpus provision, Mr. Speaker, we have heard of the frivolous appeals. Forty percent of these appeals are in fact successful. People have been denied a fair trial. People are in fact sentenced to death who are factually innocent. These are not frivolous appeals. Those who have bona fide appeals will have their rights denied.

Mr. Speaker, we have a system where the innocent and the guilty are tried by the same procedure, so those who are guilty in fact may have a little more time on death row, but those who are innocent have an opportunity to present that evidence. If this bill is enacted, we will find that those who are factually innocent and can present evidence of innocence will in fact be put to death.

Rep. Bill McCollum (R-Fla.): . . . We do all kinds of things relative to terrorism and then, in addition to that, this bill contains three of the seven crime bills that were in the Contract with America, the most significant of which has been debated a lot today, but been voted on many times by this Congress. Finally, when the President signs this bill into law after years and years of struggle, we will have limited the appeals that death row inmates can take and we will have assured that sentences of death in this country will be carried out expeditiously, as the American public wants. . . .

Rep. Nydia Velazquez (D-N.Y.): Mr. Speaker, rushing this bill to the floor just to meet a publicity deadline is irresponsible. Once again we are sacrificing our people to play election year politics. Americans and their civil rights are too important to allow this.

The right of habeas corpus is a national treasure. It is fundamental for all Americans—black and white; liberal and conservative. The conference report severely limits that right—all to fuel a national frenzy.

My colleagues, the Constitution says we are all entitled to equal protection under the law, but in today's society some of us are more equal than others. The reality is, if you have the money to hire a good lawyer, you can make it through our legal system. But, if you are a poor minority, lacking those resources, you will lose and not have the opportunity to prove you are innocent.

By severely limiting this ultimate right to appeal, more innocent Americans will unfairly die. Their blood will be on your hands. I encourage a "no" vote on this conference report. . . .

Rep. John Conyers, Jr. (D-Mich.): Mr. Speaker, this has been an important debate, and I think that it has become clear that this is a politically motivated bill, driven first by the National Rifle Association and Mr. Barr, and then finally by the 73 galloping freshmen Republicans who would not allow a deal to be made, and finally we were able to patch a little bit together.

We are dealing with a bill now that started off with no habeas corpus, we do not need it. But then, because there was nothing in the bill, we needed it.

So what do we have here? What we have is a bill that is missing, missing. Wiretaps for terrorist offenses, not in the antiterrorist conference report before this House. The current law allows for wiretaps for everything from fraud, embezzlement, destroying cars, numerous felonies, but the bill rejects on careful consideration the proposal that we be able to wiretap for crimes of terrorism and crimes where weapons of mass destruction are used.

Are you serious that this is an antiterrorist bill?

So while a Federal agent can get a wiretap if he believes a car to be destroyed, he may not be able to get a wiretap if he believes an act of terror or mass destruction or murder is going to take out a building or someone is planning to gas the New York subway.

How silly and how unserious.

Similarly, while current law allows for emergency exceptions to the requirement of a court order for a wiretap in instances where the agent learns a criminal act is imminent, this bill refuses to extend that constitutionally permissible emergency circumstance exception to terrorism cases.

So there you have it. Taggants? Oh, well, we put it back in, but we exempted black and smokeless powder. I wonder why? Well, it does not take a scientist to figure that one out.

So I guess you guys have proved your point. I mean, you are going to show that we got a terrorism bill on an anniversary and that, further, we put the President of the United States in a tremendously embarrassing position where he has to swallow a compromise of habeas corpus.

From "The Crisis in Capital Representation," by the Special Committee on Capital Representation and the Committee on Civil Rights of the Association of the Bar of the City of New York:

Whether bad death sentences result from judicial ignorance or judicial politics, prosecutorial misconduct, or other facts, federal habeas corpus proceedings have had the capacity, at least so far, to correct an error rate in state capital cases that Justice Blackmun aptly described as "staggering." Nearly half (46%) of the state capital cases reviewed in federal habeas corpus between 1976 and 1991 were found to contain harmful constitutional error. More recently, that rate has held at about 40%. Generally the federal court must not only find constitutional error, it must also find that the error was "harmful," that is, significantly prejudicial. Many federal judges often note constitutional errors, but then find them harmless. These cases are not included in the 40% figure, which represents only cases where relief was granted. Thus, the 40% reversal rate understates the incidence of constitutional error, because it fails to include those cases where the error occurred but was found harmless. . . .

Today, federal habeas corpus provides unlawfully convicted defendants far less protection than it did before the Supreme Court, under Chief Justice Rehnquist, raised procedural hurdles to the protections which the Great Writ provides. . . . Thus, the condemned prisoner who overcomes these hurdles and obtains an attorney to file a federal habeas corpus petition has a real chance of success, at least under the present regime.

[The 104th Congress] has pressed habeas corpus legislation [which] could greatly restrict the independent capacity of federal courts to determine the merits of constitutional claims and to award relief on the basis of constitutional claims that have merit.

We question how a society can look at a system where about 40% of the people facing death sentences have had trials with major constitutional flaws and decide that these cases should receive less, and not more, scrutiny.