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Federal Habeas Corpus in a Nutshell

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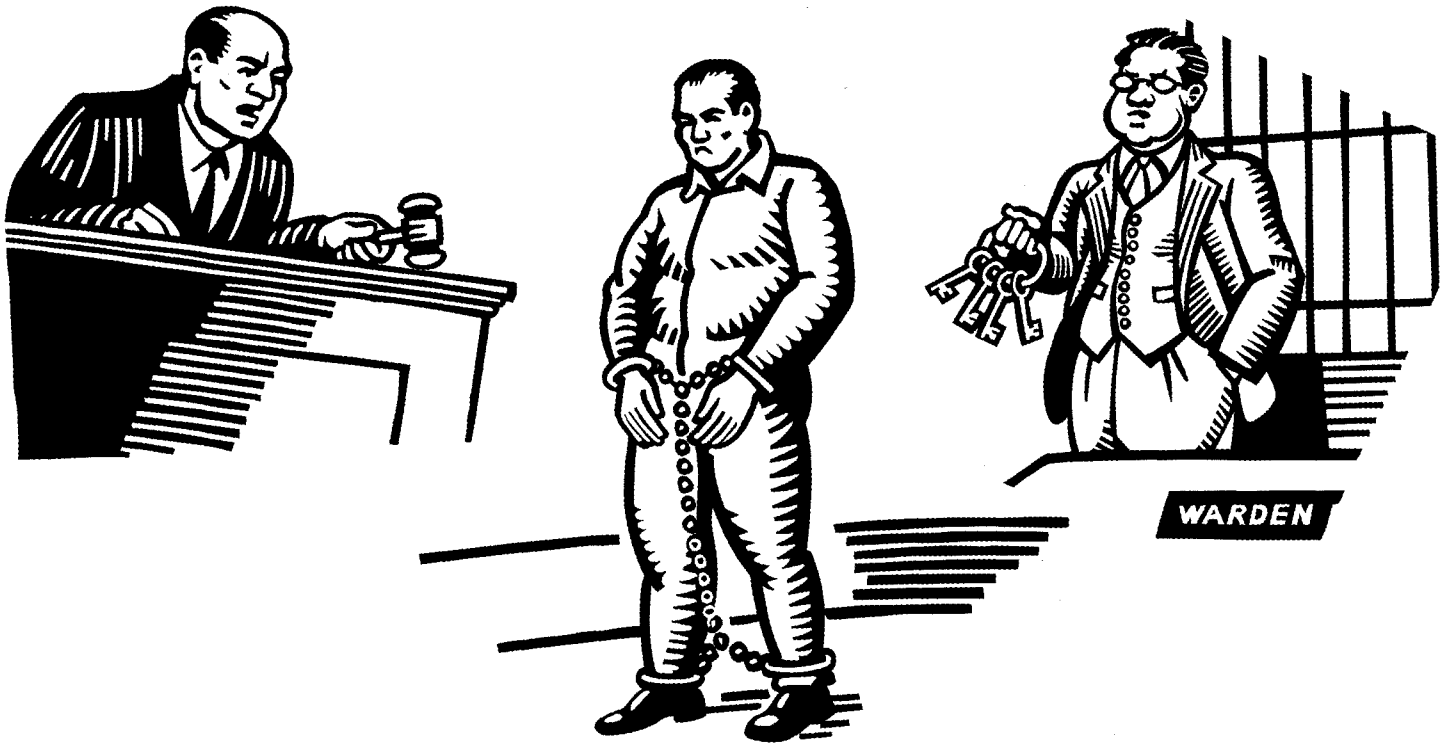

Newcomers to the capital punishment controversy may be puzzled by ubiquitous references to the common law writ of habeas corpus. What, you may ask, does the Great Writ have to do with the death penalty? The answer is: virtually everything. The lower federal courts have no ordinary appellate jurisdiction to review state criminal judgments for error. They adjudicate federal constitutional claims in death penalty cases primarily by entertaining habeas corpus petitions from death row prisoners. But for federal habeas corpus, capital sentences imposed for state criminal offenses would be examined only in state court and, occasionally, in the Supreme Court (which *does*, of course, have appellate jurisdiction to review state judgments for federal error).

Conceptually, it works this way. A state prisoner under sentence of death files a petition for a writ of habeas corpus in a U.S. district court. That petition alleges that the prisoner is being held in custody in violation of federal law. The warden responds that the prisoner is lawfully detained on the basis of a criminal conviction and a capital sentence as yet unexecuted. At that point, the district court is in a position to examine the prisoner's claims that the conviction or sentence cannot justify his or her detention, because state authorities violated the prisoner's federal rights in the course of the state criminal prosecution.

If the district court concludes that the prisoner's detention violates federal law,

Death Penalty Resources

Articles

Ken Armstrong & Steve Mills, *Gatekeeper Court Keeps Gates Shut*, CHI. TRIB., June 12, 2000.

Stephen B. Bright, *Death by Lottery—Procedural Bar of Constitutional Claims in Capital Cases Due to Inadequate Representation of Indigent Defendants*, 92 W. VA. L. REV. 679 (1990).

Stephen B. Bright, *Does the Bill of Rights Apply Here Any More? Evisceration of Habeas Corpus and Denial of Counsel to Those under Sentence of Death*, THE CHAMPION, Nov. 1996.

James S. Liebman, *More Than "Slightly Retro": The Rehnquist Court's Rout of Habeas Corpus Jurisdiction in* Teague v. Lane, 18 N.Y.U. REV. L. & SOC. CHANGE 537 (1991).

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Articles

Panel Discussion, *Capital Punishment: Is There Any Habeas Left in This Corpus?* 27 LOY. U. CHI. L.J. 523 (1996).

Panel Discussion, *Dead Man Walking Without Due Process? A Discussion of the Anti-Terrorism and Effective Death Penalty Act of 1996*, 23 N.Y.U. REV. L. & SOC. CHANGE 163 (1997).

Ann Woolner, *No-Help Habeas: When the Condemned's Right to Habeas Corpus Is No Right at All,* LEGAL TIMES, Mar. 15, 1999.

Larry W. Yackle, *Developments in Habeas Corpus* (pts. 1-3), THE CHAMPION, Sept./Oct. 1997; *Part II*, THE CHAMPION, Nov. 1997; *Part III*, THE CHAMPION, Dec.1997.

the court (sometimes) can order the warden to release the prisoner from further restraint. As a practical matter, the court will order the prisoner released only if the state fails to cure the federal error within a reasonable time (usually by giving the prisoner another trial or sentencing proceeding). Modern statutes and rules obscure this conceptual framework. As often as not, federal court adjudication in a habeas case looks like appellate review, albeit appellate review attended by a host of special procedural arrangements.

The federal courts have had the authority to issue the writ of habeas corpus since 1789 and to do so on behalf of prisoners in state custody since 1867. In the mid-twentieth century, the Supreme Court elaborated the writ's function with respect to state criminal convictions in a series of famous opinions by Justices Holmes, Frankfurter, and Brennan. In the 1960s, habeas corpus provided the vehicle by which the lower federal courts enforced the Supreme Court's innovations in constitutional criminal procedure.

In the 1970s and 1980s, however, the Court developed restrictive procedural doctrines to govern federal habeas proceedings. The Court typically explained those doctrines as attempts to reduce friction between the states and state courts, on the one hand, and the federal courts, on the other. Practically speaking, the Court's doctrines postponed or foreclosed federal court adjudication of prisoners' federal claims. They continue to do that today.

Congress has also limited federal court adjudication of state prisoners' federal claims, particularly in death penalty cases. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) restricts federal habeas in numerous ways. Proponents of that act regarded federal court authority to entertain habeas petitions from death row prisoners as a threat to capital punishment itself. They insisted that prisoners under sentence of death sought relief from the federal courts only to extend litigation—and thus to postpone lawful executions. In contrast, proponents of AEDPA meant to promote capital punishment by curbing the federal courts' authority to adjudicate claims advanced in petitions by prisoners on death row. In some respects, AEDPA fortified the Supreme Court's already restrictive doctrines; in other respects, AEDPA established additional limitations.

The American Bar Association (ABA) has always recognized the link between the death penalty and federal habeas corpus. This organization filed amicus curiae briefs in many of the Supreme Court cases in which the Court considered ever more restrictive rules for habeas cases. The thesis of those briefs was that if capital punishment is to be used at all, it should be used only after careful consideration of prisoners' federal claims. That careful consideration in turn requires federal court examination of claims as a sequel to state court proceedings. The ABA opposed the enactment of AEDPA.

Most of the provisions in AEDPA create procedural requirements that prisoners must satisfy before federal courts can consider their claims. The ostensible purpose of those procedural requirements is to streamline and expedite habeas cases in federal court, but the new procedural demands are hopelessly complicated and typically make habeas litigation even more protracted than it was previously. The result, sad to say, is that federal habeas corpus is bogged down in Byzantine procedural snarls that not only frustrate the enforcement of constitutional rights but also squander time and resources.

One provision in AEDPA, 28 U.S.C. § 2254(d)(1), is more substantive. That provision recognizes that in the typical case a prisoner seeking relief from a federal court was previously refused relief on the same grounds in state court. If the previous state court adjudication was "on the merits," Section 2254(d)(1) bars a federal court from granting relief to the prisoner, unless the state adjudication of the claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States."

In *Williams v. Taylor*, 120 S. Ct. 1495 (2000), the Supreme Court construed this new provision to mean that a federal court's decision that the prisoner was convicted or sentenced to death in violation of the Constitution does not, in and of itself, enable the federal court to grant relief. If a state court adjudicated the merits of the prisoner's claims and reached a different result, the federal court can save the prisoner from execution only if the state court decision against the prisoner was not only wrong but *unreasonably* wrong.

Taken together, the Supreme Court's restrictive doctrines and the additional limits established by AEDPA undermine the ability of federal courts to vindicate federal rights in habeas corpus proceedings. This is why efforts to redress the many difficulties with capital punishment must necessarily be complemented by parallel efforts to refurbish an ancient remedial vehicle: the writ of habeas corpus.

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