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HOW CRIMINALS DELAY GOING TO PRISON

Everybody knows that the high crime rate in America is a national scandal, and that ~~most~~ many criminals never serve a prison term. But few know how the mechanisms of the law have been bent to advantage the criminals and to disadvantage the law-abiding public.

Some state supreme court justices are trying to lift the curtain of legal complexities in order to explain of the system and recommend solutions. Alabama State Supreme Court Chief Justice C. C. Torbert, Jr., recently testified before the Senate Judiciary Committee with constructive suggestions about the writ of habeas corpus.

Habeas corpus is one of our most important constitutional rights. It was designed to safeguard the individual against being kept in jail without cause. A writ of habeas corpus requires the government to bring the prisoner into court and show a good reason for holding him.

In recent years, the federal habeas corpus writ has been abused to a point where the Founding Fathers would never recognize it. It has become a favorite instrument by which convicted criminals avoid serving their prison terms.

The way criminals work the game is this. They exhaust all their legal arguments and constitutional claims -- including U.S. constitutional claims -- in state courts. Then they try to get any federal district judge or magistrate to second-guess the state courts on any of the many constitutional claims that arise in a typical criminal case.

As Judge Torbert pointed out, "The situation can be so extreme that, even after having his claim thoroughly considered and rejected at three levels of state courts by more than a dozen state court judges, a convicted criminal can still have his conviction overturned simply because a single federal district court judge disagrees with all of the state court judges who have previously ruled on the claim."

There is no evidence that federal judges are superior in wisdom or fairness to state court judges. Clothing a lawyer in federal court robes does not magically infuse him with more legal and judicial ability. State court judges take the same oath to support and defend the U.S. Constitution that federal judges do.

The old axiom "justice delayed is justice denied" is valid both when justice is denied to those seeking redress in the courts and when justice is denied to the community that wants criminals to be convicted. Finality of judgment is essential to speedy justice.

The criminals use the constitutional writ of habeas corpus to create a dual system of appeal that prevents finality of judgment for years and years. A criminal pursues his appeals through the state courts up to the U.S. Supreme Court.

Then he files a petition in federal court for a writ of habeas corpus, thereby beginning the long and circuitous climb back to the U.S. Supreme Court through the federal courts. Since there is no time limit, this may be years or even decades after the criminal's original conviction was upheld in state courts.

A 1979 study of federal habeas corpus, made by the Federal Justice Research Program at the request of the Department of Justice, found that only three percent of all petitions achieved any sort of legal relief for the petitioner. Of course, the petitioner did delay his prison term.

The delay by the criminal's lawyer is often deliberate. The passage of time makes it more difficult to rebut challenges to the facts in the case, and, if the conviction is overturned, it is more difficult to retry the defendant successfully because witnesses die, memories fade, and evidence is lost.

Judge Torbert believes that public respect for our criminal justice system is being undermined by a system which "condones a dual system of appeal in which facts and legal issues are interminably litigated and never finally decided."

Judge Torbert supports Congressional legislation to put reasonable limits on the writ of habeas corpus so that it will function as originally intended. He recommends a statute of limitations for federal habeas corpus proceedings in order to out-fox the criminal who is playing a delaying game.

The principle of federalism is just as important to our American freedom as habeas corpus. It musts be clear that state governments and courts have the principal responsibility for criminal justice. Habeas corpus is one of the greatest of all American constitutional rights, but it should not be used to ~~federalize all criminal proceedings.~~ nullify so many criminal verdicts in state courts.