

## The Ninth Circuit: Where 'Habeas Corpus' Is Translated 'Ignore the Law'

*Americans endure more murder, rape, and violent physical assault than any other people in the civilized world. Some federal judges, meanwhile, ignore both crime victims and the law. They pass the time, rather, in ideological exercises, multiplying technicalities dancing on a pin and indulging their obsession that not one killer should die by capital punishment.*

by  
Michael D. Rushford

WHEN WE talk about the rights of the accused and the rights of victims and bringing criminals to justice, we are in fact describing in various ways the most basic duty of any civilized government: the protection of its people from crime. Without this protection, it's every man for himself, the law of the jungle — not unlike some parts of most American cities these days.

Outside of Lebanon, perhaps, and a few other places on the globe experiencing armed upheaval, people living here in America face a greater danger of murder, rape, and violent physical assault than in any other nation in the civilized world. The leading cause of death among young black American males is homicide. It is the second leading cause of death for all young Americans. Since Lyndon Johnson launched his Great Society, we have endured the greatest increase in crime in American history while at the same time maintaining an unprecedented multi-billion dollar effort to rehabilitate criminals, understand and deal with the causes of crime, and feed, clothe, house, and educate the poor. I, for one, am not confused about how things have turned out. I *am* confused about why so many Americans are resisting the changes that must be made.

Nowhere is change more wanted than in our criminal justice system. Our arrest, trial, and appeals process has become so complex and expensive that most convictions today are the result of negotiated pleas between the defense lawyer and the prosecutor. These

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plea bargains almost always favor the accused, not because he or she is innocent of the charges, but rather because everybody involved knows that the county simply cannot afford a trial for every arrest.

Nowhere is the problem more acute than with death penalty cases. In one of the most dangerous nations in the world, it takes our government roughly 10 years to execute a person who literally butchers his fellow man. This in a country where more than 70 percent of the population supports the death penalty for murder. Many of our murderers are so dangerous that they arrange to have witnesses against them killed while they await trial. They arrange to have those who helped convict them murdered while their cases are on appeal. If they get a life sentence, they kill other inmates while serving their prison sentences. If they are released, they kill more innocent people. This, I suppose, is why so many people support the death penalty.

UNNECESSARY DELAY of execution of such people is not only unjust, it is dangerous. The greatest source of delay in death penalty cases is the process of federal *habeas corpus* review of convictions and death sentences.

In February of 1989, Florida's execution of Theodore Bundy drew attention to the almost endless number of repetitive appeals entitled to convicted criminals. After convictions in two states for three brutal murders, Bundy filed a series of writs of *habeas corpus*, claiming procedural error at his trial and in his sentencing and asking federal court review which was granted. Federal court consideration of Bundy's successive petitions took nine years and cost taxpayers

\$6 million. Not once during any of this time did Bundy's lawyers claim that he was not the murderer.

**D**URING THE past 40 years, federal *habeas corpus* procedures have evolved from a process giving people thrown in jail without a trial the opportunity to demand one, to one that permits convicted criminals who have lost their direct appeals in the state Supreme Court and the U.S. Supreme Court to initiate one or more rounds of a three-stage federal court review process to re-examine the old claims and entertain new ones. This process currently provides several hundred examples of murderers, fairly convicted and sentenced by juries, who are enjoying indefinite stays of execution because the federal courts of appeal have chosen to require lengthy and expensive hearings where claims of error in legal procedure, not innocence or guilt, is the sole issue.

The Ninth Circuit is the federal court of appeals for nine western states including California. A recent U.S. Supreme Court decision reprimanded the Ninth Circuit for its non-action on a Washington murderer's request for *habeas corpus* review. After two and one-half years, a Ninth Circuit panel had yet to decide whether or not there was enough substance to the murderer's claims of trial error to warrant a hearing. One might wonder why it would take this court nearly as long to decide whether further review was necessary as it did to try the case and conduct the direct appeal process through the Washington and U.S. Supreme Courts.

**B**UT AN even better example of what's wrong with federal *habeas corpus* concerns the activity following the 1978 conviction and death sentence of California double-murderer Robert Alton Harris. For most of the past nine years Harris's claims of procedural error have been at some stage of federal *habeas corpus* proceedings. During that period, Harris's at-

torneys and the ACLU, among others, have tried virtually every argument possible to void his death sentence or the death penalty law itself.

The facts of the *Harris* case are as follows: Late on the morning of July 5, 1978, two 16-year-old boys were sitting in a car parked at a San Diego shopping center eating hamburgers. Across the street Robert Harris, on parole for a 1975 conviction of beating a man to death, was looking for a car to steal. When he spotted the boys, Harris pulled a gun he had stolen two days earlier and slid into the back seat. He ordered the boy behind the wheel to drive to a secluded area and stop. Harris then told the boys to get out and walk down a path as he followed. He shot one boy in the back. As the other one tried to escape, Harris gave chase, pausing only to fire another shot into the wounded boy's head. He caught the second boy hiding behind a rock. As he begged for his life, Harris wounded the boy with three shots and then killed him with a fourth.

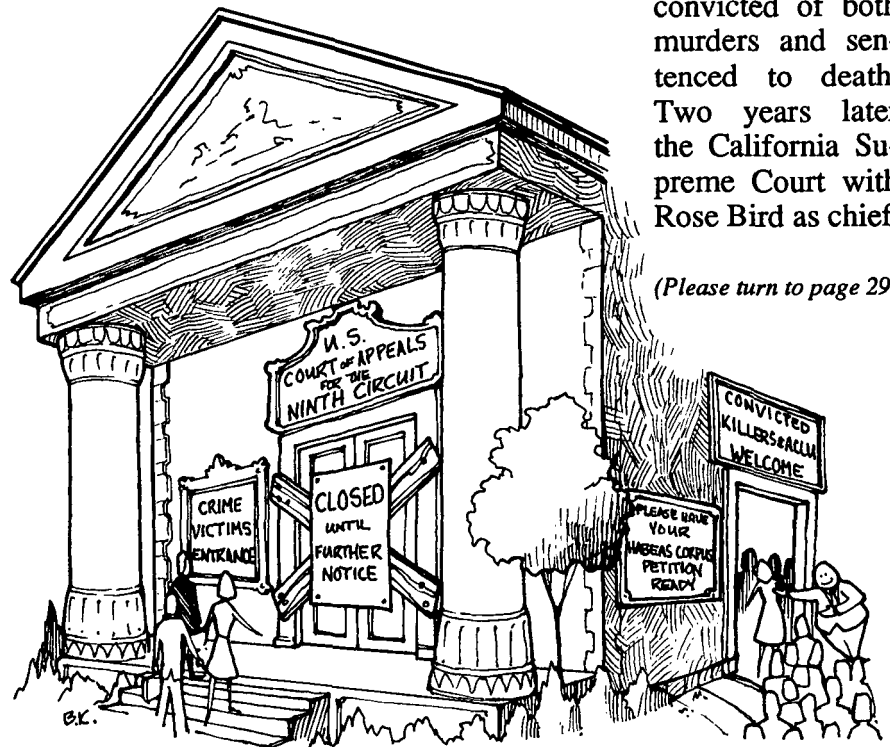
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*Since late 1982, the federal courts have entertained three successive habeas corpus petitions from Harris. At no time during any of these proceedings has anyone claimed that Harris was not the murderer.*

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**I**N MARCH of 1979, Harris was convicted of both murders and sentenced to death. Two years later the California Supreme Court with Rose Bird as chief

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## We Are the Competition

*California need not fear economic change or foreign competition. But we need lower taxes, less regulation, and free trade to realize our full potential.*

## JOHN SEYMOUR

NOT TOO long ago, Idaho Senator Larry Craig and I sat down for lunch and during the course of the conversation we turned to the economic condition of our states. I told him of the problems we're experiencing in California — the reduction in defense jobs, an unemployment rate that still out-

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*Senator John Seymour, appointed by Pete Wilson when Wilson became governor, is a candidate for the GOP nomination to serve the remaining two years of Wilson's term.*

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paces the national numbers, the natural disasters that have crippled our agricultural economy, and more.

I expected to hear a similar story from Larry, but he was optimistic and upbeat. In spite of all the talk about how tough the times are, Larry pointed out that 30 new businesses had set up shop in the northern Idaho city of Coeur d'Alene in the past year alone. Of those 30, he was pleased to tell me, 27

## Restore the Reagan Legacy

*Reregulation and the 1990 Budget Agreement — an unmitigated disaster — have undermined Reagan's accomplishments. It's time to reverse course.*

## WILLIAM DANNEMEYER

THE BUSH administration and Democrat majority in Congress have worked together to undermine those Reagan administration economic policies — reducing marginal income tax rates, restraining the growth of federal spending, granting American business firms regulatory relief, and promoting free

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*William Dannemeyer represents California's 39th congressional district. He is a Republican candidate for the unexpired portion of Pete Wilson's Senate term.*

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trade — that brought about the longest sustained economic expansion in American history.

Through the Clear Air Act Amendments of 1990, the new Civil Rights Act, the Americans with Disabilities Act, and expansive interpretations of existing laws such as the Clean Water Act and the Endangered Species Act, the Bush administration has saddled business firms with costly new regulatory mandates that are expected to produce few public

## Why We Need Political Principles

*Governing is not just adjusting interests against one another. America was founded on principle and cannot survive without it.*

## WILLIAM ALLEN

ONCE had a debate with a very famous historian, a man by the name of John Hope Franklin who will surely be remembered in years to come as one of the leading historians of the 20th century. We met in the Smithsonian Institution in Washington, D.C., where we were discussing the legacy of the

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*William Allen is a member of the U.S. Civil Rights Commission. He is a Republican candidate for the unexpired portion of Pete Wilson's Senate term.*

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American Constitution for Afro-Americans. Dr. Franklin had shared his opinion with the assembled audience that there really was nothing worth recovering from the American Constitutional era, so far as the descendants of slaves were concerned — and ultimately that meant all human beings, because anyone who had a genuine human feeling would have to identify with the descendants of the slaves.

The only thing worth harking back to would be