

Proposal to Limit Death-Row Appeals Is Unjust

To the Editor:

A committee headed by former Justice Lewis F. Powell Jr. has suggested that the states should be permitted to impose stringent limitations on the rights of death-row inmates to challenge their convictions, so long as they were granted the right to counsel throughout the proceedings (news story, Sept. 22).

This proposal is disingenuous and should be rejected. To be sure, capital defendants should be entitled to legal assistance at all stages of their cases, but the suggestion they should pay for this right in the coin of procedural restrictions is unjust for two reasons.

First, all prisoners nationwide — in all sorts of cases, not just capital ones — have enjoyed access to state and Federal writs of habeas corpus since the Constitution went into effect. The reason is simple: the Great Writ has always been considered a fundamental guarantee of liberty.

So the burden should be on those who propose limiting the right in some particular subclass of cases to show that the use of the writ is particularly inappropriate in those cases. But the opposite is the fact in the instance of the death penalty. Capital defendants succeed in overturning their convictions or sentences some 40 percent of the time; the compara-

ble figure for non-death-sentenced inmates is under 10 percent.

Second, the proposition that providing counsel will eliminate all but unjustifiable delays is simply contrary to the empirical facts. It is true that without lawyers — and competent ones, which the committee proposal does not insure — defendants cannot make effective use of the legal tools nominally available to them. But even with lawyers, doing so requires time, since persistence is often necessary to ferret out evidence of governmental misconduct.

For example, Randall Dale Adams of Texas, James Richardson of Florida and Ronald Monroe of Louisiana all had lawyers. But in each case it took repeated legal proceedings to establish what the system eventually acknowledged: that there was good reason to doubt their guilt.

No conscientious person, regardless of his or her views on the death penalty, could wish that such prisoners had been executed. But if the recommendations of the Powell committee had been in effect, there is every likelihood that all of them would have been.

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