

DRAFT

February __, 1996

MEMORANDUM TO THE PRESIDENT

FROM:

RE: Habeas Corpus

SUMMARY

On several occasions you have expressed reservations about the provision in the habeas section of the counterterrorism bill that severely restricts the scope of federal court review. The purpose of this memorandum is to identify options for seeking to have that provision amended while at the same remaining true to your frequently-repeated demand for swift passage of the counterterrorism bill.

Analysis of this issue must begin with a frank recognition that, as a practical matter, you are committed to signing any counterterrorism bill that reaches your desk similar to the one already passed by the Senate. Any successful strategy to modify the scope-of-review provisions, therefore, must center around (1) House passage of a counterterrorism bill that is, at least, "conferenceable" on habeas and (2) a conference strategy designed to modify the provision in question.

Soundings on the Hill have identified one avenue that may be available to achieve these objectives. As of now, House Republicans simply do not have the votes within their own caucus to secure passage of the counterterrorism bill. Opponents fall in two general camps: (1) hard-line conservatives (militia protagonists) who would oppose any version of counterterrorism; and (2) a group of about 30-50 Republicans who are committed to withholding their support for the counterterrorism bill unless and until the Speaker schedules a vote on the repeal of the assault weapon ban. Other opponents include a large bloc of democrats and a handful of conservatives (energized by groups like the Gun Owners of America) who are uncomfortable with the habeas provisions.

As we approach the anniversary of the Oklahoma bombing this April, the pressure on Hyde to secure passage of a counterterrorism bill will become overwhelming. In that environment, Hyde may be amenable to modifying or even deleting the habeas provisions to obtain House passage. If that were to occur, the habeas provisions in the Senate bill would at least be

conferenceable. Given the substantial bloc of Senators already opposed to the scope-of-review provisions, there is at least a reasonable possibility that the habeas provisions that emerged from conference would be more in line with your preferences.

This memorandum sets out the background of this issue, including recent developments on the Hill. It then identifies several possible approaches, ranging from doing nothing to a strategy aimed at modifying or deleting the scope-of-review provision. We recommend that we be authorized to take further steps to explore the viability of the latter approach.

I. BACKGROUND

A. The Scope-of-Review Provision.

As you are aware, one aspect of the Senate habeas bill has aroused impassioned opposition within the civil rights community. Virtually everyone agrees that habeas is in need of significant reform. In particular, there is little opposition to reforms that limit the duration and number of habeas proceedings for any given criminal conviction. There is deep concern, however, about a provision that requires federal habeas courts to defer to even concededly erroneous state court findings (the "scope-of-review provision"). The NAACP Legal Defense Fund, for example, has estimated that 89% of the cases in which relief is granted would come out differently under this provision. In a scathing op-ed piece in the New York Times, Anthony Lewis sharply criticized you for failing to oppose this part of the bill. Most recently, four former Attorneys General (including Ben Civiletti and Eliot Richardson) wrote to express their view that the restriction on federal court review is unconstitutional in addition to being bad policy.¹

In response to these concerns, you have written two letters (most recently to the former U.S. Attorneys General) expressing your hope that "the conferees send [you] a bill that shortens the duration and number of habeas reviews [but] preserves the full scope of such review."

2. Developments on the Hill

In early 1995, the House passed the "Contract" version of habeas reform by a vote of 297 to 132. After the Oklahoma

¹ DOJ's Office of Legal Counsel agrees that this provision presents a serious constitutional question. The issue, however, turns on novel and largely unresolved questions of law. Accordingly, OLC's preliminary view is that it cannot opine in any definitive way that the provision is facially unconstitutional.

bombing, the Senate passed a similar version of habeas reform as part of the counterterrorism bill. (The "scope-of-review" provision in the Senate bill is marginally better than the one in House bill.) Prior to passage, Judge Mikva met with Senator Hatch and others to urge deletion of the scope-of-review section. Once it became clear that the administration did not oppose addressing habeas in the context of counterterrorism, any leverage we may have had was lost, and the Republicans declined to make the suggested change. Nonetheless, Senator Biden led a spirited effort to delete the provision on the floor. While unsuccessful, the floor vote on his amendment was surprisingly close (46 to 53).

As you well know, the counterterrorism bill has languished in the House. Late last year, however, Chairman Hyde and Bill Barr (R-Ga.) circulated a revised (and considerably watered down) version of the bill along with a "Dear Colleague" letter. The thrust of the letter was that the bill had been substantially modified to address the concerns of the conservative constituencies who had previously had opposed it. Privately, they let it be known that it would be presented for a floor vote in short order. A matter of days before the scheduled vote, however, Chairman Hyde pulled the bill, delaying consideration indefinitely.

Significantly, the Hyde/Barr bill incorporates the Senate version of habeas reform. With respect to the counterterrorism provisions, the changes are substantial, especially in the area of wiretap authority. While there is nothing inherently offensive about the changes, the bill has been diminished to the point that it could well be viewed as a mere cover sheet for the habeas provisions. DOJ has reviewed Hyde/Barr and reported informally that the Criminal Division is concerned that the bill has been weakened in several important respects. At minimum, there is ample room for roundly criticizing the bill as modified.

Subsequent inquiries have shed some light on why Hyde pulled the bill at the eleventh hour. There are three separate factions who are opposed to counterterrorism legislation: (1) the far right (the same group that pushed the Waco and Ruby Ridge hearings) who likely would oppose any version of such legislation; (2) a bloc of approximately 30-50 Republicans would will not support the bill until Hyde schedules a vote on a repeal of the assault weapon ban; and (3) an odd collection of progressive democrats and second-tier gun groups who are opposed to the habeas provisions in the bill. (The NRA apparently also opposes the bill on these grounds, but has decided not to take a public position on it.) Hyde made the calculation that he either didn't have the votes to secure passage or that he would need to count on too many democrats for support -- thereby leaving many of his colleagues high and dry on the issue.

In recent weeks, the National Association of Attorneys General (energized by Dan Lungren of California) and an Oklahoma Victims group (led by Drew Edmundson, the AG of Oklahoma) have urged the House to pass the habeas reform legislation. Perhaps influenced by these events, last week Senator Hatch identified habeas reform as the "number one crime priority" of this Congress.

In light of these events, as well as other information we have gathered, it seems virtually certain that the House will attempt to pass a counterterrorism bill by the anniversary of the bombing in mid-April. (A floor vote is now scheduled for the week of March 11.) Apparently, Hyde is hoping that further education of conservative members will persuade them that the counterterrorism provisions are now sufficiently narrow to deserve their support. He also has indicated his willingness to schedule a committee vote on a repeal of the assault weapon ban, although he is reportedly not happy about this. Finally, he may be prepared to add other crime-related measures (e.g. "truth in sentencing" provisions) to the bill to earn the support of some members. Despite all of this, House sources suggest some continuing uncertainty about whether Hyde can cobble together the votes he needs. The fact that it is now on the schedule suggests, however, increased confidence that the votes for passage will be there by March.

On the Senate side, there remains a great reservoir of opposition to the scope-of-review provision. Staff for both Senators Cohen and Specter have indicated that their bosses might well be amenable to deletion or modification of the provision. (Less surprisingly, staff for Senators Leahy, Moynihan, and Kennedy have indicated the same.)

3. Development of a Tougher Habeas Bill

Because it may become useful at some point in the debate, we have prepared an alternative habeas bill that in most important respects is even tougher than the Senate bill. Although it deletes the scope-of-review provision, it provides for a considerably swifter and surer post-conviction process than either the Senate or House habeas bill.

In particular: (1) whereas the Republican bills still allow for "successive" petitions in some circumstances, this bill allows only one bite at the apple -- no exceptions; (2) whereas the Republican bill provides for a one-year statute of limitations, this bill would give all prisoners (state and federal) 250 days to file their claims or lose them forever; (3) whereas the Republican bill imposes a deadline for judicial decisions in only a small subset of capital cases, this bill imposes shorter time limits in all capital cases; (4) whereas the unnecessary complexity of the Republican bill creates all sorts

of opportunities for time-consuming satellite litigation (e.g., stay applications, successive petitions, and certificates of probable cause to appeal), this bill provides for a single, quick and final chance to correct significant constitutional errors -- and guarantees that the process will be completed within a very brief period of time.

A bill along these lines has several important pluses. First, by outflanking the Republicans on the key issues of speed and certainty, it makes it considerably harder for them to suggest that you oppose the kind of reform the Oklahoma victims are seeking. (Their press conferences always stress the importance of swift and final resolution of post conviction proceedings, and never (to our knowledge) allude to federalism issues in general or the scope-of-review provision in particular. Second, although groups like the Inc. Fund may have resisted reforms of this kind two years ago, they would now view a bill of this nature as a cause for gratitude. Third, reforms along these lines dovetail completely with the public position you have taken on habeas for many years: a strong commitment to "any reform that would assure dramatically swifter and more efficient resolution of criminal cases while at the same time preserving the historic right to meaningful Federal review." (Letter to Robert Dole, 5/25/95).

II. OPTIONS

A. Do Nothing

Under this option, the administration would simply let events take their natural course. If Chairman Hyde succeeds in securing passage of his version of the counterterrorism bill, which includes the Senate habeas provisions, it would be extremely difficult (and likely impossible) to have them modified in conference. Barring unforeseen developments, you would then have little choice but to sign whatever version of the bill eventually emerged.

If, as appears quite unlikely, the House failed to pass the bill, the issue of habeas reform would become moot, unless and until habeas provisions were reintroduced as a free-standing bill or as part of another, unrelated bill. (Recall that habeas was attached to the debt ceiling legislation you vetoed last December.) Were habeas to come to you in either of those forms, you would have considerably more latitude in insisting on revisions than if it arrives as part of the oft-demanded counterterrorism bill.

Pros and Cons. The principal advantage of a do-nothing approach is that it leaves you out of the debate on this highly charged issue. The principal disadvantages are (1) it likely would result in your signing a bill you have expressed great

reservations about; (2) it would be viewed with disappointment, and perhaps even a sense of betrayal, by democratic constituencies who care deeply about this issue -- some of whom you have corresponded with to express your desire for modification of the scope-of-review provision; and (3) as a practical matter, it would mean the demise of federal habeas, which still operates as the last bulwark of protection against wrongful convictions and executions. (Every year or so a factually innocent, but duly convicted, prisoner is saved from execution by the writ; habeas also has been the vehicle for many of the most fundamental rulings in the area of criminal procedure, e.g., Gideon v. Wainwright.)

B. State Opposition to Scope-of-Review Provision in a SAP But Otherwise Do Nothing.

Under this approach, you would authorize a Statement of Administration Position (SAP) indicating your preference for deletion of the scope-of-review provision, but otherwise let events take their natural course.

Pros and Cons. The advantages and disadvantages of this approach are similar to those for Option A, with one exception. By submitting a SAP, you would deflect some of the criticism from habeas supporters by taking at least one affirmative (albeit, modest) step to effect the change they want.

C. Assist Hyde in Securing Passage of a Counterterrorism Bill in Exchange for an Alternative Approach to Habeas.

Under this approach, it would be made clear to Chairman Hyde that Democrats could deliver the votes he needs to guarantee passage of the counterterrorism bill in exchange for either deletion of the scope-of-review provision or substitution of the alternative habeas bill described above. Simultaneously, we would pursue a Senate strategy designed to delete the scope-of-review provision once the bill reached conference.

Because there are members of both houses who are prepared to take the lead, neither effort (House or Senate) would need to be identified as an administration initiative. Moreover, even if Hyde were initially reluctant, his hand could be forced to some degree by the introduction of a new free-standing habeas bill along the lines of the tougher, leaner approach described above.

Pros and Cons. The principal advantage of this approach is that it represents the one strategy that actually has some prospect of achieving the desired objective: deletion of the scope-of-review provision. Moreover, even if the strategy failed, attempting it would earn the respect and gratitude of those supporters who have felt abandoned on this issue.

The disadvantages of this strategy include the following: (1) it could well fail, especially if Hyde concludes that, even without our help, he will be able to muster the majority he needs to secure passage; and (2) there is some risk the administration would be tagged (albeit incorrectly) with "supporting" a bill that would assist criminal defendants or wavering from its generalized support of the Senate counterterrorism bill. To a significant degree, however, the latter risk would be moderated by support for the alternative bill, which could fairly be described as even tougher on criminals than the Republican bill.

D. Oppose Hyde/Barr as "Counterterrorism Lite."

This approach builds on the reality that the House bill has become so watered down to appease the right that it now serves more as a cover sheet for the habeas provisions than a meaningful counterterrorism bill. Under this approach, you would ask that the Senate counterterrorism provisions be restored in conference. (There would be no need to say anything at all about habeas.) If they were not, you would veto the bill and admonish the Congress to send you a "real" counterterrorism bill that restored the various provisions that were deleted in the course of the debate. Since it appears quite unlikely that there are sufficient votes in the House for a toothier counterterrorism bill, this course of action, as a practical matter, could well result in its demise. As a consequence, the habeas debate would be put off until another day, perhaps in the context of a free-standing bill.

Pros and Cons. While perhaps attractive as a matter of sound policy, this is an extremely risky course. You have called repeatedly for swift enactment of a counterterrorism bill. If you are presented with one -- even a weak one -- anything less than an enthusiastic reception would subject you to charges of inconsistency. As things stand now, the Republicans would be blamed (deservedly) if the counterterrorism bill fails. It is difficult to see any advantage in a scenario that would allow critics to shift the blame back to you.

III. RECOMMENDATION

We recommend that we be authorized to continue to explore Option C. While something of a longshot, it is the only approach that, with relatively minimal political risk, has the potential for achieving your principal objective: enactment of a counterterrorism bill that includes habeas reform of historic proportions but does not eviscerate the writ altogether.

Option A: Do nothing ____

Option B: Submit SAP, but otherwise do nothing ____

Option C: Attempt to induce Hyde and conference
to delete scope-of-review provision _____

Option D: Reject counterterrorism bill on grounds
it has become too weak _____

Let's discuss _____

THE WHITE HOUSE

WASHINGTON

November 6, 1995

MEMORANDUM TO JACK QUINN
COUNSEL TO THE PRESIDENT

FROM: CHRIS CERF *Cpl*
ASSOCIATE COUNSEL TO THE PRESIDENT

RE: Status of Habeas Corpus Legislation

On "Meet the Press" this past Sunday, Senator Dole suggested the possibility of attaching habeas corpus reform to legislation providing for a temporary extension of the debt ceiling. As of this writing, Legislative Affairs is not aware of any concrete evidence that the Republican leadership is moving forward with this idea. Nonetheless, a brief review of the status of habeas legislation may be useful.

A. Reform Proposals

Habeas reform has been a Republican rallying cry for at least a decade, as reflected in the fact that it was one of the items included in the "Contract." In general, the effort to reform habeas has two distinct components. First, critics correctly observe that habeas review simply takes too long. Accordingly, they propose a variety of ways to shorten the duration and limit the number of habeas proceedings. Such provisions include (1) imposing a "one bite at the apple" rule, thereby severely restricting so-called "successive petitions," and (2) adopting a very brief (e.g., nine month) statute of limitations. Second, some critics question the very premise of habeas: the appropriateness of federal court review of state court convictions. This more radical perspective is reflected in various efforts to restrict the scope of review, e.g., by requiring federal habeas courts to defer to even concededly erroneous state court rulings, provided they are at least "reasonable."

There is virtually no political resistance to the first kind of reform, and the President has supported it since his days as governor. In contrast, restrictions on the scope of habeas review inspire extremely powerful opposition in the civil rights community. See, e.g., Anthony Lewis's Editorial, "Mr. Clinton's Betrayal" (attached). According to the NAACP Legal Defense Fund, habeas petitions virtually never would be granted if federal courts were required to defer to state court rulings on such issues as the voluntariness of a confession. On two occasions, most recently in a letter to a supporter, the President has

indicated that he does not support efforts to reform habeas by restricting the scope of review. See attached Decision Memos.

B. Status of Legislation

In early 1995, the House passed a free standing habeas bill that included both kinds of reform. Although several versions of habeas legislation also were floating around the Senate, they went nowhere until the aftermath of Oklahoma bombing. Seizing upon that incident, Senators Dole, Hatch and Specter succeeded in attaching habeas legislation to the Counterterrorism bill.¹ After initially opposing this effort to bundle habeas with counterterrorism, the President eventually acceded to it. As you know, the Senate passed the bill last spring and, despite the President's urgings, it continues to languish in the House.

The Senate bill also includes both kinds of habeas reform. While it was being drafted, the White House made clear in meetings with Senator Hatch and others that we strongly opposed restrictions on the scope of review. Once it became clear that we would not oppose addressing habeas in the context of counterterrorism, any leverage we may have had was lost, and the Republicans declined to make the proposed change. On the floor, Senator Biden led a spirited effort to delete the scope-of-review provisions, which failed by a surprisingly modest margin. Seeing the handwriting on the wall, the White House did not weigh in during the debate.

C. Forthcoming Decisions Related to Habeas

As a practical matter, if the House passes a counterterrorism bill it is doubtful that we will be in a position to modify its habeas provisions. (I should say, however, that a recent note from the President asks whether, even at this juncture, "we can get any changes in habeas" (attached).)

If the Republicans go forward with their threat to attach habeas provisions to debt ceiling legislation, we will be in a considerably more complicated position. On the one hand, we will face the argument that the habeas provisions are the same as those in the Senate Counterterrorism bill, which the President has repeatedly urged Congress to pass without delay. On the other hand, it has always been clear that we have only supported habeas reform as a means of assuring expeditious passage of

¹ Because McVeigh and Nichols were indicted in federal court for federal crimes, the linkage between the Oklahoma incident and most aspects of habeas reform is very attenuated. Undaunted, the Attorney General of Oklahoma, energized by the Attorney General of California, organized the family members of the bombing victims to lobby for habeas reform.

counterterrorism legislation. Moreover, the President has (and should have) serious policy and political reservations about supporting the scope-of-review provisions any new habeas bill would surely contain.

The best way to address this dilemma is to avoid it. We should strongly oppose any effort to lard up debt ceiling legislation with any extraneous issues -- whether habeas reform or the demise of the Commerce Department. Our position is straightforward: The economic implications of failure to raise the ceiling are simply too cataclysmic to make this an appropriate vehicle for such gameplaying. In the event debt ceiling legislation does come to the President's desk with habeas provisions attached, however, the pressure to sign it will be overwhelming.

THE PRESIDENT HAS SEEN
10/27/95

THE WHITE HOUSE

WASHINGTON

October 16, 1995

95 OCT 18 P12:24

MEMORANDUM TO THE PRESIDENT

FROM: ABNER J. MIKVA *conf Mr*
CHRISTOPHER D. CERF *cpe*

RE: Habeas Corpus

Attached for your consideration is a draft response to a letter from David Robertson that contains some highly critical comments about your position on habeas corpus. As Mr. Robertson's comments reflect, this is an issue that has generated very powerful feelings in the civil rights community. Anthony Lewis's tough editorial in the New York Times last summer (also attached) typifies the strength of these views.

There is no dispute among these communities that habeas is in need of significant reform. In particular, there is little opposition to reforms that limit the duration and number of habeas proceedings for any given criminal conviction. They are deeply concerned, however, about a provision that requires federal habeas courts to defer to even concededly erroneous state court findings on such issues as the voluntariness of a confession. The NAACP Legal Defense Fund has estimated that 89% of the cases in which relief was granted over the past few years would have come out differently under this provision. The proposed letter to Robertson would make clear that you do not favor this kind of dramatic curtailment of the scope of habeas review.

As a practical matter, if the House passes the Counterterrorism bill, we will not be in a position to moderate its habeas provisions. If, contrary to your repeated urgings, the bill languishes in the House, you may very well be confronted with a free standing habeas bill some time down the road. (Conceivably, it could also come packaged as a component of an omnibus Republican crime bill). In that event, we urge that you give serious consideration to supporting Senator Biden's and other's efforts to moderate the deference provision described above.

We recommend that you sign the attached letter.

Agree ☒ _____

Disagree _____

Let's Discuss _____

BILL CLINTON

October 27, 1995

Mr. David G. Robertson, Jr.
One Rider Lane
Mill Valley, California 94941

Dear David:

Bob Raymar let me know that you were upset by my position on habeas corpus reform, and I wanted to personally respond to your concerns.

I understand and appreciate your strong views about preserving habeas corpus. Like you, I recognize that habeas corpus has been a cornerstone of our freedoms. At the same time, I have long believed that habeas corpus has been subject to abuse and is badly in need of reform. I am sure you would agree that it makes no sense for courts to take over a decade to review criminal convictions, a phenomenon that occurs frequently under the current system. Such delays justly undermine the public's confidence in a swift -- but fair -- judicial system.

I respect how passionately you feel about this issue. It is not the case, however, that I have "signed legislation that gutted" habeas rights. With my support, the Senate has now passed a counterterrorism bill that includes various habeas reform provisions. The House has yet to take up counterterrorism, despite my repeated urgings. When it does, it is my hope that the conferees will send me a bill that shortens the duration and number of habeas reviews for each criminal conviction. It is my equally strong hope, however, that the bill I receive preserves the full scope of habeas review so that it can continue to serve its historic function as the last protection against wrongful convictions.

In the future, I hope we have more agreements than disagreements. Hillary sends her best, and we hope to see both you and Maggie before too long.

Sincerely,

Bill Clinton

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO THE PRESIDENT

5/23/95

FROM:

ABNER J. MIKVA *ajm*

CHRISTOPHER D. CERR *cce*

RE:

Habeas Corpus Reform

While the Administration is, and should be, a strong proponent of habeas corpus reform, three provisions of the Hatch/Dole bill are unacceptable. Most significantly, Section 704(d) would eviscerate the writ by requiring deference to even concededly erroneous state court rulings (ending 206 years of de novo review.) The NAACP Legal Defense Fund has estimated that 89% of the cases in which relief was granted over the past few years would have come out differently under this provision.

Accepting Hatch/Dole "as is" also would have political consequences among communities we care about. We are informed that all of the following are passionately opposed: The NAACP (Ben Chavis was released from prison years ago on a habeas petition), the ABA, the LDF, the Leadership Conference on Civil Rights, the Urban League, the SCLC, etc. Recognizing political reality, however, the LDF has conveyed that these groups would be deeply grateful for even a modest softening of the bill.

Recommendation: Suggest to Senators Hatch and Dole that if they are prepared to make three small changes, this would be a bipartisan bill that would have the Administration's enthusiastic support. Indeed, if these changes are made, we would go even further, e.g., eliminate successive petitions entirely. The changes we should insist on are as follows:

1. Modify Sec. 704(d) to make clear that (consistent with more than a dozen Supreme Court opinions) federal courts give de novo review to "mixed questions," such as the voluntariness of a confession.

2. Modify or delete Sec. 704(h) to clarify that indigent prisoners under a sentence of death still have a right to appointed counsel in their first habeas application. (Existing law already confers that right.)

3. Modify Sec. 704(e) to provide that a petitioner has a right to an evidentiary hearing only if there was "cause" for failure to develop the facts previously and convincing evidence that "the verdict would have been different" if the facts were proven. The current bill requires proof of actual innocence.

Agree ☒ _____

Disagree _____

Let's Discuss _____

copies to
Lake
Mikva
Griffin

HE PRESIDENT HAS SEEN
10/27/95

THE WHITE HOUSE
WASHINGTON

October 24, 1995

MR. PRESIDENT:

The attached Lake-Mikva-Griffin memo discusses problems with the counterterrorism bill and recommends that we agree to delete two provisions if we can't get them fixed.

Posse Comitatus. Your bill was designed to broaden the military's authority to assist police in the event of an attack using biological or chemical weapons. But the provision in House and Senate bills would do more to restrict existing authorities (re nuclear weapons) than add to new authority. An amendment stating explicitly that the new provision does *not* restrict existing authorities would fix the problem. But if we can't get such an amendment added, Justice recommends deleting the whole provision. The downside is that the posse comitatus provision is strongly associated with your initiative. But in the interest of passing an acceptable overall bill, Tony, Ab and Pat concur in DOJ's view. Leon and George concur.

Agree ☒

Disagree ☐

Discuss ☐

Fundraising. Your bill barred fundraising for terrorist organizations. The Senate version of this provision is unworkable and the House version needs major revision. Once again, Tony, Ab and Pat favor no provision to a flawed one, especially since we can fall back on existing authority under IEEPA (the International Emergency Economic Powers Act). Leon and George concur.

Agree ☒

Disagree ☐

Discuss ☐

Todd Stern

Q: Can we
get any changes
in habeas?
PC

ANTHONY LEWIS

Mr. Clinton's Betrayal

BOSTON

For Bill Clinton's natural supporters, the most painful realization of his Presidency is that he is a man without a bottom line. He may abandon any seeming belief, any principle. You cannot rely on him.

There is a telling example to hand. As the Senate debated a counterterrorism bill last month, Mr. Clinton changed his position on the power of Federal courts to issue writs of habeas corpus. The Senate then approved a provision that may effectively eliminate that power.

The issue may sound legalistic, but habeas corpus has been the great historic remedy for injustice. By the Great Writ, as it is called, Federal courts have set aside the convictions of state prisoners because they were tortured into confessing or convicted by other unconstitutional means.

In recent years conservatives in Congress have attacked the habeas corpus process because it delays the execution of state prisoners on death row. Some prisoners do file frivolous petitions. But in other cases conservative Federal judges have found

habeas corpus reform so long as it preserved "the historic right to meaningful Federal review." The issue should be addressed later, he said, not in the counterterrorism bill.

Then, on June 5, Mr. Clinton appeared on television on CNN's "Larry King Live." Asked about habeas corpus, he said reform "ought to be done in the context of this terrorism legislation."

It was a complete switch from his position of less than two weeks before. And it had the effect of undermining Senate supporters of habeas corpus.

Two days later the Senate approved the Republican measure. The House has also passed stringent restrictions on habeas corpus, so almost certainly there will be legislation putting a drastic crimp on the historic writ.

The Senate bill says that no Federal court may grant habeas corpus to a state prisoner if state courts had decided his or her claim on the merits — unless the state decision was "contrary to, or involved an unreasonable application of" Federal constitutional law as determined by the Supreme Court.

That language seems to mean that Federal judges must overlook even incorrect state rulings on constitutional claims, so long as they are not "unreasonably" incorrect. It is a new and remarkable concept in law: that mere wrongness in a constitutional decision is not to be noticed.

Experts in the field say the provision may effectively eliminate Federal habeas corpus. It signals Federal judges to stay their hands. And what Federal judge will want to say that his state colleagues have been not just wrong but "unreasonable"?

The President explained to Larry King that attaching the habeas corpus provision to the counterterrorism bill would speed proceedings in the prosecutions brought over the Oklahoma bombing. But those are Federal prosecutions, not covered by this bill.

No, the reason for President Clinton's turnabout is clear enough. He thinks there is political mileage in looking tough on crime. Compared with that, the Great Writ is unimportant.

In 1953 Justice Hugo L. Black wrote: "It is never too late for courts in habeas corpus proceedings ... to prevent forfeiture of life or liberty in flagrant defiance of the Constitution." Now, thanks to Bill Clinton and the Republicans in Congress, it may be.

A reversal on habeas corpus.

grave violations of constitutional rights — ones not found in state courts, often because the defendants had such incompetent lawyers.

After the Oklahoma City bombing, Senate Republicans decided to attach a crippling habeas provision to the counterterrorism bill. On May 23 four former Attorneys General, Democrats and Republicans — Benjamin Civiletti, Nicholas deB. Katzenbach, Edward H. Levi and Elliot L. Richardson — wrote President Clinton urging him to oppose it.

"It is vital," they wrote, "to insure that habeas corpus — the means by which all civil liberties are enforced — is not substantively diminished. ... It has a proud history of guarding against injustices born of racial prejudice and intolerance, of saving the innocent from imprisonment or execution and in the process insuring the rights of all law-abiding citizens."

Two days later President Clinton wrote the Senate majority leader, Bob Dole, to say that he favored

A. M. Rosenthal is on vacation.

January __, 1996

Benjamin R. Civiletti, Jr.
Venable, Baetjer & Howard
1800 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Md. 21201

Dear Mr. Civiletti,

Thank you for your thoughtful letter on the constitutional implications of the pending habeas corpus legislation. I have read it with care and asked both the White House Counsel's Office and the Office of Legal Counsel of the Department of Justice to report back to me after they have had an opportunity to review your arguments more fully.

I understand and appreciate your strong views about preserving habeas corpus. Like you, I recognize that the Great Writ has been a cornerstone of our freedoms. At the same time, I have long believed that the right of habeas corpus has been abused and is badly in need of reform. I am sure you would agree that it simply makes no sense for courts to take over a decade to review criminal convictions, a phenomenon that occurs far too often under the current system. Such delays justly undermine the public's confidence in a swift, but fair, judicial system.

The Senate has now passed a counterterrorism bill that includes various habeas reform provisions. The House, however, has yet to take up counterterrorism, despite my repeated urgings. When it does, it is my hope that the conferees will send me a bill that shortens the duration and number of habeas reviews for each criminal conviction. It is my equally strong hope that the bill I receive preserves the plenary scope of habeas review so that it can continue to serve its historic function as the last bulwark of protection against wrongful convictions.

Again, let me assure you that I will give your position the careful consideration it deserves. In the meanwhile, if you would find it useful, please feel free to set up a meeting with my Counsel, Jack Quinn, to discuss these issues further.

Sincerely,

POTUS

date 1/10/96

December 8, 1995

*Per our
discussion*

Ch

95 DEC 22 P12 : 45

The Honorable William J. Clinton
The White House
Washington, D.C. 20500

Dear Mr. President:

The habeas corpus provisions in the Senate terrorism bill, which the House will soon take up, are unconstitutional. Though intended in large part to expedite the death penalty review process, the litigation and constitutional rulings will in fact delay and frustrate the imposition of the death penalty. We strongly urge you to communicate to the Congress your resolve, and your duty under the Constitution, to prevent the enactment of such unconstitutional legislation and the consequent disruption of so critical a part of our criminal punishment system.

The constitutional infirmities reside in three provisions of the legislation: one requiring federal courts to defer to erroneous state court rulings on federal constitutional matters, one imposing time limits which could operate to completely bar any federal habeas corpus review at all, and one preventing the federal courts from hearing the evidence necessary to decide a federal constitutional question. They violate the Habeas Corpus Suspension Clause, the judicial powers of Article III, and due process. None of these provisions appeared in the bill that you and Senator Biden worked out in the last Congress together with representatives of prosecutors' organizations.

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Both of these provisions, by flatly barring federal habeas corpus review under certain circumstances, violate the Constitution's Suspension Clause, which provides: "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in the cases of rebellion or invasion the public safety may require it" (Art. I, §9, cl. 2). Any doubt as to whether this guarantee applies to persons held in state as well as federal custody was removed by the passage of the Fourteenth Amendment and by the amendment's framers' frequent mention of habeas corpus as one of the privileges and immunities so protected.

The preclusion of access to habeas corpus also violates Due Process. A measure is subject to proscription under the due process clause if it "offends some principle of justice so rooted in

the traditions and conscience of our people as to be ranked as fundamental," as viewed by "historical practice." Medina v. California, 112 S.Ct. 2572, 2577 (1992). Independent federal court review of the constitutionality of state criminal judgments has existed since the founding of the Nation, first by writ of error, and since 1867 by writ of habeas corpus. Nothing else is more deeply rooted in America's legal traditions and conscience. There is no case in which "a state court's incorrect legal determination has ever been allowed to stand because it was reasonable," Justice O'Connor found in Wright v. West, 112 S.Ct. 2482, 2497; "We have always held that federal courts, even on habeas, have an independent obligation to say what the law is." Indeed, Alexander Hamilton argued, in *The Federalist* No. 84, that the existence of just two protections — habeas corpus and the prohibition against ex post facto laws — obviated the need to add a Bill of Rights to the Constitution.

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Finally, in prohibiting evidentiary hearings where the constitutional issue raised does not go to guilt or innocence, the legislation again violates Due Process. A violation of constitutional rights cannot be judged in a vacuum. The determination of the facts assumes "an importance fully as great as the validity of the substantive rule of law to be applied." Wingo v. Wedding, 418 U.S. 461, 474 (1974).

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December 8, 1995

Page 3

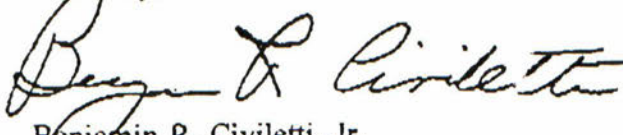
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Congress can either fix the constitutional flaws now, or wait through several years of litigation and confusion before being sent back to the drawing board. Ultimately, it is the public's interest in the prompt and fair disposition of criminal cases which will suffer. The passage of an unconstitutional bill helps no one.

We respectfully urge you, as both President and a former professor of constitutional law, to call upon Congress to remedy these flaws before sending the terrorism bill to your desk. We request an opportunity to meet with you personally to discuss this matter so vital to the future of the Republic and the liberties we all hold dear.

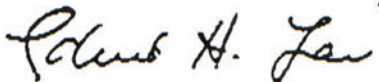
Sincerely,



Benjamin R. Civiletti, Jr.
Venable, Baetjer & Howard
1800 Mercantile Bank & Trust Bldg
2 Hopkins Plaza
Baltimore, MD 21201



Nicholas deB. Katzenbach
906 Great Road
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Edward H. Levi
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Harper West 606
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Elliot L. Richardson
Milbank, Tweed, Hadley & McCloy
1825 I Street, N.W.
Washington, D.C. 20006

BILL CLINTON

October 27, 1995

Mr. David G. Robertson, Jr.
One Rider Lane
Mill Valley, California 94941

Dear David:

Bob Raymar let me know that you were upset by my position on habeas corpus reform, and I wanted to personally respond to your concerns.

I understand and appreciate your strong views about preserving habeas corpus. Like you, I recognize that habeas corpus has been a cornerstone of our freedoms. At the same time, I have long believed that habeas corpus has been subject to abuse and is badly in need of reform. I am sure you would agree that it makes no sense for courts to take over a decade to review criminal convictions, a phenomenon that occurs frequently under the current system. Such delays justly undermine the public's confidence in a swift -- but fair -- judicial system.

I respect how passionately you feel about this issue. It is not the case, however, that I have "signed legislation that gutted" habeas rights. With my support, the Senate has now passed a counterterrorism bill that includes various habeas reform provisions. The House has yet to take up counterterrorism, despite my repeated urgings. When it does, it is my hope that the conferees will send me a bill that shortens the duration and number of habeas reviews for each criminal conviction. It is my equally strong hope, however, that the bill I receive preserves the full scope of habeas review so that it can continue to serve its historic function as the last protection against wrongful convictions.

In the future, I hope we have more agreements than disagreements. Hillary sends her best, and we hope to see both you and Maggie before too long.

Sincerely,

Bill Clinton

THE WHITE HOUSE

WASHINGTON

November 7, 1995

"unreasonable
application of...
law"

MEMORANDUM TO LEON PANETTA
HAROLD ICKES

FROM:

JACK QUINN *Jm*
CHRIS CERF *ine*

RE:

Status of Habeas Corpus Legislation

On "Meet the Press" this past Sunday, Senator Dole suggested the possibility of attaching habeas corpus reform to legislation providing for a temporary extension of the debt ceiling. A brief review of the status of habeas legislation therefore may be useful.

In sum, the President is committed to supporting a version of habeas reform in the specific context of the counterterrorism bill. In one important respect, however, that bill goes further than we believe the President ideally would like. In particular, while he has long supported significant restrictions on the number and duration of habeas proceedings, he does not favor the provision in the Senate counterterrorism bill that severely restricts the scope of habeas review.

If habeas reform is presented outside of the context of the counterterrorism bill, and is thus not essential to gaining enactment of that legislation, we would hope that the President will feel free to oppose this kind of restrictive limitation. Given our general support of the counterterrorism bill, it admittedly would be somewhat awkward to oppose the precise version of habeas reform currently attached to the bill. That path, however, should remain open to the President. Our explanation would simply be that we never said that the broader version is the best version of reform.

A. Reform Proposals

Habeas reform has been a Republican rallying cry for at least a decade, as reflected in the fact that it was one of the items included in the "Contract." In general, the effort to reform habeas has two distinct components. First, critics correctly observe that habeas review simply takes too long. Accordingly, they propose a variety of ways to shorten the duration and limit the number of habeas proceedings. Such provisions include (1) imposing a "one bite at the apple" rule, thereby severely restricting so-called "successive petitions," and (2) adopting a very brief (e.g., nine month) statute of

limitations. Second, some critics question the very premise of habeas: the appropriateness of federal court review of state court convictions. This more radical perspective is reflected in various efforts to restrict the scope of review, e.g., by requiring federal habeas courts to defer to even concededly erroneous state court rulings, provided they are at least "reasonable."

There is virtually no political resistance to the first kind of reform, and the President has supported it since his days as governor. In contrast, restrictions on the scope of habeas review inspire extremely powerful opposition in the civil rights community. See, e.g., Anthony Lewis's Editorial, "Mr. Clinton's Betrayal" (attached). According to the NAACP Legal Defense Fund, habeas petitions virtually never would be granted if federal courts were required to defer to state court rulings on such issues as the voluntariness of a confession. On two occasions, most recently in a letter to a supporter, the President has indicated that he does not support efforts to reform habeas by restricting the scope of review. See attached Decision Memos.

B. Status of Legislation

In early 1995, the House passed a free standing habeas bill that included both kinds of reform. Although several versions of habeas legislation also were floating around the Senate, they went nowhere until the aftermath of Oklahoma bombing. Seizing upon that incident, Senators Dole, Hatch and Specter succeeded in attaching habeas legislation to the counterterrorism bill.¹ After initially opposing this effort to bundle habeas with counterterrorism, the President eventually acceded to it. As you know, the Senate passed the bill last spring and, despite the President's urgings, it continues to languish in the House.

The Senate bill also includes both kinds of habeas reform. While it was being drafted, the White House made clear in meetings with Senator Hatch and others that we strongly opposed restrictions on the scope of review. Once it became clear that we would not oppose addressing habeas in the context of counterterrorism, any leverage we may have had was lost, and the Republicans declined to make the proposed change. On the floor, Senator Biden led a spirited effort to delete the scope-of-review provisions, which failed by a surprisingly modest margin.

¹ Because McVeigh and Nichols were indicted in federal court for federal crimes, the linkage between the Oklahoma incident and most aspects of habeas reform is very attenuated. Undaunted, the Attorney General of Oklahoma, energized by the Attorney General of California, organized the family members of the bombing victims to lobby for habeas reform.

Seeing the handwriting on the wall, the White House did not weigh in during the debate.

C. Forthcoming Decisions Related to Habeas

As a practical matter, if the House passes a counterterrorism bill it is doubtful that we will be in a position to modify its habeas provisions. (However, a recent note from the President asks whether, even at this juncture, "we can get any changes in habeas" (attached).)

If the Republicans go forward with their threat to attach habeas provisions to debt ceiling legislation, we will be in a considerably more complicated position. On the one hand, we will face the argument that the habeas provisions are the same as those in the Senate counterterrorism bill, which the President has repeatedly urged Congress to pass without delay. On the other hand, it has always been clear that we have only supported habeas reform as a means of assuring expeditious passage of counterterrorism legislation. Moreover, the President has (and should have) serious policy and political reservations about supporting the scope-of-review provisions any new habeas bill would surely contain.

The best way to address this dilemma may be to avoid it. We assume that we will strongly oppose any effort to lard up debt ceiling legislation with extraneous issues -- whether habeas reform or the elimination of the Commerce Department. Our position is straightforward: The economic implications of failure to raise the ceiling are simply too cataclysmic to make this an appropriate vehicle for such gameplaying. If, nonetheless, Congress continues to push for inclusion of habeas reform as part of debt-ceiling legislation, the President should make clear that, outside of the context of counterterrorism, there is no "deal" on habeas reform and he would oppose any habeas amendment that contains restrictive "scope of review" provisions.

10/27/95

THE WHITE HOUSE

WASHINGTON

October 16, 1995

95 OCT 18 P12:24

MEMORANDUM TO THE PRESIDENT

FROM: ABNER J. MIKVA *CAF mr*
CHRISTOPHER D. CERF *cpe*

RE: Habeas Corpus

Attached for your consideration is a draft response to a letter from David Robertson that contains some highly critical comments about your position on habeas corpus. As Mr. Robertson's comments reflect, this is an issue that has generated very powerful feelings in the civil rights community. Anthony Lewis's tough editorial in the New York Times last summer (also attached) typifies the strength of these views.

There is no dispute among these communities that habeas is in need of significant reform. In particular, there is little opposition to reforms that limit the duration and number of habeas proceedings for any given criminal conviction. They are deeply concerned, however, about a provision that requires federal habeas courts to defer to even concededly erroneous state court findings on such issues as the voluntariness of a confession. The NAACP Legal Defense Fund has estimated that 89% of the cases in which relief was granted over the past few years would have come out differently under this provision. The proposed letter to Robertson would make clear that you do not favor this kind of dramatic curtailment of the scope of habeas review.

As a practical matter, if the House passes the Counterterrorism bill, we will not be in a position to moderate its habeas provisions. If, contrary to your repeated urgings, the bill languishes in the House, you may very well be confronted with a free standing habeas bill some time down the road. (Conceivably, it could also come packaged as a component of an omnibus Republican crime bill). In that event, we urge that you give serious consideration to supporting Senator Biden's and other's efforts to moderate the deference provision described above.

We recommend that you sign the attached letter.

Agree ☒ _____

Disagree _____

Let's Discuss _____

BILL CLINTON

October 27, 1995

Mr. David G. Robertson, Jr.
One Rider Lane
Mill Valley, California 94941

Dear David:

Bob Raymar let me know that you were upset by my position on habeas corpus reform, and I wanted to personally respond to your concerns.

I understand and appreciate your strong views about preserving habeas corpus. Like you, I recognize that habeas corpus has been a cornerstone of our freedoms. At the same time, I have long believed that habeas corpus has been subject to abuse and is badly in need of reform. I am sure you would agree that it makes no sense for courts to take over a decade to review criminal convictions, a phenomenon that occurs frequently under the current system. Such delays justly undermine the public's confidence in a swift -- but fair -- judicial system.

I respect how passionately you feel about this issue. It is not the case, however, that I have "signed legislation that gutted" habeas rights. With my support, the Senate has now passed a counterterrorism bill that includes various habeas reform provisions. The House has yet to take up counterterrorism, despite my repeated urgings. When it does, it is my hope that the conferees will send me a bill that shortens the duration and number of habeas reviews for each criminal conviction. It is my equally strong hope, however, that the bill I receive preserves the full scope of habeas review so that it can continue to serve its historic function as the last protection against wrongful convictions.

In the future, I hope we have more agreements than disagreements. Hillary sends her best, and we hope to see both you and Maggie before too long.

Sincerely,

Bill Clinton

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO THE PRESIDENT

5/23/95

FROM:

ABNER J. MIKVA *ajm*
CHRISTOPHER D. CERF *cd*

RE:

Habeas Corpus Reform

While the Administration is, and should be, a strong proponent of habeas corpus reform, three provisions of the Hatch/Dole bill are unacceptable. Most significantly, section 704(d) would eviscerate the writ by requiring deference to even concededly erroneous state court rulings (ending 206 years of novo review.) The NAACP Legal Defense Fund has estimated that 89% of the cases in which relief was granted over the past few years would have come out differently under this provision.

Accepting Hatch/Dole "as is" also would have political consequences among communities we care about. We are informed that all of the following are passionately opposed: The NAACP (Ben Chavis was released from prison years ago on a habeas petition), the ABA, the LDF, the Leadership Conference on Civil Rights, the Urban League, the SCLC, etc. Recognizing political reality, however, the LDF has conveyed that these groups would deeply grateful for even a modest softening of the bill.

Recommendation: Suggest to Senators Hatch and Dole that if they are prepared to make three small changes, this would be a bipartisan bill that would have the Administration's enthusiastic support. Indeed, if these changes are made, we would go even further, e.g., eliminate successive petitions entirely. The changes we should insist on are as follows:

1. Modify Sec. 704(d) to make clear that (consistent with more than a dozen Supreme Court opinions) federal courts give novo review to "mixed questions," such as the voluntariness of confession.

2. Modify or delete Sec. 704(h) to clarify that indigent prisoners under a sentence of death still have a right to appointed counsel in their first habeas application. (Existing law already confers that right.)

3. Modify Sec. 704(e) to provide that a petitioner has a right to an evidentiary hearing only if there was "cause" for failure to develop the facts previously and convincing evidence that "the verdict would have been different" if the facts were proven. The current bill requires proof of actual innocence.

Agree ☒ _____

Disagree _____

Let's Discuss _____

copies to
Lake
Mikva &
Griffin &

HE PRESIDENT HAS SEEN
10/27/95

THE WHITE HOUSE
WASHINGTON

October 24, 1995

MR. PRESIDENT:

The attached Lake-Mikva-Griffin memo discusses problems with the counterterrorism bill and recommends that we agree to delete two provisions if we can't get them fixed.

Posse Comitatus. Your bill was designed to broaden the military's authority to assist police in the event of an attack using biological or chemical weapons. But the provision in House and Senate bills would do more to restrict existing authorities (re nuclear weapons) than add to new authority. An amendment stating explicitly that the new provision does *not* restrict existing authorities would fix the problem. But if we can't get such an amendment added, Justice recommends deleting the whole provision. The downside is that the posse comitatus provision is strongly associated with your initiative. But in the interest of passing an acceptable overall bill, Tony, Ab and Pat concur in DOJ's view. Leon and George concur.

Agree ☒

Disagree ☐

Discuss ☐

Fundraising. Your bill barred fundraising for terrorist organizations. The Senate version of this provision is unworkable and the House version needs major revision. Once again, Tony, Ab and Pat favor no provision to a flawed one, especially since we can fall back on existing authority under IEEPA (the International Emergency Economic Powers Act). Leon and George concur.

Agree ☒

Disagree ☐

Discuss ☐

Todd Stern

Q: Can we
get any changes
in values?
WFS

ANTHONY LEWIS

Mr. Clinton's Betrayal

BOSTON

For Bill Clinton's natural supporters, the most painful realization of his Presidency is that he is a man without a bottom line. He may abandon any seeming belief, any principle. You cannot rely on him.

There is a telling example to hand. As the Senate debated a counterterrorism bill last month, Mr. Clinton changed his position on the power of Federal courts to issue writs of habeas corpus. The Senate then approved a provision that may effectively eliminate that power.

The issue may sound legalistic, but habeas corpus has been the great historic remedy for injustice. By the Great Writ, as it is called, Federal courts have set aside the convictions of state prisoners because they were tortured into confessing or convicted by other unconstitutional means.

In recent years conservatives in Congress have attacked the habeas corpus process because it delays the execution of state prisoners on death row. Some prisoners do file frivolous petitions. But in other cases conservative Federal judges have found

habeas corpus reform so long as it preserved "the historic right to meaningful Federal review." The issue should be addressed later, he said, not in the counterterrorism bill.

Then, on June 5, Mr. Clinton appeared on television on CNN's "Larry King Live." Asked about habeas corpus, he said reform "ought to be done in the context of this terrorism legislation."

It was a complete switch from his position of less than two weeks before. And it had the effect of undermining Senate supporters of habeas corpus.

Two days later the Senate approved the Republican measure. The House has also passed stringent restrictions on habeas corpus, so almost certainly there will be legislation putting a drastic crimp on the historic writ.

The Senate bill says that no Federal court may grant habeas corpus to a state prisoner if state courts had decided his or her claim on the merits — unless the state decision was "contrary to, or involved an unreasonable application of" Federal constitutional law as determined by the Supreme Court.

That language seems to mean that Federal judges must overlook even incorrect state rulings on constitutional claims, so long as they are not "unreasonably" incorrect. It is a new and remarkable concept in law: that mere wrongness in a constitutional decision is not to be noticed.

Experts in the field say the provision may effectively eliminate Federal habeas corpus. It signals Federal judges to stay their hands. And what Federal judge will want to say that his state colleagues have been not just wrong but "unreasonable"?

The President explained to Larry King that attaching the habeas corpus provision to the counterterrorism bill would speed proceedings in the prosecutions brought over the Oklahoma bombing. But those are Federal prosecutions, not covered by this bill.

No, the reason for President Clinton's turnabout is clear enough. He thinks there is political mileage in looking tough on crime. Compared with that, the Great Writ is unimportant.

In 1953 Justice Hugo L. Black wrote: "It is never too late for courts in habeas corpus proceedings ... to prevent forfeiture of life or liberty in flagrant defiance of the Constitution." Now, thanks to Bill Clinton and the Republicans in Congress, it may be.

A reversal on habeas corpus.

grave violations of constitutional rights — ones not found in state courts, often because the defendants had such incompetent lawyers.

After the Oklahoma City bombing, Senate Republicans decided to attach a crippling habeas provision to the counterterrorism bill. On May 23 four former Attorneys General, Democrats and Republicans — Benjamin Civiletti, Nicholas deB. Katzenbach, Edward H. Levi and Elliot L. Richardson — wrote President Clinton urging him to oppose it.

"It is vital," they wrote, "to insure that habeas corpus — the means by which all civil liberties are enforced — is not substantively diminished. ... It has a proud history of guarding against injustices born of racial prejudice and intolerance, of saving the innocent from imprisonment or execution and in the process insuring the rights of all law-abiding citizens."

Two days later President Clinton wrote the Senate majority leader, Bob Dole, to say that he favored

A. M. Rosenthal is on vacation.

unreasonable application of...
law
refers to mixed
Q's of law & fact
by search &
seizure, 171.
etc.

December 8, 1995

The Honorable William J. Clinton
The White House
Washington, D.C. 20500

TO: Todd Stern
From: Chas. C. ...

FYI

95 DEC 11 P 3:01

Dear Mr. President:

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December 8, 1995

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December 8, 1995

Page 3

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Congress can either fix the constitutional flaws now, or wait through several years of litigation and confusion before being sent back to the drawing board. Ultimately, it is the public's interest in the prompt and fair disposition of criminal cases which will suffer. The passage of an unconstitutional bill helps no one.

We respectfully urge you, as both President and a former professor of constitutional law, to call upon Congress to remedy these flaws before sending the terrorism bill to your desk. We request an opportunity to meet with you personally to discuss this matter so vital to the future of the Republic and the liberties we all hold dear.

Sincerely,



Benjamin R. Civiletti, Jr.
Venable, Baetjer & Howard
1800 Mercantile Bank & Trust Bldg.
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Nicholas deB. Katzenbach
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Edward H. Levi
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Elliot L. Richardson
Milbank, Tweed, Hadley & McCloy
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Washington, D.C. 20006

EMERGENCY COMMITTEE TO SAVE HABEAS CORPUS

Chairs

BENJAMIN CIVILETTI, FORMER ATTORNEY GENERAL OF THE UNITED STATES
NICHOLAS DeB. KATZENBACH, FORMER ATTORNEY GENERAL OF THE UNITED STATES
EDWARD H. LEVI, FORMER ATTORNEY GENERAL OF THE UNITED STATES
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Chris - I work with Julie Clark and NCADA. This is cc'd
to you at the suggestion of Seth Waxman in Jamie