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Raised Bill No. 5502 - An Act Concerning Habeas Corpus Reform

Judiciary Committee Public Hearing - March 22, 2010

On March 17th, 2010 the habeas court, (Fuger, J.) ruled that two Connecticut men, Ronald Taylor and George Gould, were actually innocent of the crime for which they had been imprisoned in 1993. Both had been sentenced to 80 year terms and had been incarcerated for 18 years. They lost their direct appeals in 1997. Each man had filed an earlier habeas petition. If Raised Bill 5502 had been law these men would not have been able to bring the new evidence showing their innocence into the habeas court (or any other court). In his memorandum of decision, Judge Fuger stated that:

“ . . . government in a civilized society must always be accountable for an individual’s imprisonment, if the imprisonment does not conform to the fundamental requirements of the law, the individual is entitled to immediate release.”

He further stated the following citing Moore v. Dempsey, 261 U.S. 86 (1923):

“the scope of the writ has been adjusted to meet changed conceptions of the kind of criminal proceedings so fundamentally defective as to make imprisonment under them unacceptable”

Despite diligent investigation and representation by prior defense attorneys in this case, new evidence proving Gould and Taylor’s innocence could not be unearthed until years after their convictions. In addition, the evidence showing that the key witness committed perjury would have been deemed merely impeachment evidence and insufficient to be granted a hearing. Such impeachment of trial evidence to get to the truth was essential to demonstrating that Taylor and Gould were actually innocent. Under the proposed bill the court could have refused to hear their claim of actual innocence even though it was based on newly discovered evidence. In actual innocence cases proof of an exception to the statute of limitations should require that the court hear the case, not provide that the court *may* do so.

The proposed legislation assumes that the filing of multiple habeas petitions is the norm, and that the existing tools available to the court are inadequate to deal with such abusive process. Indeed, the Chief State's Attorney, the proponent of this bill, has appeared on multiple occasions before this Committee, stating that successive petitions are a major problem for his Office and the court system. It is imperative that the Chief State's Attorney, define successive petition and accurately indicate the numbers of petitions that he is referring to as problematic.

In fact, the experience of the Public Defender's Habeas Corpus Unit is the opposite. The number of inmates filing multiple petitions is relatively low. One inmate may file multiple habeas petitions of varying kinds. Conditions claims (for instance a claim that the conditions of an inmate's confinement are unconstitutional cruel and unusual punishment), time calculation claims, and ineffective assistance claims, are all considered separately. Indeed, the Judicial Branch does not allow petitioners to combine time claims with ineffective assistance of counsel claims. They must be filed separately. Also, the Chief State's Attorney has indicated that he is counting habeas claims that allege ineffective assistance of the habeas lawyer as a successive claim. The Connecticut Supreme Court, on the other hand, has ruled that they are not successive petitions because the claim is not the same as that raised in the earlier habeas. In addition the claim could not have been raised in the earlier habeas.¹

Habeas courts and prosecutors can readily deal with the relatively few repeat filings using the tools already available to them. Those tools include:

- **Abuse of the Writ**

Abuse of the writ is an equitable doctrine that empowers the judge to refuse to hear (or even docket) a petition on the ground that the inmate is abusing the system. This tool has been used to prevent an inmate from filing any further petitions or to dismiss an existing petition. Abuse of the writ can be based on an inmate filing many petitions, or can arise when an inmate could have raised a claim in the earlier habeas, but intentionally withheld the claim in order to get a second hearing.² The abuse of the writ doctrine has also been used prospectively. The Court has ruled that any future petitions from one particular inmate would be an abuse of the writ and could not be filed without the Court express permission.³

- **Laches**

Laches is an equitable doctrine barring delayed claims where the Commissioner of Corrections (or other person holding the petitioner) is prejudiced by the delay. This tool has been used to bar consideration of the inmate's claims. Laches applies where there is both unreasonable delay and prejudice to the Commissioner's ability to defend the habeas case. The State has successfully used this tool to bar consideration of an inmate's claims.⁴

- ***Res judicata* and Collateral Estoppel**

Res judicata and collateral estoppels are legal doctrines that bar a person from relitigating a claim that was already heard and decided by the Court. The doctrine of *res judicata* ordinarily bars not only any claim that was actually litigated and decided, but also any claim that could have been raised in the earlier case. Collateral estoppel applies to and bars litigation of a claim that has actually been litigated and decided, but also bars litigation of facts that have previously been decided. The Connecticut Supreme Court has ruled that *res judicata* applies in habeas cases, but only to claims that were actually raised and decided in the earlier litigation. This ruling was based on the common law history of the writ of habeas corpus and the special place that the writ of habeas corpus holds in history, and in the legal system. Despite this limitation *res judicata* is a tool that has been used successfully to bar consideration of repetitive claims.⁵

- **Dismissal of Successive Petitions**

Connecticut Practice Book §23-29 (3) authorizes the court to dismiss a case *at any time* on its own motion (or the motion of the Commissioner of Correction) if the petition presents the same ground as a prior petition that was previously denied, unless the later petition states new facts or offers new evidence not available at the time of the prior petition. This provision has been invoked by the Court and successfully raised by the Commissioner to bar consideration of the inmate's claims.⁶

- **Motion for Injunction**

The State has successfully moved the habeas court to grant a permanent injunction barring a petitioner from filing any further petitions. An injunction can be entered where a party seeking injunctive relief has the burden of alleging and proving irreparable harm and lack of an adequate remedy at law.⁷

All of these tools are available to deal with repeat petitions. As a result, they render the proposed bill unnecessary.

Claims can be made that the proposals included in Raised Bill 5502 are unconstitutional under both Article first, §10 and §12¹ of the Connecticut Constitution. Section 10 of the Connecticut Constitution, which is known as the "Open Courts Provision," provides:

"All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

This constitutional provision protects all rights and remedies that existed when the Connecticut Constitution was adopted in 1818. The "Open Courts Provision" guarantees that

¹ "The privileges of the writ of habeas corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety may require it; nor in any case, but by the legislature."

the legislature cannot abolish those rights and remedies, and may only enact statutory substitutes that are reasonable in that they preserve individuals' right to seek redress. If a statutory procedure limits the remedy unreasonably (such as barring some people from bringing their claims to court) that procedure violates the right to redress that is part of the open courts provision.⁸

Section Two of the proposed bill seeks to eliminate the common law *writ of error coram nobis*, and substitute the statutory procedure created by the bill. This proposed statutory procedure does not provide an adequate substitute for the writ of error *coram nobis*. *Coram nobis* is available as a remedy even if a person is not held in custody.⁹ This proposed statutory procedure would eliminate the right of anyone who is not incarcerated to seek redress via *coram nobis*, yet provides no substitute remedy. This is precisely the type of situation that the "Open Courts Provision" was intended to prevent.

Article first, Section 12 of the Connecticut Constitution, which is known as the "Non-Suspension Clause" provides:

"The privileges of the writ of habeas corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety may require it; nor in any case, but by the legislature."

This provision applies to restrictions on the use of the writ of habeas corpus and not just to a wholesale suspension of the writ resulting from legislative action. The Non-Suspension Clause requires that any statutory substitute for the writ of habeas corpus must be an adequate and effective substitute for the common law writ, and allow petitioners the same access to the court as the common law remedy. If a statutory procedure limits habeas so that some people who would have had access before no longer have access, that procedure is a suspension of the writ and is unconstitutional for that reason. If a statute is unconstitutional as a suspension of the writ, the petitioner has the right to use the common law writ. This is exactly what the United States Supreme Court held in the case of Guantanamo detainees whose access to the federal statutory substitute¹⁰ for the writ of habeas corpus was restricted by the Detainees Treatment Act (DTA). The United States Supreme Court held that the DTA was an unconstitutional suspension of the writ of habeas corpus because it barred the detainees from having their claims heard by a court. The Court ruled that detainees were entitled to use the broad common-law writ of habeas corpus because the DTA's provisions were too restrictive.¹¹

If the proposed bill were enacted it would create more habeas litigation and would prevent the court from hearing legitimate claims from people such as Mssrs. Taylor and Gould. The Office of the Chief Public Defender opposes Raised Bill 5502 for those and the following reasons:

Sections One & Two - The Office of the Chief Public Defender opposes Sections One & Two which would establish a statutory substitute for the writ of habeas corpus. Because of the extreme restrictions on the statutory remedy, the statutory substitute is likely to be held unconstitutional. The proposed bill certainly will engender extensive litigation as individuals turned away from the courthouse door seek to litigate the validity, scope, and meaning of the legislation.

Section Three - The Office of the Chief Public Defender opposes **Section Three** of the proposed bill. This section imposes a number of restrictions that would render the statutory procedures an inadequate substitute for the writ of habeas corpus. Under this section **wrongly convicted innocent people such as Taylor, Gould, Ireland, and Roman would not be allowed into court to demonstrate their innocence.** This provision would spawn additional litigation as inmates excluded under the statutory procedure ask the courts to determine whether the common law writ of habeas corpus is available to them because the statutory procedures are an inadequate substitute. Thus the proposed statutory limitations are at risk for being ruled an inadequate substitute, and thus ineffective in limiting the number of petitions or the court's ability to hear them.

Section Three (a) would institute a broad form of *res judicata* which was unknown at common law, and has been rejected by the United States and Connecticut Supreme Courts as inconsistent with the essence of the writ of habeas corpus. The United States Supreme Court, in discussing the common law writ of habeas corpus, stated, "Conventional notions of finality of litigation have no place where life or liberty is at stake and the infringement of constitutional rights is alleged. . . . The inapplicability of *res judicata* to habeas, then, is inherent in the very role and function of the writ." Sanders v. United States, 373 U.S. 1, 8 (1962). The Connecticut Supreme Court has acknowledged "the common-law principle that the doctrines of *res judicata* and collateral estoppel, claim preclusion and issue preclusion, respectively, are ordinarily inapplicable in the habeas corpus context." James L., 245 Conn. 132, 142, n. 11 (1998).

In In re Ross, 272 Conn. 653 (2005), the Court reiterated that the sweeping doctrine of *res judicata* and "notions of finality of litigation [upon which *res judicata* is based] have no place where . . . the infringement of constitutional rights is alleged." Ross, 272 Conn. at 698-99 (ellipses original). The Court stated, "Unique policy considerations must be taken into account in applying the doctrine of *res judicata* to a constitutional claim raised by a habeas petitioner. . . . Foremost among those considerations is the interest in making certain that no one is deprived of liberty in violation of his or her constitutional rights." In re Ross, 272 Conn. at 662 (ellipses original), quoting Thorpe v. Commissioner of Correction, 73 Conn. App. 773, 779 n.7, 809 A.2d 1126 (2002). In light of the fact that the traditional form of *res judicata* "blockades unexplored paths that may lead to truth" by barring litigation of claims that could have been raised earlier but were not, State v. Ellis, 197 Conn. 436, 466, n. 23 (1985), the Ross Court concluded that a limited bar - which precluded repeated hearings on claim that had actually been litigated and decided, was not inconsistent with the role and purpose of the writ. Id. The Court thus "limit[ed] the application of the doctrine of *res judicata* . . . to claims that actually have been raised and litigated in an earlier proceeding." Id. The Ross Court expressly drew a distinction between habeas petitions alleging "the infringement of constitutional rights," such as that at issue in James L., and those not claims a violation of fundamental rights. Ross, 272 Conn. at 669.

Section Three (a) imposes a bar on litigation even if the petitioner did not have a full and fair opportunity to litigate the claim in the earlier proceeding. Such a fair opportunity to litigate is required under traditional notions of *res judicata*. As the Supreme Court reiterated in Willard v. Travelers Ins. Co., 247 Conn. 331, 338 (1998), "The requirement of full and fair litigation

ensures fairness, which is a 'crowning consideration' in collateral estoppel cases." See Aetna Casualty & Surety Co. v. Jones, 220 Conn. 285, 306 (1991).

The traditional form of *res judicata* bars litigation of claims that were litigated and decided, as well as claims that could have been raised in the earlier proceedings. It is this broad bar that the state proposes. Actually, the state is proposing a bar that is even more extensive than the traditional form of *res judicata*. *Res judicata* bars relitigation if a claim had been decided on the merits. Section Three proposes that a claim should be barred if it was never decided on the merits. The Connecticut Supreme Court already has rejected that suggestion. Williard, 247 Conn. at 339 n. 9.

Section Three also bars (a) consideration of a claim that has never been heard. The habeas court would be barred from hearing the claim described in James L., supra, even though it had never been heard. Section Three bars the Court from considering a claim that could have been raised in a previous habeas corpus petition "challenging the same sentence or commitment." This provision would restrict the writ of habeas corpus to 1 petition per confinement, absent extraordinary circumstances. This is strictly contrary to the common law writ of habeas corpus, which did not foreclose multiple applications challenging the same confinement.

The proposal that the habeas court be prohibited from hearing a claim of a constitutional violation based upon an earlier procedural ruling would preclude a petitioner from obtaining even one judicial review of a claim. For example, if a prosecutor failed to disclose exculpatory evidence unknown to a criminal defendant (not from bad faith but because a police officer inadvertently failed to share it with the prosecutor), and the defendant, on appeal, tried to raise a constitutional challenge to his conviction based upon that evidence, but that Court concluded that the record on appeal did not support the claim because it did not include all of the circumstances surrounding the claim, the petitioner would be barred from presenting the claim, with the necessary evidence of the surrounding circumstances, in the habeas court. This is not only inconsistent with Supreme Court precedent;¹² it flies in the face of the fundamental role of the writ of habeas corpus "[T]he proper time" to [bring "off-the-record conduct to the attention of the court"] "is in a collateral evidentiary proceeding" not on direct appeal. State v. Colton, 234 Conn. 683, 697 (1995). The Supreme Court has already determined that policy considerations require that issues dependent on off the record facts be considered at an evidentiary hearing in a collateral proceeding. State v. Rivera, 196 Conn. 567, 571 (1985); State v. Leecan, 198 Conn. 517 (1986).

Although Section Three (b) (1) initially appears to codify existing caselaw concerning the defense of cause and prejudice available to Respondents, it makes significant changes to the doctrine, enlarging its scope in a manner inconsistent with existing law and with the role of the writ. First Section Three (a) creates a presumption of procedural default where currently it is the Respondent's burden to its defense that a default occurred.

Section Three presents a definition of good cause substantially more restrictive than that now applicable in connection with the common law writ of habeas corpus. Current law permits a court to determine whether good cause has been shown, and establishes that a factor external to the defense is one form of good cause, as is ineffective assistance of counsel. The state's

proposal would limit good cause to one of these circumstances, but would narrow the scope of cause to exclude certain forms of ineffective assistance of counsel.

The proposed bill would exclude cases where the attorney who handled the first habeas case rendered ineffective assistance of counsel under the extremely strict standard of Strickland v. Washington, 466 U.S. 668 (1984), causing the inmate to lose a claim that (with reasonably competent counsel) he would have won. Chief State's Attorney Kevin Kane has asserted that numerous such petitions are filed. In fact, of 362 new habeas cases opened by the Public Defender's Habeas Corpus Unit between January 1, 2009 and January 1, 2010 only 29 (8%) raised a claim of ineffective assistance of prior habeas counsel.

Section Three (b) (1) proposes a new definition for the 'prejudice' required to excuse a procedural default under 'cause and prejudice.' The proposal would limit prejudice to a showing that the failure to raise the claim at an earlier time led to a conviction "so infected by error that it violates due process." Currently a showing of a violation of a constitutional right other than due process will also satisfy that prejudice requirement. It is unclear why one constitutional right should be elevated over others, such as double jeopardy.

Section Three (b) (1) prohibits a court from hearing a substantive claim unless and until the petitioner "demonstrates" cause and prejudice (which will require an evidentiary hearing). Only after such a hearing and a favorable decision will the court be permitted to hold a hearing on the merits of the claim. By contrast, under (b) (2) the court may hear the substantive claim if a petitioner alleges newly discovered evidence. This requirement of two hearings is wasteful and unnecessary. Currently these issues are addressed at a single hearing. The wording of Section Three, providing that no court may decide the claim if there has been a procedural default, would make a single hearing improper.

Section Three (a) seeks to eliminate the discretion of the Respondent (Commissioner of Correction or Commissioner of Mental Health and Addiction Services) to decide whether to raise a claim of procedural default in a given case. Currently the Respondent, as the party defending the lawfulness of the petitioner's custody, has the right to decide whether to raise a claim of procedural default in a particular case.

Section Three further seeks to remove from the habeas court the discretion to hear a claim even if the claim, in some theoretical sense, could have been raised in an earlier habeas. One example of an occasion where the exercise that discretion was appropriate is found in James L. v. Commissioner, 245 Conn. 132 (1998). In James L. the petitioner filed an application for writ of habeas corpus asserting that his confinement was unlawful because he had been deprived of the effective assistance of counsel at his criminal trial. While that petition was pending the inmate filed a second petition asserting that a *different* lawyer who represented him at sentencing also provided ineffective assistance of counsel. The parties and the Court agreed that the two petitions should be consolidated and both issues heard at a single trial. Unfortunately, for administrative reasons the consolidation was never effectuated. The Respondent urged that the second petition should have been combined with the first, and hence should not be heard at all. The habeas court disagreed and permitted the second petition to be heard. The Supreme Court affirmed the habeas court's action, stating that the

circumstances did not support that Respondent's argument that the petition was abusing the writ by filing two petitions. The Court stated:

"Decisions concerning abuse of the writ are addressed to the sound discretion of the trial court. Theirs is the major responsibility for the just and sound administration of . . . collateral remedies, and theirs must be the judgment as to whether a second or successive application shall be denied without consideration of the merits." (Internal quotation marks omitted.) Sherbo v. Manson, 21 Conn. App. 172, 175, 572 A.2d 378, cert. denied, 215 Conn. 808, 809, 576 A.2d 539, 540 (1990). James L., 245 Conn. at 143.

In addition to the trial court's discretion, the Supreme Court noted that it "exercise[d] supervisory authority over the administration of justice in the state court system." That supervisory authority is sufficient to ensure that the judicial branch of government processes habeas claims in a fair and efficient manner, through the use of already available tools such as the doctrines of laches and abuse of the writ.

Section Four - The Office of the Chief Public Defender opposes Section Four. Section Four (a) imposes a statute of limitations of three years after an unappealed judgment or one year from the end of appellate proceedings. Such a time limitation would have barred Taylor and Gould from court, and prevented them from proving their innocence. This section is inconsistent with the common law writ of habeas corpus. This section will cause additional litigation as inmates barred by the time limitation challenge whether it violates the "Non-Suspension" and 'Open Courts' provisions of the state constitution.

Section Four will create additional litigation because there is no mechanism in the proposed bill to warn criminal defendants that any claims they may have must be presented within the new time limit, or they likely will be barred from ever raising them. The effect of such an advisement would be a flood of new petitions, as defendants file petitions in an attempt to secure review. The proposed bill is likely to result in inmates filing petitions automatically, even though without this legislation they might never have filed a habeas petition at all.

By using the phrases "[n]o application for a writ of habeas corpus shall be allowed" in Section Four (a) and "a court may hear a claim if the applicant establishes due diligence" in Section Four (b), Section Four seems to create a statute of limitations that is self-effectuating. However, a statute of limitations is not a jurisdictional bar to prosecution. It is an affirmative defense, which the [party claiming the bar] must prove by a preponderance of the evidence and can be waived. State v. Aloj, 86 Conn. App. 363, 380 n.13 (2004), affirmed in part and reversed in part on other grounds, 280 Conn. 824 (2007). Thus this section does not eliminate late petitions; it merely creates litigation on new and additional topics during the pendency of the case in which it is raised.

Subsection (b) of Section Four places the burden on the petitioner (contrary to the common law burden of proof on issues of lateness) to prove both that he was diligent in presenting the claim, and also that:

- (1) a physical disability or mental disease precluded timely filing;¹³ or

(2) certain limited types of new evidence discovered after the expiration of the three year period for filing a petition, establishes after the petitioner is actually innocent; or

(3) the petitioner's claim relies upon a new rule of constitutional law that has already been made retroactively applicable to habeas proceedings.

Section Four again requires a preliminary evidentiary hearing (at which the petitioner, contrary to current law, has the burden of proof). This hearing is required by the language of subsection (b) (1) calling for the petitioner to "establish[]" that he suffered from a physical disability or mental disease. Again, compare the language found in (b) (2) ("[t]he applicant alleges") that he was diligent, and then a second hearing on the merits if the Court sustains his claim in the first hearing. Two hearings instead of one only increases litigation. Subsection (b) (1) does not take into account the situation of an inmate who cannot communicate in English, and hence cannot access the courts. A language barrier is neither a physical disability nor a mental disease, yet it prevents the inmate from understanding even the simple form for filing a pro se petition, and therefore from gaining access to the court. The current proposal would provide no exception for this circumstance, despite the absence of any suggestion that the inmate would have failed to make a timely filing if the materials were accessible to him.

Subsection (b) (2) presents an unacceptably narrow version of newly discovered evidence exception. Ordinarily a statute of limitation does not begin to run until the cause of action was discovered or reasonably could have been discovered. This subsection would eliminate the right to discover the existence of a claim before that claim can be extinguished.

Subsection (b) (2) provides that newly discovered evidence proving that the petitioner's trial was fundamentally unfair is irrelevant, and that if, for example, the evidence was hidden (but not exclusively hidden by the state) until after the time limit expired, the State of Connecticut is willing to accept a conviction based upon a trial that violates all contemporary standards of justice, and to enforce the sentence imposed, regardless of whether it is a few years or death. This provision would not have allowed Taylor and Gould into court because the State's key witness hid the evidence. It was not *exclusively* in the possession of the state.

Subsection (b) (2) also provides that newly discovered evidence that would impeach the prosecution witnesses so extensively that no reasonable trier of fact would credit the state's case is irrelevant. Not only will it not provide relief from an alleged unlawful confinement, it will not even permit a hearing on the claim. Consider the following circumstances (which are from an actual case): The petitioner injures an elderly person. The injured party apparently recovers from the injury, but dies four months later, after complaints of loss of appetite, and after his family authorizes the removal of his feeding tube. The petitioner is charged and convicted of murder on the theory that the beating months earlier led to a blood clot in his brain which caused his death. At the petitioner's criminal trial a number of doctors testify, but only one testifies to this theory of causation. Years later it is discovered that the 'doctor' was not a doctor at all.¹⁴ Under this provision, newly discovered evidence that the supposed medical doctor did not have the training or experience to draw any conclusion about the cause of death would not allow the petitioner to be heard.

Section Five - The Office of the Chief Public Defender opposes **Section Five**. This section would have barred Taylor and Gould from proving their innocence because they both had filed an earlier petition. In addition, **Section 5 (a)** places a new, unnecessary but nonetheless substantial burden upon the habeas court. The proposed bill creates the need for multiple pretrial hearings at which the petitioner must prove various facts. The proof of facts requires an evidentiary hearing. The decision cannot be made based on the pleadings or in affidavits because the judge must determine the credibility of the witnesses.

The Office of the Chief Public Defender opposes **Section 5 (a)** because it limits the inmate's access to counsel to evaluate the potential claims and to plead the case in order to show that it qualifies under the rule and should be permitted into court. This limitation is likely to be held unconstitutional because it discriminates between people who can afford to hire counsel and those who cannot. The Connecticut Supreme Court has stated "the right to be represented by one's counsel in a proper post-conviction proceeding is an integral and indispensable part of due process of law."¹⁵ The right to counsel in habeas corpus proceedings serves to ensure access to the courts,¹⁶ and aids the Court by "convince[ing] inmates that ... grievances are ill-founded, thereby facilitating rehabilitation by assuring the inmate that he has not been treated unfairly."¹⁷

Section Six - The Office of the Chief Public Defender opposes **Section Six** of the proposed bill. This section makes the new rules that would be created by this bill retroactive to penalize prior actions that were perfectly legitimate when they were taken, but now can be used to bar a person from presenting his claim to the Court. For instance, in James L., supra, the inmate was entitled to bring his separate claims in separate petitions. Under the proposed bill a decision to follow that procedure (perhaps because the evidence to prove the second claim had not yet been fully investigated) would prevent the second claim from ever being filed or heard by the court. This application of new rules to past acts is likely to create additional litigation

In conclusion, the proposed bill is based on a perceived problem that is grossly overstated by the Chief State's Attorney. Not only would it serve to deny legitimate claims, but it would also be counterproductive and increase the court's work by creating multiple pretrial hearings. The Office of Chief Public Defender urges this Committee to reject this bill.

ENDNOTES

¹ Lozada v. Warden, 223 Conn. 834 (1992).

² Examples of the successful use of the abuse of the writ doctrine include Gaffney v. Warden, 2007 Conn. Super. LEXIS 2921 (Conn. Super. Ct. Nov. 5, 2007) (prospectively holding additional petitions shall be considered an abuse of the writ); Zollo v. Warden, 2009 Conn. Super. LEXIS 3024 (Conn. Super. Ct. November 4, 2009) and Frank v. Warden, 2009 Conn. Super. LEXIS 2722 (Conn. Super. Ct. Oct. 8, 2009).

³ Simms v. Warden, 229 Conn. 178 (1994).

⁴ Examples of the successful use of the laches doctrine include Dickinson v. Mullaney, 2004 Conn. Super. LEXIS 2474 (Conn. Super. Ct. July 15, 2004) and Ostroski v. Warden, 2009 Conn. Super. LEXIS 618 (Conn. Super. Ct. Mar. 9, 2009).

⁵ Moody v. Warden, 2009 Conn. Super. LEXIS 1722 (Conn. Super. Ct. 2009) and Toccaline v. Warden, 2008 Conn. Super. LEXIS 1669 (Conn. Super. Ct. 2008) are examples of cases in which the res judicata doctrine was successfully used to bar consideration of the inmates' claims.

⁶ Examples of the use of the successive petitions provision to bar consideration of an inmate's claims include Danzy v. Warden, 2008 Conn. Super. LEXIS 2743 (Conn. Super. Ct. 2008) and Zollo v. Warden, 2009 Conn. Super. LEXIS 3024 (Conn. Super. Ct. 2009).

⁷ Example of the use of this tool to bar consideration of the inmate's claims include McCarthy v. Warden, 1997 Conn. Super. LEXIS 769 (Conn. Super. Ct. 1997) and Johnson v. Warden, No. 30857 (Tolland Judicial District Nov. 6, 1984) (Smith, J.)

⁸ The Open Courts Provision is thoroughly discussed in Gentile v. Altermatt, 169 Conn. 267, 286 (1975).

⁹ State v. Henderson, 259 Conn. 1 (2002) discusses the writ of error *coram nobis*.

¹⁰ Congress enacted statutory substitutes for the writ of habeas corpus. Those substitutes are codified at 28 U. S. C. sections 2254 and 2255.

¹¹ The detainees case is Boumediene v. Bush, 553 U.S. 723 (2008).

¹² See Mercer v. Commissioner, 230 Conn. 88, 93-94 (1994); State v. Stanley, 197 Conn. 309, 313 (1985) ("Despite our finding of no error at this juncture, the defendant is not precluded from pursuing his ineffective assistance of counsel claim in an appropriate collateral proceeding."); State v. Mason, 186 Conn. 574, 580 (1982) (denying relief on claim of ineffective assistance of counsel but holding that such ruling "does not preclude the defendant from pursuing this claim in the appropriate collateral action"); State v. Chairamonte, 189 Conn. 61, 64-65 (1983)

(same); State v. Chace, 199 Conn. 102, 109 n. 4 (1986); State v. Hinckley, 198 Conn. 77, 89-90 (1985) (same).

¹³ Litigation is sure to result from the use of the language in Section Four, (b) (1), for the terms “physical disability” and “mental disease” are broad and subject to interpretation. Furthermore, under the terms of this section, persons with extremely limited IQs would not be eligible to have the court consider their claims (except in the unlikely event that mental retardation is considered a mental disease, as opposed to a disability). Litigation is also likely to arise surrounding the precise meaning of the term “precluded” used in subsection (b) (1). That term has various meanings, including ‘to prevent occurrence of’ or ‘to make impossible’, or to forestall. It is synonymous with prevent, impede, and hinder. See <http://www.yourdictionary.com>.

¹⁴ This scenario is drawn from State v. Morin, 180 Conn. 599 (180).

¹⁵ Flaherty v. Warden, 155 Conn. 36, 39 (1967).

¹⁶ Bounds v. Smith, 430 U.S. 817, 828 (1977).

¹⁷ Bounds, 430 U. S. at 831.