

March 2, 2011

Statement of:

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Fix Connecticut's unworkable death penalty.
Stop using public funds to provide free habeas lawyers to prisoners.

Public Defender Services were created thirty-seven years ago by PA 74-317 and codified in Chapter 887, Sections 51-289 to 51-300.

PA 74-317 unfortunately awards indigent prisoners with public defenders "in any habeas corpus proceeding arising from a criminal matter . . ." C.G.S. Sec. 51-296(a). Wielding this mighty authority to bring and maintain habeas corpus cases, public defenders purposefully and zealously have protected each of their death row clients from their sentences of execution – except for Michael Ross, who had to win a battle against the public defenders before his sentence was carried out.

I urge repeal of Connecticut's statutory right to habeas counsel for prisoners – whether the prisoners are on death row or not. Public funds should not be used to sue the state on behalf of prisoners incarcerated by the state. It's a bizarre circle of extraordinary and unnecessary expenditures. Claimed benefits in post-conviction jurisprudence are far outweighed by the enormous costs incurred by both the public defenders who choose to bring these cases, and by the lawyers from the Office of the Attorney General who must defend them.

The Supreme Court of the United States has held that the Federal Constitution *does not require* the federal government or the states to provide counsel to any indigent prisoner in any proceeding beyond the first, direct appeal from a criminal conviction. Ross v. Moffitt, 417 U.S. 600, 610-611 (1974) (reversing the Fourth Circuit in North Carolina case after extensive analysis of Due Process and Equal Protection Clauses of the Fourteenth Amendment). Inmates have no constitutional right to pursue discretionary state appeals after the first criminal appeal following conviction. Accordingly, they have no right to counsel in such cases. Wainwright v. Torna, 455 U.S. 586, 587-588 (1982) (re-iterating Ross v. Moffitt in reversing the Fifth Circuit in a Florida case).

Habeas cases are not criminal appeals. They are filed on a discretionary basis, by prisoners, only after criminal cases have ended. Habeas corpus cases are *civil* cases in which inmates are the plaintiffs-petitioners. Habeas actions are civil suits brought against the Department of Correction seeking inmates' release due to alleged unconstitutional

confinement, for reasons like ineffective assistance of counsel. Habeas cases are *collateral attacks* upon underlying criminal convictions.

In Pennsylvania v. Finley, 481 U.S. 551 (1987), the Supreme Court of the United States stated “we have never held that prisoners have a constitutional right to counsel when mounting collateral attacks on their convictions, and we decline to do so today.” Finley at 555.

But in 1974, Connecticut chose to give prisoners a right to habeas counsel via Public Act 74-317, codified in C.G.S. Sec. 51-296. In Franko v. Bronson, 19 Conn. App. 686 (1989), while recognizing the absence of a federal constitutional right, the court logically expanded the *statutory* right, so that prisoners have since received publicly-funded lawyers for all habeas appeals, as well!

The federal government does not provide habeas counsel to indigent federal prisoners. Connecticut should follow suit. In our state’s fiscal condition, the last area we need to fund is habeas lawyers for prisoners. Now is the time to take away the right-to counsel in habeas cases and to stop funding public defenders for this purpose. Their job should be limited to criminal defense and criminal appeal in this context.

Simply by repealing the provision, “in any habeas corpus proceeding arising from a criminal matter,” substantial public funds can be saved or diverted into more worthwhile efforts. Taxpayers no longer should fund anti-death penalty public defenders or any other group of state employees seeking to undermine implementation of the death penalty. Repeal of the habeas provision also should include a provision that prevents public funds to be used to mount any legal challenge to the repeal.

Let private, donated funds maintain habeas cases on behalf of prisoners deemed worthy of support. Prisoners also may act *pro se*. Get the taxpayers out of habeas-lawyer funding. After all, budgetary constraints demand that prisoners bear their share of sacrificing, also.

Finally, the habeas process itself should be streamlined with appropriate rules and restrictions.

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