

Death penalty bill advances police state

by Leo F. Scanlon

The one good thing about the crime bill passed by the House on Oct. 5 is that it will probably not become law this year. But the fact is that Representatives voted by an overwhelming margin of 368-55 for a bill which will greatly expand the use of capital punishment and make it nearly impossible to overturn such a verdict, no matter how corrupt the prosecution or incompetent the defense.

Within days of the vote, the Commonwealth of Virginia demonstrated what this bill will make commonplace, when it executed a prisoner who had been sentenced on the basis of tainted evidence, then denied access to exculpatory material which would have mitigated his sentence. It took nearly eight years for attorneys for Wilbert Lee Evans to prove that the state hid crucial evidence from the defense. If H.R. 5269 is enacted into law, a prisoner will have only six months to expose such corruption and file for federal *habeas corpus* relief.

Even then, he will be facing a U.S. Supreme Court which treated the proven injustices in the Evans case with indifference. In a ringing dissent against the 8-1 decision not to review Evans's case, Justice Thurgood Marshall denounced the Court's action and the immorality which lay behind it. "A death sentence that is dead wrong is no less so simply because its deficiency is not uncovered until the eleventh hour," he said. He predicted that "a system of capital punishment that would permit Wilbert Evans's execution, notwithstanding as-to-now unrefuted evidence showing that death is an improper sentence, is a system that cannot stand."

But the Bush administration is determined to try to make such a system stand, if it has to rid the legal code of all natural law to do so, and the crime bill passed by the Congress is the vehicle for that effort.

The fight over the death penalty provisions of this crime bill is part of a more profound dispute which goes to the root of the constitutional protection against tyranny. Demagogues of every political stripe are exploiting a lynch mob atmosphere in the population, but it is the Bush administration and a cabal on the U.S. Supreme Court which triggered the furor in order to further their schemes against the Bill of Rights as a whole.

At the core of that attack is an attempt to weaken and destroy the "great writ" of *habeas corpus*, which has always been a protection against corrupt and politically motivated

prosecutions by the government. Ever since the U.S. Supreme Court lifted its 1972 moratorium on all state and federal applications of capital punishment, the *habeas corpus* procedures have been the primary grounds for delaying an execution long enough so that a competent defense could be mounted.

'Blood lust' fuels amendments

Under mounting pressure from a pro-death lobby led by Chief Justice William Rehnquist and many prosecutors, a committee led by then-Justice Lewis Powell studied the issue and proposed a set of limitations on the use of *habeas corpus* proceedings to overturn a death sentence, including a time limit beyond which no appeal would be possible. These limits were rejected by the House Judiciary Committee, which said that such limits deter lawyers from taking complicated cases, and perpetuate the errors committed by inexperienced counsel in capital cases.

The House Judiciary Committee also limited capital punishment to 10 crimes, demanded that a jury find two aggravating factors in addition to the crime itself before being allowed to impose the death sentence, and proposed standards for state-appointed counsel in death sentence cases.

When the bill reached the floor of the House, a mood which one Member described as "a lust for blood" took over the debate, and a series of amendments was passed—while opponents derisively shouted "Kill, Kill, Kill"—which transformed the House bill into a carbon copy of the monstrosity passed by the Senate last summer.

Rep. George Gekas (R-Pa.) led the charge, presenting amendments which increased to 30 the number of capital crimes, reduced to one the number of aggravating factors required to impose the sentence of death, and allowed the prosecutor to ask a sentencing jury to consider aggravating factors which are not part of statute law, without approval of the trial judge or notice to the defendant. This latter violation of the Constitution was specifically proposed in the Justice Department's blueprint for a prosecutorial police state.

A showdown was staged over the provisions governing the use of *habeas corpus*. Rep. Henry Hyde (R-Ill.), a so-called leader of "pro-life" forces in the Congress, introduced a compromise amendment which will make optional the six-month limit on *habeas corpus* actions proposed by the Powell commission, but specifies that a state which chooses the option must provide an attorney for the defendant. However, state-appointed attorneys will not be required to meet any standards of competence, and a defendant cannot cite incompetence by his attorney as the basis for bringing a *habeas corpus* action.

In short, capricious and arbitrary executions will become more widespread. The beneficiaries of this act will be Bush and his mermidons, for whom "crime control" means exemplary executions of the poor, the black, and the indigent. It is terrorism, pure and simple.