

11th Presidential Conference:

William Jefferson Clinton, The "New Democrat" from Hope

Abstract of Proposal: Bill Clinton, the Death Penalty, and the Assault on Habeas Corpus.

By David R. Dow, Distinguished University Professor, University of Houston Law Center.

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Between 1976 and 1995, death row inmates who filed petitions for a writ of habeas corpus in federal court prevailed approximately half the time. That is a stunning statistic: In half of all death penalty cases, a federal court determined that either the conviction itself or the sentence of death involved a serious constitutional error that could not be disregarded as harmless. Half of all death row inmates received new trials, or were removed from death row, or were released from prison altogether.

No reliable data have yet been collected for the period from 1996 to the present, but the anecdotal evidence suggests that the success rate of death row inmates has plummeted, from 50 percent, to perhaps 10 percent, and perhaps as low as 1 or 2 percent. This dramatic change did not result from the eradication of constitutional error in death penalty cases. Rather, it resulted from severe limitations placed on the power of the federal courts to grant relief.

The ominously entitled "Antiterrorism and Effective Death Penalty Act of 1996," or AEDPA for short, represent the most radical limitation on the power of federal courts to grant habeas relief in the nation's history. In part, the statute codified nearly a decade's worth of Supreme Court doctrine that had made it increasingly difficult for death row inmates to obtain relief in collateral litigation. In other respects the statute went beyond existing law, imposing even more severe limitations on the ability to obtain legal relief than already existed.

As a candidate for national office, Bill Clinton sought to shore up his law-and-order credentials by rushing back to Arkansas from New Hampshire, where the Gennifer Flowers story was threatening to make him an also-ran in the upcoming primary, so he could preside over the execution of Ricky Rector, a death row inmate so profoundly retarded that he put aside a small piece of pie from his final meal to eat later. As President, Bill Clinton proved that his trip home for the Rector execution was no mere publicity stunt. AEDPA has ensured that inmates are routinely executed, notwithstanding the occurrence of serious constitutional errors that undermine the fairness of their trials. It has significantly increased the likelihood that more innocent people will be executed. It represents one of the most lamentable surrenders of the rule of law to the passion of the mob in modern legal history.

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