

Radical proposal to limit conviction review flawed

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FORUM

BY RAY DALL'OSTO

In an editorial in the *Sunday New York Times*, April 17, 2011, entitled "Justice, Too Much and Too Expensive," two law professors from Indiana and Vanderbilt

University present a radical proposal that federal court review of state court convictions under the writ of habeas corpus should be even more strictly limited than it currently is — to just death penalty cases and cases in which the prisoner can produce persuasive new evidence of his or her innocence.

Their logic and proposal are not only wrong-headed, but very, very dangerous. As anyone who has done serious work in the real world of defending individuals charged with crimes knows, be it in the state or federal systems, mistakes are often made; innocent people are charged and convicted of crimes, are sent to prison, and these systems tend to overcharge and sentence people far too harshly.

Raymond Dall'Osto has been practicing law for 34 years, spent many years as a public defender, and is in private practice in Milwaukee with a law firm that represents persons charged with state and federal crimes.
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Our nation has gone from having under a half million persons incarcerated in prisons and local jails in the mid-1970's to almost 2 1/2 million people incarcerated today.

Crime rates have dropped over this period of time, yet the incarceration rate has skyrocketed. The United States has the largest number of people incarcerated in the world. Those of us in the trenches scratch our heads and ask why? How can these professors seriously suggest that the critically important fail-safe and quality control of federal habeas corpus review be drastically curtailed? This does not make sense, either from a public safety or fiscal soundness perspective. However, it does mean continuing the unquestioned flow of big dollars into the so-called prison-industrial complex.

One of the biggest budget busters for state governments is corrections spending, but few legislators and no governor seem to be willing to take on this 800 pound gorilla in the room. It is much like Congress' reluctance to question the spending for two undeclared wars our federal government is currently paying for, in the current budget debate. If our legislators won't, who will?

The two professors who suggest this radical restriction on our traditional, hard-won legal rights and protections from wrongful charging, wrongful conviction and harsh sentences should come out into the real world of the criminal justice system to see what goes on and how mistakes and injustices really regularly occur. I will show the both of them around myself. The writ of habeas corpus has already been unduly restricted by the last round of so-called "habeas reform" in Congress in 1996. Habeas corpus must be preserved and restored, not drastically cut back.

For more on habeas corpus, see "Ineffective assistance claim denied," page 6.