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LIMITATIONS ON HABEAS CORPUS TROUBLE CONFERENCE ATTENDEES

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LOS ANGELES It was a weekend that saw 17 former inmates solemnly tell audiences about their wrongful convictions and their hard-fought exonerations won after years behind bars.

Last weekend also saw Pepperdine Law School Dean Kenneth W. Starr visibly moved as he sang "Amazing Grace" with a choir of formerly homeless military veterans from a residential treatment program.

And there was the former Texas prosecutor who described his concerns that he won conviction and execution of a man he now thinks may have been innocent.

UCLA School of Law hosted "The Faces of Wrongful Conviction," the first ever such event in California, to focus the public's and the criminal justice system's attention on how often the innocent find themselves behind bars.

But a number of lawyers and activists in attendance worry that the doors allowing innocent people ever to leave their prison cells are about to be slammed shut. Politicians in Congress, they say, are taking aim like never before at what allowed innocent inmates to gain their release in the first place- the writ of habeas corpus.

With roots going back to the Magna Carta, the writ is the last chance inmates have to prove their innocence after their appeals have been exhausted.

"All of the people standing before you would not have been able to be exonerated and would not be out of prison without habeas corpus," Lynne Coffin, former president of California Attorneys for Criminal Justice, said of the former inmates who spoke Saturday. "What Congress is trying to do is take that writ and basically gut it."

Coffin, speaking at the conference's workshop on habeas corpus, was referring, in part, to a provision placed into the revised U.S.A. Patriot Act signed into law in March. It allows state prosecutors to ask the U.S. Department of Justice for permission to implement a shorter timeline for resolving habeas claims alleging constitutional error in death-penalty verdicts.

But more alarming, she said, is the Streamlined Procedures Act, a bill sponsored by Sen. John Kyl, R-Ariz. The proposed measure, now in the Senate Judiciary Committee, seeks to speed up the resolution of habeas corpus cases in federal court by restricting claims that already have been litigated in state court.

Such a law would be disastrous for the wrongfully convicted because federal courts are far more likely to overturn convictions than state courts, she said.

"If I can't get to federal court, I might as well just put my head in an oven," Coffin said in an interview Monday.

A Columbia University study showed that, between 1978 and 1995, the California Supreme Court overturned death sentences on direct appeal 31 percent of the time.

But last year, the California Supreme Court denied 100 percent of direct death-penalty appeals. The denials had been on an upward curve since 1997, and a 2002 San Jose Mercury News study found that the state high court had overturned death penalties 10 percent of the time since 1997.

The 9th U.S. Circuit Court of Appeals, however, overturned 62 percent of California death sentences affirmed by the state's Supreme Court, between 1978 and 2001, the study found.

"This is a matter of great concern," Cardozo School of Law professor Barry Scheck said in an interview. "What some in Congress want to do now is restrict the right of people to get into federal court."

Scheck, co-founder of the Innocence Project and former O.J. Simpson lawyer, said the law would virtually wipe out the ability of inmates to get a death sentence overturned on constitutional grounds such as inadequate lawyers or withholding of exculpatory evidence - grounds which historically have been much more effective than arguing factual innocence.

"But," he added, "there is still a relationship between due process rights and innocence."

Proponents of the bill, which includes the National District Attorneys Association, say its provisions still protect the innocent while putting reasonable limits on the seemingly endless appeals system inmates are afforded before they can be executed.

Scheck said a better idea would be to speed up the process and have truly open discovery.

Scheck was one of the key speakers at the two-day UCLA conference sponsored by the American Civil Liberties Union, Amnesty International, Death Penalty Focus and other groups.

Natasha Minsker, death penalty policy director for the ACLU of Northern California, estimated roughly 500 people showed up. Half were students, and the rest were split between lawyers and activists, she said.

"This is really to raise awareness that California has serious problems with its criminal justice system," Minsker said. "It's a system that fails very basically. We think there's this false perception where California is the Golden State, where criminal justice is better than anywhere in the country."

Along with individual testimonies of people who spent years behind bars and later were exonerated, the conference held numerous workshops that included issues related to DNA, jailhouse informants, race, mistaken identity and prosecutorial misconduct.

In a two-part workshop titled "Executing the Innocent," former Texas prosecutor Sam Millsap said he was responsible for the executions of eight men. He now believes one of those men, Ruben Cantu, was innocent.

Millsap regrets seeking the death penalty in a case with a lone eyewitness, who later recanted his testimony against Cantu.

"These are stories about a system that is broken," he said, "about a system that can't be trusted to protect the innocent."

Millsap opened his remarks by saying he felt like the guy who is invited to a pin-the-tail-on-the-donkey party, only to arrive and learn that he is the donkey. He stood out at a

conference filled with stories about prosecutorial misconduct. But he invited the audience to take advantage of the rare opportunity to ask a prosecutor tough questions about guilt and innocence.

In response to a question about how to curb the power of prosecutors, Millsap said, "the solution is not to take the discretion away from the DA but to take the death option off the table."

Millsap said Cantu, who was sentenced to death in 1985, had a fair trial. He said mistakes, even when there is no police or prosecutorial misconduct, are likely.

"No one should be able to make the decision I made in 1985," he said.

Many speakers at the conference noted that innocent people stand little chance of having their convictions overturned without habeas corpus.

"Were it not for the ability to get to a federal court and get a federal habeas proceeding, I would have spent the rest of my life in prison," said Gloria Killian, who spent 17 years in the California Institution for Women in Corona after being convicted of murder.

The 9th Circuit exonerated Killian in 2002 after a letter emerged between a co-defendant in the case and the Sacramento County district attorney's office about how the co-defendant lied to get Killian convicted. Prosecutors never gave the letter to Killian's lawyers. Last summer, Killian was part of a delegation that successfully lobbied Sen. Diane Feinstein, D-Calif., a member of the Senate Judiciary Committee, to oppose the Streamlined Procedures Act.

"People are just sick and tired of us whining about being innocent, so they created something so they don't have to listen to us whine anymore," Killian said. "They can talk about delays in court and all, but it's rarely the defendant who causes the delay. They don't want to have to sit there for years waiting to be heard."

Killian's prosecutor, Sacramento Deputy District Attorney Christopher Cleland, still maintains that Killian is guilty.

To close the conference, the New Directions Choir, comprising current and former residents of the New Directions treatment center for veterans, performed a capella.

Starr, who participated in a closing panel, called for more transparency, the involvement of large, private firms in capital cases, the revival of clemency in the U.S. and "an unremitting campaign against junk science in criminal cases."

In an impromptu moment, as everyone was preparing to leave, a member of the choir asked whether the audience would mind joining in singing "Amazing Grace." Starr joined in as many in the audience openly wept.

Daily Journal Staff Writer Anat Rubin contributed to this article.