

professionals with the medical teams currently deployed overseas are ABA members, and many more work stateside, treating the severe burn injuries that result from military conflicts.

In addition to research and treatment, the American Burn Association continually promotes educational campaigns to prevent burn injuries. Past campaigns include home safety, senior burn safety, prevention of gasoline burns, scald prevention and electrical burn prevention. They have also highlighted the value of home sprinkler systems, which are no more expensive per foot than home carpeting, and serve as a valuable preventative measure.

The ABA represents a vital national resource in the select medical community of burn care. These professionals are in every State of the Union and almost every congressional district. I have met with representatives from my region of Pennsylvania. I hope that you will meet with yours and take an opportunity to learn more about the ABA and the outstanding work they do in your own State and district.

CHILDREN'S SAFETY AND VIOLENT CRIME REDUCTION ACT OF 2006

SPEECH OF
HON. JEFF FLAKE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 2006

Mr. FLAKE. Mr. Speaker, I would like to comment on section 302 of the Children's Safety and Violent Crime Reduction Act of 2006. This section is based on an amendment that I offered, and that was accepted by voice vote, to H.R. 3132, a predecessor version of the Children's Safety and Violent Crime Reduction Act, on September 14 of last year.

Section 302 is named after Kenneth Wrede, a young man who served as a police officer in West Covina, California. On August 31, 1983, Officer Wrede responded to a call about a man behaving strangely in a residential neighborhood. Wrede confronted the man, who became abusive and tried to hit Wrede with an 8-foot tree spike. Wrede could have shot the man, but instead attempted to defuse the situation. The man then reached into Wrede's patrol car and ripped the shotgun and rack from the dashboard. Wrede drew his gun and tried to persuade the man to lay down the shotgun. The man did so, but when Wrede lowered his revolver, the man picked up the shotgun again and shot Wrede in the head. Officer Wrede was killed instantly. He was 26 years old.

Officer Wrede's killer was sentenced to death in 1984, and that conviction was affirmed by the California Supreme Court in 1989. Then in 2000—17 years after Ken Wrede's murder—a divided panel of the Federal Court of Appeals for the Ninth Circuit reversed the killer's death sentence. The Ninth Circuit found that the killer's lawyer provided ineffective assistance of counsel at the sentencing phase of the trial because he did not present additional evidence of the killer's abusive childhood and chronic use of PCP.

When the Ninth Circuit handed down its ruling, Officer Wrede's mother simply noted that, "We thought we finally were close to getting this behind us. And now this." (Gordon Dillow,

Long Wait for Justice Gets Worse, The Orange County Reg., May 11, 2000, at B01.) A California Deputy Attorney General denounced the court's action, commenting that "it can always be suggested a jury should have heard something else in the penalty phase of a death penalty case." (Richard Winton, Reversal of Death Penalty in Officer's Killing Decried Courts, L.A. Times, May 10, 2000, at B3.) West Covina Corporal Robert Tibbets, the original investigator at the scene of Wrede's murder, described the Ninth Circuit's decision as a "miscarriage of justice." (Id.) He had promised Officer Wrede's parents that he would accompany them to every court hearing for their son's killer. He made good on his promise. Nineteen years later, in 2002, Corporal Tibbets was there with the Wredes when their son's killer was given a second sentencing trial and was again sentenced to death.

But the Wredes now face yet another round of state-court appeals for their son's killer, and that litigation will be followed by a new battery of federal habeas appeals. At the 2002 retrial, Ken's father noted that "my family and I had endured 19 years of trial, appeals, delays, causing us to relive the trauma of Ken's death over and over again." The trial judge noted the absurdity of this system. He stated, "It is an obscenity to put anyone through this needlessly for 19 years. It is inexcusable for us in the system that we need to look at this case for 19 years to get it resolved. The system at some point in the line has become clogged and broken." (Larry Welborn, 19 Years and No Resolution For Parents, The Orange County Reg., Sept. 21, 2002.)

My amendment will prevent injustices such as the one inflicted on the Wredes. It will guarantee that federal jurisdiction will not be used to reverse criminal sentences and force a repeat of the litigation years after the crime has occurred, the trial has been completed, and state appeals have been exhausted—all because of an error that was already judged harmless in state proceedings, or that was never presented at all on earlier review.

It is simply ridiculous that, 17 years after a police officer was murdered, federal courts would prolong the litigation of the case of the officer's killer for this kind of reason. The error identified by the Ninth Circuit in the Wrede case had nothing to do with the reliability or fairness of the jury's conclusion that the defendant had murdered Officer Wrede. Instead, the Ninth Circuit invalidated the sentence because it thought that the trial attorney could have introduced additional evidence of the killer's use of phencyclidine. (Trial counsel already had introduced considerable evidence of such drug use during the guilt phase of the trial.) Frankly, I do not see how the fact that a defendant regularly used a dangerous drug could mitigate his criminal conduct at all. The jury in the Wrede case did not think so, nor did the state appeals courts think that additional evidence of the defendant's PCP use could reasonably have affected the jury's decision to sentence the defendant to death. The Ninth Circuit's conclusion that such an error could have made a difference in the sentencing decision obviously is a highly subjective judgment. It is not really a judgment of law, so much as a question of personal opinion and popular psychology. Such unstable judgments, at least with respect to sentencing

errors that are properly subject to harmless review, should not be a basis for overriding duly entered state criminal sentences many years after the fact.

My amendment to this bill builds on an amendment that I filed earlier in this Congress and which has been enacted as section 507 of the USA Patriot Improvement and Reauthorization Act. That amendment guarantees that states such as Arizona and California will be given an objective evaluation of their eligibility for the streamlined and expedited habeas corpus procedures in chapter 154 of title 28. That chapter sets strict time deadlines for federal judicial action on capital habeas-corpus petitions in qualifying states, restricts amendments, and eliminates ping-pong litigation between state and federal courts over unexhausted claims. By unlocking states' access to chapter 154, my previous amendment will ensure that cases such as that of Kenneth Wrede's killer—or the infamous Christy Ann Fornoff case in Arizona—will be resolved much more quickly. My current amendment to the Children's Safety and Violent Crime Reduction Act will ensure that these types of cases are not reversed on account of claims of minor and highly subjective sentencing errors. Allegations of such errors do not relate to the defendant's culpability for the underlying offense, and they do not merit the use of federal judicial resources at this late stage of the criminal-litigation process.

My amendment is based on a legislative proposal that is part of the habeas corpus reform bill introduced by Senator KYL and Congressman LUNGREN. That broader bill has been the subject of four hearings in this Congress: two before the House Judiciary Committee's Crime Subcommittee on June 30 and November 10, and two before the Senate Judiciary Committee on July 13 and November 16.

Between its evolution from the Kyl/Lungren bill to my amendment, and again from my original amendment to the provision in the current Children's Safety and Violent Crime Reduction Act, section 302 has been modified somewhat. First, it has been expanded to also apply to those sentencing claims that the habeas applicant procedurally defaulted in the state courts. It would make no sense to limit federal review for a habeas petitioner who presented his sentencing claim in state court in a timely manner, where the error had been found harmless, but to afford unrestricted habeas review to a petitioner who did not timely and properly present his claim in state proceedings. The purpose of the procedural-default doctrine is to encourage state prisoners to abide by state procedural rules. That purpose would be undercut if the applicant presenting a defaulted sentencing claim were afforded more liberal access to federal court than the applicant who had properly presented his claim during state review.

Also, allowing defaulted sentencing claims to be heard for the first time in a federal application inevitably disrupts the federal proceedings. A defaulted claim generally will not have been considered on the merits in state court, and therefore there is no evidentiary record on which to evaluate the claim in federal court. And allowing the applicant to obtain relief on a defaulted claim in federal habeas inevitably prejudices the state. As the Supreme Court has noted, forcing prisoners to

timely present their claims in state court “affords the state courts the opportunity to resolve the issue shortly after trial, while evidence is still available both to assess the defendant’s claim and to retry the defendant effectively if he prevails in his appeal.” *Murray v. Carrier*, 477 U.S. 478 (1986). But when a federal habeas court orders a sentencing retrial on the basis of a claim that was never presented to the state courts, it often will have been many years since the original trial and the crime occurred. (In the *Wrede* case, the Ninth Circuit’s reversal of the killer’s sentence came 17 years after the crime had been committed.) During this time, witnesses often will die or disappear or their memories will fade and other evidence will become unavailable. If defaulted claims were exempted from my amendment, not only would habeas petitioners presenting such claims have better access to the federal courts than would those who followed state rules; the relief that the defaulting petitioner obtains would be more likely to mean not just a second chance to try the sentencing case, but rather would amount to a permanent bar on the state’s imposition of a capital or other sentence.

Finally, I would like to respond briefly to those critics who argue that any tailoring or limits on federal habeas-corpus review constitute an unconstitutional “suspension” of the Great Writ. I would note that federal courts rejected this argument when it was made by critics of the 1996 reforms. The courts noted that Congress has the power both to expand and to retract the scope of federal collateral review of state criminal convictions. In *Felker v. Turpin*, 518 U.S. 651 (1996), the U.S. Supreme Court highlighted the utter lack of basis for the view that Congress is required to grant lower federal courts unrestricted power over state criminal convictions:

“The first Congress made the writ of habeas corpus available only to prisoners confined under the authority of the United States, not under state authority. It was not until 1867 that Congress made the writ generally available in ‘all cases where any person may be restrained of his or her liberty in violation of [federal law].’ And it was not until well into this century that this Court interpreted that provision to allow a final judgment of conviction to be collaterally attacked on habeas.”

The Supreme Court concluded: “We have long recognized that the power to award the writ by any of the courts of the United States, must be given by written law, and we have likewise recognized that judgments about the proper scope of the writ are normally for Congress to make.”

The U.S. Court of Appeals for the Seventh Circuit elaborated on this point in *Lindh v. Murphy*, 96 F.3d 856 (rev’d on other grounds, 521 U.S. 320), and explained the nature of the constitutional habeas right:

“The writ known in 1789 was the pre-trial contest to the executive’s power to hold a person captive, the device that prevents arbitrary detention without trial. The power thus enshrined did not include the ability to reexamine judgments rendered by courts possessing jurisdiction. Under the original practice, ‘a judgment of conviction rendered by a court of general criminal jurisdiction was conclusive proof that confinement was legal * * * [and] prevented issuance of a writ.’” The founding-era historical evidence suggests a prevailing view that state courts were adequate fora for protecting federal rights.

Based on this assumption, there was (and is) no constitutionally enshrined right to mount a collateral attack on a state court’s judgment in the inferior Article III courts and, a fortiori, no mandate that state court judgments embracing questionable (or even erroneous) interpretations of the federal Constitution be reviewed by the inferior Article III courts.”

The Seventh Circuit concluded: “Any suggestion that the [Constitution] forbids every contraction of the [federal habeas] power bestowed by Congress in 1885, and expanded by the 1948 and 1966 amendments, is untenable.”

My amendment is a necessary and appropriate adjustment to the federal jurisdiction over state criminal convictions. I am pleased to see that it is part of the Children’s Safety and Violent Crime Reduction Act.

EXPRESSING SUPPORT OF CONGRESS REGARDING ACCESS OF MILITARY RECRUITERS TO INSTITUTIONS OF HIGHER EDUCATION

SPEECH OF

HON. JAMES R. LANGEVIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 14, 2006

Mr. LANGEVIN. Mr. Speaker, today the House will be voting on legislation to affirm the ability of military recruiters to access college campuses. As a member of the House Armed Services Committee, I support our military’s efforts to recruit some of our most promising young men and women and believe that service in our nation’s armed forces is an honorable career choice. However, I question why we are considering this measure, especially as the Supreme Court unanimously upheld Congress’s position a short while ago. If Congress’s authority has not been challenged, why are we reiterating it?

As we have heard, a lawsuit arose when a group of colleges challenged the Congressional requirement that military recruiters be granted access to schools that receive federal funding. The schools argued that the U.S. military’s policy of excluding gays and lesbians from serving openly violated their non-discrimination requirement for prospective employers on campus, and that the recruiters’ presence would be interpreted as the schools’ official endorsement of the military’s position. The Supreme Court rejected this argument, noting that colleges and universities still maintained their right to express their opposition to the military’s policies as they saw fit. The resolution of today reaffirms the very Congressional power that the Court just upheld.

Unfortunately, Congress is debating the wrong issue. Instead of celebrating a minor legal victory, we should be discussing how to end the discriminatory “Don’t Ask/Don’t Tell” policy that inspired the opposition from the colleges and which threatens our military readiness to this day. Since the policy’s enactment in 1993, Don’t Ask/Don’t Tell has resulted in the discharge of nearly 10,000 service members, many of whom had language proficiency or other skills essential to the Global War on Terror. Over the past ten years, Don’t Ask/Don’t Tell has cost the U.S. military hundreds of millions of dollars—funds that could have

gone toward obtaining additional armored vehicles and investing in other vital force protection initiatives.

Don’t Ask/Don’t Tell, originally conceived as a compromise, has outlived its utility and now actually harms our military readiness and its ability to perform certain essential functions. Qualified and dedicated servicemembers should not be discharged based on their sexual orientation, especially at a time when our National Guard and Reserves are serving repeated deployments. For these reasons, I am an original cosponsor of H.R. 1059, the Military Readiness Enhancement Act, which would replace Don’t Ask/Don’t Tell with a policy that would not allow discrimination or discharges based on sexual orientation.

Those who oppose repeal of Don’t Ask/Don’t Tell conveniently ignore that gay men and women already serve in the military—many with great distinction—despite the fact that they must hide their identities from those whose lives they have sworn to defend. They also ignore the fact that some of our closest allies in the Global War on Terrorism permit open service by gay men and women, and our forces regularly serve alongside theirs without incident. They also ignore numerous polls indicating that a strong majority of Americans support repeal. Our military’s purpose is to protect the United States, and it must recruit the most qualified people in order to succeed. Repeal of Don’t Ask/Don’t Tell is consistent with that goal.

I will support H. Con. Res. 354 today because I believe we should be encouraging our nation’s finest young men and women—no matter who they are or where they go to school—to join the strongest, smartest and most capable military in the world. However, such an effort is incomplete without also repealing Don’t Ask/Don’t Tell. I encourage all of my colleagues to cosponsor H.R. 1059 to ensure that all who are willing and able to serve may do so.

IN HONOR OF THE PREMIERE OF
“WALKOUT”

HON. XAVIER BECERRA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 15, 2006

Mr. BECERRA. Mr. Speaker, facing unfortunate injustices, relegated to second class citizenship, and anxious to see change come to their classrooms, a group of students banded together in 1968 to protest the conditions of their high schools in East Los Angeles. The civil and non-violent protest took the form of a staged and systematic “walkout,” which was not only the single largest protest by high school students ever in the history of the United States, but is also recognized as the event that gave birth to the Chicano civil rights movement.

Today, I rise and pay tribute to the efforts of these students who embody change and whose memory reminds us all that peaceful, intelligent activism can right egregious wrongs. That reminder is now ever more visible as this seminal moment in civil rights history has been put to film, premiering tonight here in Washington, D.C., and on Saturday, March 18, on HBO.

Called “Walkout,” the film provides a sincere and candid look at these student protests