"MAKING CRIMINALS PAY FOR THEIR CRIMES"
Honorable Bill McCollum

There are four essential elements for any major reform of federal criminal laws: (1) changes in habeas corpus law to limit the virtually endless appeals of death row inmates which delay the carrying out of their sentences; (2) expansion of a so-called "good faith " exception to the exclusionary rule of evidence in cases involving search and seizure issues so that more evidence in cases is admissible and more convictions obtainable; (3) restoration of the death penalty for a number of federal crimes by revising sentencing procedures to comply with a 1973 Supreme Court ruling which declared all death penalties in the United States unconstitutional on procedural grounds; and (4) creation of a provision permitting the award of the death penalty in cases of trafficking in very large quantities of narcotics.

Republicans and President Bush have made these four reforms the centerpiece of their crime initiatives for several years, but liberal Democrats have thwarted these reform efforts every time. Most recently a stacked House/Senate conference produced a crime bill with provisions on habeas corpus and the exclusionary rule which are worse than present law. Amazingly, if these provisions became law, death row inmates could use habeas corpus proceedings to delay the carrying out of their sentences even longer than they can now. And it would be more difficult for prosecutors to get into evidence contraband seized by police with search warrants meaning that fewer criminals would be convicted and go to jail.

In habeas corpus proceedings the Democrats would give murderers twice as long to file appeals in federal district court as the proposal of President Bush. The Democrats would also allow criminals to file multiple petitions raising that had already been determined by the courts. Elimination of this repetitious and unnecessary litigation is at the heart of the Republican habeas corpus reform proposal.

In contrast, the Democrats proposal will increase delay and repetitious litigation. They overrule a recent Supreme Court decision to allow convicted murderers to get additional rounds of federal litigation based on rules that were not even in existence at the time the court originally decided the case.

This means that every inmate presently sitting on death row would be given new opportunities to file petitions, and depending on how long one could drag out each appeal, the delays could truly be endless. This is why so many prosecuting attorneys have stated that were this proposal to become law, there would never be another death penalty carried out again in the United States.
The exclusionary rule is a court-made rule of evidence to prohibit the admission into a trial of any contraband seized by police in violation of the constitutional protections against illegal searches and seizures. It was designed to discipline police and discourage unconstitutional searches. A few years ago, the Supreme Court carved a "good faith" exception in those cases where a search warrant had been issued and a police officer had a reasonably objective belief that the warrant and his search were legal. Two federal courts of appeal have adopted this same standard as an exception with respect to searches. No other courts have ruled on this matter, and if it were to be presented to them or go all the way to the Supreme Court, it is quite possible that this exception would be expanded by court ruling to all cases of search and seizure. The Republican legislative initiative simply codified this exception for all types of searches and seizures and made it uniformly applicable throughout the nation. In the Democrats' bill the exception is forbidden for cases that do not involve search warrants, and in cases where a warrant has been issued not only must a prosecutor show that the police officer had a reasonably objective belief that the search and warrant were legal, but he must also demonstrate that the magistrate issuing the warrant did so properly and in good faith. This is a new and much tougher standard that will make it more difficult to get contraband into evidence even in cases where search warrants have been issued. The net effect is more criminals will go free on technicalities.

In 1973 the United States Supreme Court ruled that all death penalties in the United States were invalid because the procedures on sentencing were unconstitutional. All the states that had death penalties on the books at that time have long ago reinstated the death penalties by putting into law the proper constitutional safeguards. Congress has never done so with regard to federal crimes and today even the assassination of the President would not get the death penalty. Republicans have long fought to correct this and on several occasions the House has overwhelmingly voted to reinstate the death penalty, but on each occasion the provision have been either stripped in conference or tied to some repugnant measure to assure ultimate defeat. This time is no exception; the Democrat conference bill contains the death penalty corrective provisions but their enactment would be effectively nullified by the changes in the habeas corpus laws that give death row inmates unparalleled opportunities to avoid ever being executed.

The same is true for the drug kingpin death penalty. Even if no specific death can be shown if someone traffics in very large quantities of narcotics a court should be allowed to award the death penalty because it is self-evident that many deaths have resulted or will result from this trafficking. This provision also came out of conference but it too would be meaningless in the face of the liberalized habeas corpus changes.
While the death penalty sentencing provisions only affect federal cases, the habeas corpus reforms and exclusionary rule changes affect all criminal cases, state and federal. Reform to allow more evidence in at trials and more convictions to result and to stop the endless appeals of death row inmates is long overdue. It is time the liberal Democrats in Congress stop playing games and pass true reform that will allow the American law enforcement community to do its job in putting away those who commit heinous crimes.