AEDPA Has Reduced Federal Habeas Relief For State Prisoners

Report summary by Hans Sherrer

Habeas Litigation in U.S. District Courts is the first study conducted on the effect of the Antiterrorism and Effective Death Penalty Act of 1996 on habeas corpus petitions filed by state prisoners. The two year study of federal district court rulings was conducted by a three person team headed by Nancy J. King, a Vanderbilt University Law School professor. The study's Final Report was released to the public on August 21, 2007. *

The AEDPA changed federal habeas law by:

- Establishing a 1-year statute of limitations for filing a federal habeas petition, which begins when appeal of the state judgment is complete. The filing deadline is tolled during "properly filed" state post-conviction proceedings.
- Authorizing federal judges to deny on the merits any claim that a petitioner failed to exhaust in state court.
- Prohibiting a federal court from holding an evidentiary hearing when the petitioner failed to develop the facts in state court, except in limited circumstances.
- Barring successive petitions, except in limited circumstances.
- Mandating a new standard of review for evaluating state court determinations of fact and applications of constitutional law.

The effect of these changes was studied by examining 2,384 non-capital cases randomly selected from 37,000 federal habeas cases filed nationally in 2003 and 2004, and 368 capital cases filed between 2000 and 2002 in the thirteen federal judicial districts in which the most capital habeas cases were filed. Four of those districts were in Texas, two in Ohio, and one each in seven states.

The researchers compared their findings with four pre-AEDPA studies. The study found that the AEDPA has had the following general effects in both capital and non-capital federal habeas cases compared to before its 1996 enactment:

- Cases take longer to complete in district court;
- Fewer evidentiary hearings are granted in district court; and,
- A case is less likely to end in a grant of the writ.

Summary of report's findings by subject

Evidentiary hearing and discovery

Before the AEDPA an evidentiary hearing in a non-capital case was rare, only being granted in one out of every 99 petitions (1.1%). Under the AEDPA the likelihood of an evidentiary hearing is even rarer – only one granted for every 243 petitions (0.41%).

Evidentiary hearings are granted in only half as many capital cases as before the AEDPA's enactment – 9.5% of cases after the AEDPA compared with 19.5% before.

Discovery is also less common after the AEDPA. Although ordered in 12.5% of post-AEDPA capital cases (1 in 8), it is only ordered in 0.26% of non-capital cases (1 in 397).

State defenses against a petition's claims

22% of non-capital and 4% of capital habeas petitions are dismissed as time-barred (exceed the statute of limitations for filing) by the AEDPA, without consideration of any claims on their merits.

An additional 6.9% of non-capital and 3.8% of capital habeas petitions are dismissed as successive under the AEDPA, without consideration of any claims on their merits.

Processing time of case

From the time of filing to disposition, non-capital cases take about a month longer on average to process after the AEDPA – 7 months compared with 6 months previously.

Capital cases take almost twice as long to process after the AEDPA as before – 29 months compared with 15 months previously. None of the 13 federal districts studied, on average, complete capital cases within the 450-day time limit imposed by the AEDPA for states qualifying for fast track status.

Grants of relief in non-capital cases

The most noticeable effect of the AEDPA is where the rubber meets the road: the granting or denial of a habeas request for relief. Prior to the AEDPA about one in every 100 (1%) habeas petitioner in a non-capital case was granted the relief of a new trial or a sentence reduction. Under the AEDPA, only about 3 of every 1,000 state non-capital petitioners is receiving any form of relief (0.29%).

Grants of relief in capital cases

Prior to the AEDPA 4 out of 10 (40%) petitioners in a capital case were granted a new trial or a reduced sentence. Since enactment of the AEDPA the granting of relief has been reduced to only 1 in 8 (12.4%) petitioners. Of those, 70% were only granted a reduction in his or her death sentence, while the other 30% were granted a new trial. Thus, only about 4 out of 100 (1 in 25) capital habeas petitions now results in an order for a new trial.

The study shows that a capital petitioner is 43 times more likely to receive a new trial or a sentence reduction than a non-capital petitioner.

Effect of lawyer representation

While all death penalty states but Alabama provide post-conviction counsel, only 7% of non-capital petitioners were represented by an attorney. The study's findings show that representation by a lawyer has the effect of increasing the time before final disposition, and increases the likelihood that one or more of a petition's claims will be decided on its merits and not terminated as time barred or for a procedural violation. The study shows that the disparity in legal representation between capital and non-capital petitioners has the following result:

Percentage of state prisoner federal habeas petitions that raise a particular claim

Type of claim	% of capital cases	% of non-capital cases
Ineffective assistance of counsel	81.0	50.4
Improper jury instructions or comments	68.3	14.5
Improper prosecutorial argument	48.0	10.1
Erroneous evidence ruling, guilt phase (other than illegal confession, search, or seizure)	45.8	19.8
False, lost, or undisclosed evidence	43.1	13.0
New evidence of innocence of conviction	10.8	3.9
Sentencing proceeding error	5.1	12.9
Plea or plea negotiation error *	4.0	14.8

* 10 of 349 capital petitioners were convicted by plea (0.29%); 35% of the non-capital petitions were filed by a plea-convicted prisoner.

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About two weeks after the murders, a FBI informant told Bellevue investigators that a Muslim cleric in Seattle ordered Dr. Rafay killed because of disagreement with his teachings of the Koran. This informant also said a baseball bat was a murder weapon, which was a fact that had not been made public. Incredibly, the Bellevue police did not investigate this or two other credible tips, even though the tips included details like the names of people involved.

Similar murder unsolved

Today it would be readily accepted that the murders of the Rafays were religiously motivated because there are media reports every day about extreme sectarian violence. However, more than a decade ago the police investigators obviously didn't believe what can't be denied today – the murders could have been motivated by passions inflamed by differing religious ideas or extremism. The police were not only uninformed at the time, but tragic events continue to suggest Islamic extremism remains a threat to Muslims both domestically and abroad. In January 2003, Riasat Ali Khan, a close friend of Dr. Rafay and also a former president of the Canadian-Pakistan Friendship Organization, was murdered outside his home in Vancouver, BC. His murder remains unsolved.

RCMP "Mr. Big" sting operation

Nine months after the murders, frustrated by the lack of evidence suggesting the guilt of Burns or Rafay and uninterested in pursuing the evidence directly implicating other people as responsible for the murders, the Bellevue police obtained the assistance of the Royal Canadian Mounted Police in an effort to obtain incriminating evidence against the two teenagers. The RCMP decided to initiate an undercover sting operation known in Canada as "Mr. Big," in an effort to elicit a confession from one or both of them. Evidence from a Mr. Big type operation is not admissible in the United States unless it is obtained outside the country. Although legal in Canada, the technique is known to have produced false confessions from a number of people suspected of a murder.

The Mr. Big sting initiated in 1995 involved two undercover RCMP officers who first made the acquaintance of Burns, and then Rafay. They introduced themselves using phony identities as violent criminals, with one posing as a crime boss. They then systematically set out to gain the teenagers' confidence so they could coerce them to become involved in their group. They did this by putting them in the position of "knowing too much" about the alleged criminal's activities. Using threats of death and violence, promises, and even pretending to have underworld connections to the investigation in Bellevue, these undercover officers repeatedly challenged the teenagers to put to rest their professed skittishness for violence. The officers were eventually successful in pressuring them to reassure the officers of their toughness by bragging about their respective alleged roles in the Bellevue murders. Burns, Rafay and their friend Jimmy Miyoshi were subsequently arrested based on those so-called "confessions."

Later, the RCMP threatened Miyoshi with a charge of conspiracy to commit murder, even suggesting to him that he could face the death penalty if he did not tell the police that Burns and Rafay were guilty. Miyoshi signed an immunity agreement and provided the RCMP with a number of statements. Every statement by Miyoshi contradicts the last and each one contradicts the physical evidence at the crime scene.

Miyoshi, who lives in Japan, refused to return to North America to testify at Burns and Rafay's trial. Instead, his deposition videotaped months earlier was shown to the jury. Before giving this videotaped deposition Miyoshi phoned Burns' lawyer and asked him for help. The lawyer could not do anything for him because he didn't represent him and Miyoshi was a witness for the prosecution.

False confessions

The statements provided by Miyoshi and the confessions by Burns and Rafay are not merely unreliable because they were coerced by threats and promises, but they are false. How do we know they are false? Every material element of them is refuted by physical evidence collected by the police, and forensic testing and analysis of that evidence by the state's experts who testified during Burns and Rafay's trial. Some of the inconsistencies in the statements and confessions are:

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1. It is 14 times more likely that a capital petitioner is represented by a lawyer than a non-capital petitioner.
2. It is 23 times more likely for a capital petitioner to be granted an evidentiary hearing.
3. It is 43 times more likely for a capital petitioner to be granted a new trial or a sentence reduction.

These findings about the possible impact of being represented by an experienced post-conviction lawyer are emphasized by the fact that 58% of non-capital petitions are denied on the merits of one or more claims. That isn't dramatically less than the 72% of capital petitions decided on the merits of a claim. An experienced post-conviction lawyer is able to not just frame legal arguments, but eliminate weak arguments from a petition that detract from possibly winning arguments.

Claims for relief

The study also analyzed the number and types of claims that are made in post-AEDPA petitions. Non-capital habeas cases average about four claims for relief from a conviction or sentence. Capital habeas petitions averaged 28 claims, with significant differences between districts: California petitions averaged 80 claims, while Texas petitions averaged only 13 claims.

Although a significant number of capital and non-capital petitions allege new evidence of innocence, no petitioner was granted relief on the basis of his or her factual innocence.

Conclusion

The study only includes the processing of habeas cases at the district court level. However, given the restrictive rules for the court of appeals consideration of a district court's ruling, the study's findings may be indicative of over-all how federal courts handle state habeas petitions.

This is only a very brief summary of the findings detailed in the study's 194-page report. The report can be read or printed from JD's website at,
www.justicedenied.org/cases/habeasreport2007.pdf
The report's 12-page Executive Summary can be read or printed from JD's website at,
www.justicedenied.org/cases/habeassummary2007.pdf
The Executive Summary (only) can also be obtained by mailing $3 (stamps OK) with a request for "Executive Habeas Summary" to: Justice Denied; PO Box 68911; Seattle, WA 98168.

* Final Technical Report: Habeas Litigation in U.S. District Courts – An empirical study of habeas corpus cases filed by state prisoners under the Antiterrorism and Effective Death Penalty Act of 1996, by Nancy J. King, J.D., Fred L. Cheesman II, Ph.D., and Brian J. Ostrom, Ph.D., Vanderbilt Public Law Research Paper No. 07-21, August 21, 2007.