

## Lawless America Video Explains How The AEDPA Keeps Innocent Persons Imprisoned

**L**awless America was a project started by Bill Windsor to videotape “testimony” by persons in the United States about different aspects of this country’s dysfunctional legal system. In June 2012 Mr. Windsor began traveling to one or more cities in every state collecting his video taped testimony. He was in Seattle on September 6, 2012 and *Justice Denied’s* editor and publisher Hans Sherrer was taped talking about wrongful convictions in general, and in particular the negative effect of the Anti-terrorism and Death Penalty Act of 1996 (“AEDPA”) on innocent persons filing a federal habeas corpus petition. A six-minute excerpt of Hans Sherrer’s presentation about the AEDPA has been posted by Lawless America on Youtube.com, which can be viewed at, [www.youtube.com/watch?v=GdGTyOuiAv4](http://www.youtube.com/watch?v=GdGTyOuiAv4).

The text of the videotaped presentation follows:

My name is Hans Sherrer. I am the editor and publisher of *Justice Denied – the magazine for the wrongly convicted*, which for almost 14 years has been the only regularly published magazine in the United States devoted solely to issues related to wrongful convictions.

I have been associated with Justice Denied since 1998. I have personally reviewed many hundreds of cases of persons with compelling evidence they were convicted and remain imprisoned in spite of being actually innocent of their convicted crimes.

There are estimates that as many as 15% of imprisoned persons are actually innocent. An important cause of that grave problem is federal court’s act on the basis innocence is irrelevant.

In his book *Dead Wrong*, lawyer and law professor Michael Mello pointed out to lay readers what is well known in legal circles: “In federal court, innocence is irrelevant. The Supreme Court says so, and the lower courts listen – as they’re required to do.”

The Supreme Court has ruled in *Herrera v. Collins* and other cases the Constitution only guarantees procedural formalities are to be followed, it does not guarantee the outcome of those procedures will be cor-



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rect. The Supreme Court has made crystal clear the Constitution doesn’t assure a defendant’s innocence is any more relevant to the outcome of their case than their sex, age, or city of birth.

A federal habeas corpus petition is the last resort for both an innocent state and federal prisoner to have their wrongful conviction overturned.

The shock to a person who first learns of the irrelevance of their innocence *after* being wrongly convicted *and* then losing on appeal, is compounded when the person files a federal habeas petition. It may be common for people to think a federal court will intervene to protect an innocent person when no one else will. But such a thought is far more of a romantic fantasy than a belief grounded in reality. That fantasy is fed by movies such as *The Hurricane*, in which Rubin “Hurricane” Carter’s federal habeas petition was granted in 1985, and he was released after almost 20 years imprisonment for a triple murder he did not commit. What is not revealed is that under today’s rules the federal habeas petitions of Hurricane Carter and his co-defendant John Artis would not have been granted. Instead of being free men they might still be caged in a New Jersey prison. But people see and believe the Hollywood myth instead of the reality facing innocent people squarely in the face.

The reason Hurricane Carter’s federal habeas petition wouldn’t have been granted today, was enactment in 1996 of The Anti-Terrorism and Effective Death Penalty Act. The AEDPA was hastily enacted after the Oklahoma City Bombing. The AEDPA imposes a general one-year time limit to file a federal habeas petition after a state or federal prisoner’s conviction has been affirmed on direct appeal. State prisoners must also exhaust all their claims in State court before raising them in a federal habeas petition – which Hurricane Carter did not do. There are also serious restrictions placed on the filing of a second or successive petition.

Extreme restrictions are placed on a federal judge’s ability to invoke what is called the “miscarriage of justice” exception to allow consideration of a federal habeas petition that is filed after the one-year deadline, or a second or successive petition. A petitioner has to overcome the hurdle of what is called “due diligence” in discovering their “new

evidence” that establishes their conviction is a “miscarriage of justice.” If there is a reasonable likelihood the new evidence could have been discovered by a petitioner before expiration of the one-year filing deadline, they didn’t exercise “due diligence” and the evidence is not allowed to be considered.

There are untold thousands of innocent men and women languishing in state and federal prisons because of the extraordinary harsh and unfair restrictions imposed by the AEDPA. Those restrictions don’t recognize the reality that imprisoned persons are limited by the circumstance of their confinement from discovering new evidence as quickly as required by the AEDPA’s one-year time limit. And even for an innocent prisoners supporters on the outside, new evidence isn’t discovered all at once, but it can take years to discover through an investigation that gradually peels away the many layers of a case.

Congress can immediately help alleviate the dilemma innocent persons face by taking the simple action of abolishing the one-year time limit on an original or first federal habeas petition filed by state and federal prisoners. So it impacts all innocent prisoners, that new law should be made retroactive for every person imprisoned at the time it is enacted. It also needs to be specifically spelled out that the “due diligence” requirement does not apply to an original or first petition no matter when it is filed.

Even if it takes ten years for a prisoner to obtain new evidence of their innocence, a federal court should be able review that evidence the same as if their habeas petition was filed within the one-year deadline that now exists.

Abolishing the one-year time limit will help untie the hands of federal judges who today are hamstrung by the AEDPA from doing what they know is the right thing for a person that they believe is actually innocent.

Thank you.



Lawless America has posted over 700 videos of testimony by persons around the country. Lawless America’s website is, [www.lawlessamerica.com](http://www.lawlessamerica.com).

