The AEDPA- An Abomination created by the 1990's Crime Bill

During this past presidential election, we heard much about the notorious "Crime Bill." But as usual, we got more rhetoric than substance. The Crime Bill included several statutory changes, including the 1996 Anti-Terrorism and Effective Death Penalty Act (AEDPA). AEDPA was designed specifically to make it more difficult for people appealing their state court convictions to attain review in the federal courts, i.e. habeas corpus. Although habeas corpus was far from perfect before AEDPA, most legal scholars today describe habeas corpus as a confusing mess (Huq, 522). Below, I will show how AEDPA essentially eliminates a criminal appellant's ability to have federal courts overturn state court decisions by discouraging state courts from making reasoned decisions about constitutional violations, to grant evidentiary hearings, preventing petitioners from filing class action habeas proceedings, and otherwise encouraging federal courts to deny people based solely on arbitrary procedural rules. Although eliminating AEDPA would not completely fix habeas, it sure would make a good start.

Even as late as 2011, the federal courts continued to debate about the provisions of AEDPA, coming to new conclusions that shake the world of habeas, such as Harrington v. Richter, 131 S Ct 770 (2011). AEDPA requires federal courts to attribute a "presumption of correction" to state court decisions, but Richter extended this obligation to even single sentence denials. For example, Michigan's Court of Appeals often denies criminal appellants based "on the merits in the grounds presented." These types of rulings do not indicate whether or not a court even read the petitioner's complaints, nor do they provide a reasoned basis to be attacked in reviewing courts. Its like making petitioners play a dart game blind folded. To attack an unreasoned opinion, petitioners must imagine all of the potential justifications the court could have used, then show how each of these justifications are unreasonable (Huq 538, 541)! Thus, AEDPA actually encourages state courts to chelt criminal appellants out of their appeals by summarily dismissing them. It saves them judicial resources and it is more difficult to have such opinions overturned by "meddling" federal courts. Therefore, it should not surprise us that 97% of state post-conviction litigation in California "ends with a summary disposition" (Huq, 538). Why would state officials waste money or risk losing political capital to help the most reviled people in society? These people have

o power to challenge or punish them.

Likewise, AEDPA's inspired Cullen v. Pinholster, 131 S Ct 1388 (2011) encourages state courts to avoid adjudicating petitioners' claims on the merits. In the past, federal courts regularly held evidentiary hearings, but Pinholster essentially ended this (Huq, 537). In Pinholster, SCOTUS ruled that federal courts must rely entirely on state court records to evaluate habeas petitioner claims. In other words, if a petitioner's claims cannot be proven by the bare record created during trial, plea or sentencing proceedings, the claims will be denied. Since many claims, such as ineffective assistance of counsel, involve off the record discussions, attaining the evidence to prove such claims depends wholly on the good graces of the state courts. Such an outcome is unlikely, as scholars agree that many states continue to systematically deny petitioners' constitutional rights (Huq, 560). If true, why would they spend resources to do something that increases the chances they get caught?

AEDPA includes a number of other provisions that hinder criminal appellants from vindicating their constitutional rights. For instance, petitioners must raise or "exhaust" all of their claims in the state courts and then file a habeas petition with the same claims in the appropriate federal district court. The problem is that federal courts take advantage of the exhaustion doctrine. In Pirkel v. Burton, 970 F3d 684 (CA6 2020), a district court ruled that Pirkel's claims were unexhausted in a convoluted 10+ page opinion. It essentially said that Pirkel did not raise his claims in the same exact way in each of the required courts. Pirkel spent eight years in court fighting this unjustifiable attempt to sabotage his appeal. In 2020, the Sixth Circuit vindicated Pirkel's rights, granting him a new attorney to represent him in the state courts. However, the district court was not punished for abusing the procedural rules.

AEDPA also requires petitioners to file their habeas petitions within one year of being denied in the state courts. Combining the exhaustion doctrine with the time constraints essentially eliminated class-action habeas corpus proceedings. Class action habeas proceedings allowed the courts to rule on a large number of petitions at once, which both saved judicial resources and expedited petitioners' crusades for justice. The latter is most important, as many exonerated people spend ten to forty years in prison.

All of AEDPA's provisions focus the federal courts on addressing arbitrary

procedural aspects rather than the merits of petitioners' claims. Therefore, it is not surprising that most habeas petitioners cannot navigate the various statutes, case law, etc. Thus, courts dismiss most of their petitions purely for procedural reasons (Huq, 532). In other words, they never reach the merits of claims (Primus, 12). Furthermore, research suggests that less than one percent of non-capital habeas petitioners receive any type of relief (King, 310). In other words, habeas has become a very expensive procedure that essentially grants no one relief (Primus 4, 12).

Although legal scholars are fully aware of the problems with habeas, they are divided as to what to do about it. Amazingly, many have sought to limit habeas review even further, such as granting relief to only people who can prove actual innocence or to people whose state is engaging in systematic constitutional violations. Both designs would continue to make federal review a mockery. No doubt actual innocence should become a stand alone issue (it currently isn't), and federal courts should eliminate systematic violations in state courts. We should also eliminate AEDPA, but this would only make a good start to fixing habeas. Above all, the system must be injected with accountability to deter government officials from violating people's constitutional rights and Court officials and police who intentionally hide or fabricate evidence should be disbarred and held personally liable. In state cases, prosecutors and police commit misconduct in about 30-35% of the cases that are later exonerated (National Registry of Exonerations). Although both currently receive qualified or absolute immunity, the public pressures them to solve crimes quickly and maintain high conviction rates, both of which may require truth bending. Until government officials are held personally accountable for their misconduct, people will continue to be unjustly convicted. And their appeals will probably be dismissed, for no other reason than that the courts decided not to read their briefs.

***Huq, Aziz, "Habeas and the Roberts Court," The University of Chicago Law Review, Vol. 81, No. 2 (Spring 2014), pp. 519-608.

***Primus, Eve Brensike, "A Structural Vision of Habeas Corpus," California Law Review, Vol. 98, No. 1 (February 2010), pp. 1-57.

***King, Nancy J., "Non-Capital Habeas Cases after Appellate Review: An Empirical Analysis," Federal Sentencing Reporter, Vol. 24, No. 4, Prisoner Rights and Habeas Corpus: Assessing the Impact of 1996 Reforms (April 2012), pp. 308-320. Published by University of California Press on behalf of the Vera

Institute of Justice

***"Government Misconduct and Convicting the Innocent- The Role of Prosecutors, Police and Other Law Enforcement" by the National Registry of Exonerations.