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# The Effects of AEDPA on Justice

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## CHAPTER 13

# THE EFFECTS OF AEDPA ON JUSTICE

*David R. Dow<sup>1</sup> and Eric M. Freedman*

### Introduction

We know that through the course of American history federal habeas corpus has been a critical mechanism for preventing injustice in capital cases. We also know that through the 1980s and 1990s Supreme Court doctrine erected a series of legal barriers to the availability of habeas corpus that caused many scholars to question whether the goal of achieving justice was being threatened. And we know from a major empirical study covering the years 1973–1995 what success rate death row inmates achieved in federal habeas corpus actions during that period.

The Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA) “dramatically altered the landscape for federal habeas corpus petitions” (*Rhines v. Weber* 2005) by making legal alterations that were designed, as President Clinton said in signing the legislation, “to streamline Federal appeals for convicted criminals sentenced to the death penalty,” while preserving “independent review of Federal legal claims and the bedrock constitutional principle of an independent judiciary” (Hertz and Liebman 2005b:2124). We have now learned, from a study covering the years 2000–2006 and here reported in full for the first time,<sup>2</sup> that, insofar as the published cases reveal, the success rate for capital inmates on federal habeas has fallen dramatically—to levels about a fifth of what they previously were.

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1. I thank the University of Houston Law Foundation for support and Jennifer Hannigan and Matt Kita for superb research assistance. My special thanks to Melissa Azadeh both for superb research assistance and for additional contributions that warrant calling her a co-author.

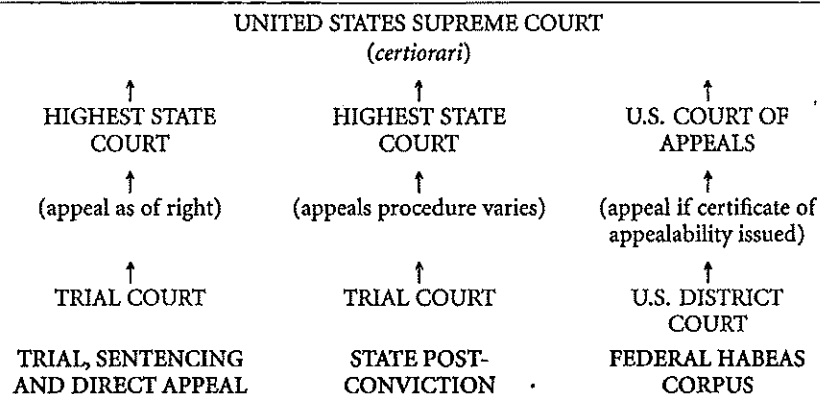
2. A very preliminary set of results has been published previously (Dow 2006:xxii).

These results raise pressing questions of public policy for empirical research. The mere fact that the relief rate in capital federal habeas corpus litigation has plummeted since the enactment of AEDPA does not itself establish causation, much less answer the normative question of whether that rate is an appropriate one in light of the error rate in the underlying cases. But given the many causes for concern about the functioning of the contemporary system of capital punishment, there is an urgent need to do the empirical research that will create a complete database for study. Until then, proposals to impose yet further restrictions on the availability of habeas corpus are—as all knowledgeable organizations have already told Congress—simply premature. Once the study has been completed and Congress is in a position to legislate on the basis of facts rather than anecdote, it may well find that the path towards achieving speed and justice together lies in some hitherto-neglected directions.

### Getting to 1995

As one of us has previously described in some detail (Freedman 2003a:554–560), there is a close historical connection between federal habeas corpus and the imposition of capital punishment by the states. Summarizing briefly, as Figure 1 illustrates, a state criminal defendant has the right after conviction in a state trial court to pursue a direct appeal to one or more state appellate courts (typically in capital cases directly to the state's supreme court), and then to seek discretionary review in the United States Supreme Court by a petition for a *writ of certiorari*. Thereafter, most states provide for some form of state post-conviction review to allow for the examination of issues that could not have been addressed during the appeal. Where such procedures exist, defendants must utilize them before seeking the federal habeas corpus remedy.

Figure 1. Typical State and Federal Trial and Post-Conviction Procedure



This is not a system designed for efficiency. It is instead intended as a constraint on government power. As famously expressed by James Madison in *The Federalist* (No. 51), "In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allocated to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself" (Madison 1788:323).

In the years prior to the Civil War, however, "the rights of the people" came under unremitting stress from the philosophical and political challenges generated by the peculiar institution of slavery:

During the period that slavery existed in a colony or state, African-Americans were usually judged and summarily punished in special courts by all-white judges or juries for alleged crimes committed against whites. Violent acts by whites against blacks were rarely defined as criminal and then only as property crimes committed against the slave's white owner. Not only did the legal structure of slavery fail to protect blacks against the violent acts of whites, but it denied African-Americans the right to seek legal redress, or to testify as a witness against whites (Colbert 1990:13).

The 13th, 14th, and 15th Amendments, passed in the aftermath of the Civil War, were designed to end this two-tier system within the states. But the framers of those Amendments had little faith in the willingness of the state courts to discharge the responsibility of guaranteeing the rights of equal protection and due process of law to all citizens. It was in this context that Congress passed the federal habeas corpus act of 1867 (Amsterdam 1965), whose basic structure survives to this day. In the face of "the state courts' expected systematic resistance," the "Congress sought to assure prisoners of one full opportunity to enforce their newly given national rights in a national court" (Hertz and Liebman 2005a:52). Although its enthusiasm for the implementation of this purpose wavered during the Reconstruction period (Freedman 2003a:558–560), the Supreme Court in 1923 reaffirmed the critical importance of independent federal judicial review of claims that state criminal proceedings had violated the Constitution (*Moore v. Dempsey* 1923:90–92).

During the twentieth century and into the twenty-first, the death penalty in America has been the subject of extensive empirical study. Its principal features from the viewpoint of achieving justice are quite clear (Freedman 2005:667–672) and have been fully documented in a comprehensive anthology (Acker, Bohm, and Lanier 2003). In brief:

[C]apital defendants systematically receive less due process than others. Their cases are more likely than those of defendants not facing execution to have been infected by distortions arising from racism, the incompetence of defense counsel, their own mental limitations, public passion, political pressures, or jury prejudice or confusion (Baldus and Woodworth 2003; Bowers, Fleury-Steiner, and Antonio 2003; Bright 2003; Mello and Perkins 2003; Sandys and McClelland 2003). Of course, the result is a dangerous increase in the risk that the system will make a fatal error (Freedman 1990–1991; Gross 1996; Radelet and Bedau 2003) (Freedman 2003a:560).

This risk is compounded by the fact that capital cases are tried under unique rules that systematically increase the chances of conviction. Although death penalty trials are bifurcated into guilt and penalty phases, they are heard before a single jury. States are entitled to exclude from the penalty phase jury those with a fixed conviction in opposition to capital punishment. But such individuals also are denied participation in the trial's guilt phase, where they generally would be more likely to acquit defendants of capital murder than would their death-qualified counterparts. Repeated studies have shown that capital cases are tried before jurors who are more apt to convict than jurors sitting on non-capital cases (Freedman 2005:667–668; Liptak 2007).

For all of these structural reasons, in the decades following *Moore* robust federal habeas corpus review in capital cases was repeatedly recognized as being of especial importance for preventing miscarriages of justice (Association of the Bar 1996:177–181; Hertz and Liebman 2005a:§2.6). Nevertheless, following its ruling in *Gregg v. Georgia* (1976) that procedures could be designed to meet the constitutional mandate “that the penalty of death not be imposed in an arbitrary or capricious manner” (p. 195), the Supreme Court throughout the 1980s and 1990s systematically built up “a legalistic maze of restrictions on the availability of the habeas corpus remedy” (Freedman 2003a:567).

Among the most entangling vines in this dense thicket were doctrines of harmless error (*Brecht v. Abramson* 1993), whose incoherence had the practical effect of encouraging federal judges to ignore serious claims of constitutional violations (Amsterdam 2004; Dow and Rytting 2000); the universally condemned ruling in *Teague v. Lane* (1989), which arbitrarily constricted the universe of favorable legal rules available to federal habeas corpus petitioners (Freedman 2003a:566–567); and a series of cases involving the doctrines of procedural default, abuse of the writ, and exhaustion of remedies (Freedman 2006a:1097–1098). To take just one of many examples, in *Coleman v. Thompson* (1991) the Court ruled that a capital prisoner whose lawyer had filed his

state habeas corpus appeals papers three days late had thereby forfeited federal habeas corpus review. This decision was premised on the explicit view that the outcome represented the appropriate “allocation of costs” between the interests of the State in avoiding a federal review of its conviction that might lead to an expensive retrial and those of the prisoner in not being executed pursuant to a possibly unconstitutional judgment (p. 754).

We have reliable empirical knowledge of how death row inmates fared in attempting to traverse this legal landscape, because a landmark study by Professor James S. Liebman and his colleagues examined every capital case in the United States in the period between 1973 and 1995, including more than 4,500 habeas petitions (Liebman, Fagan, and West 2000). The study found that petitioners in capital cases that reached federal habeas review succeeded approximately 40% of the time in overturning either the verdict or the sentence (Liebman *et al.* 2000). Specifically, for each 100 death verdicts returned, approximately 47 were overturned during state appeals; of the remaining 53, approximately 21 were invalidated on federal habeas corpus review—a total error rate of 68% (pp. 5–6). Even then—noting the systemic sources of error inherent in the design of death penalty systems and the legal difficulties in correcting them on federal habeas review—the authors expressed “grave doubt” about whether all errors were indeed being caught (a doubt reinforced by the observation that in 82% of the cases in which a death sentence was overturned the defendant subsequently received a sentence less than death, including 7% of cases in which he was found to be innocent of the capital offense) (pp. i–ii).

## AEDPA and After

The last year covered by the Liebman study was 1995. In 1996, Congress enacted AEDPA. The statute, which was complex and convoluted—“in a world of silk purses and pigs’ ears, the Act is not a silk purse of the art of statutory drafting” (*Lindh v. Murphy* 1997: 336)—made a plethora of highly technical changes to the rules governing federal habeas corpus proceedings. These changes included the creation of a statute of limitations and the imposition of constraints on federal review of legal and factual issues that had been, or might have been, litigated during the antecedent state proceedings (Hertz and Liebman 2005a:114–117).<sup>3</sup>

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3. With the exception of certain provisions contained in Chapter 154 of the statute, these changes apply to capital and non-capital cases alike. Although, in keeping with the concerns of this volume, our discussion is limited to capital cases, it is worth noting that as a matter of design of the criminal justice system the effects of AEDPA on non-capital cases—

Arguably, AEDPA was principally motivated by an impetus to speed the federal habeas review of state death penalty cases, “while making no fundamental alteration in the existing role of the federal courts inquiring into state capital convictions” (Freedman 2003a:568). The Supreme Court certainly has frequently read the statute that way (Hertz and Liebman 2005a:120–132), which is consistent with the view that the Court had already shaped the field to its liking prior to 1996 (Freedman 2003a:569). This premise also is consistent with a recent study by Professor Blume finding that AEDPA made no difference to petitioners’ success rate at the Supreme Court level (Blume 2006). But Professor Blume went on to caution:

However, AEDPA does seem to have made it more difficult, especially in recent years, for petitioners to succeed in the federal courts of appeals. Given the number of exonerations in recent years, the scope of the writ—if it is to retain its historical function as a safeguard of freedom in our criminal justice system—should be expanded, not contracted, before the “bite” of judicial and congressional habeas reform exceeds the “hype” and effectively insulates even the most egregious state court decisions from federal collateral attack (p. 297).

Our statistical data show Professor Blume’s warning to have been entirely correct. If the statute was intended to speed up federal habeas corpus proceedings in the lower federal courts without making relief any more difficult to obtain than it already was, the legislation has most certainly failed. Whatever may have been the effect on speed of disposition (which we have not studied) the success rate of capital federal habeas corpus petitioners in the lower federal courts has fallen sharply—so sharply as to raise a serious doubt whether those courts are in fact conducting the independent review of state law that Article III of the Constitution mandates (Liebman and Ryan 1998). Quite apart from legal considerations, our results warrant an urgent look at a grave policy question: has the statute in practice imperiled the bedrock role of capital habeas proceedings as “a safeguard against injustice” (American Bar Association 2003:931)?

We have examined the published results on appeal of all federal habeas corpus applications filed by all death row inmates between 2000 and 2006, inclu-

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which greatly outnumber capital ones and which in an era of sharply rising rates and lengths of incarceration are consuming enormous resources (Amsterdam 2007:53; Liptak 2005)—are also in urgent need of study. An initial effort in this direction has been announced by Vanderbilt Law School (<http://law.vanderbilt.edu/article-search/article-detail/index.aspx?nid=55>).

sive.<sup>4</sup> The data can be summarized simply: whereas prior to AEDPA death row inmates prevailed somewhere between half and two-thirds of the time, they now prevail, nationwide, approximately 12 percent of the time. Further, the success rate, in most jurisdictions, appears to be declining.<sup>5</sup>

Although the entire data are reported in the Appendix, several aspects of our findings are worth highlighting here. First, although the overall rate of relief nationwide is around 12 percent, the figure varies significantly from circuit to circuit. Thus, for example, the rate of relief in the Fourth Circuit is less than two percent; in the Fifth and Eleventh Circuits it is less than four percent. In contrast, the Ninth Circuit shows a relief rate of 35 percent, while the Seventh and Tenth Circuits have relief rates of around 23 percent.

Second, relief rates do not appear to be adumbrated by grants of certificates of appealability in any of the circuits. Thus, in the Fourth and Fifth Circuits, where relief rates are lowest, the rates for COA grants are also low (at 45 and 43 percent, respectively). However, in the Eleventh Circuit, which also has an extremely low rate of relief, the courts grant a COA more than 84 percent of the time. In contrast, while the Ninth Circuit has the highest rate of relief, its rate of granting COA is in the middle of the pack, at 68 percent. The Seventh Circuit, which has a relatively high relief rate, has the lowest COA grant rate, only 37 percent. The highest COA grant rate of 91 percent is in the Eighth Circuit, which has a relief rate of only 17 percent.

Third, although relief rates have been declining over the last three years of the period we have studied, there is not a clearly defined trend line that stretches across all circuits over the entire seven-year period that we have examined. For example, the overall relief rate in 2000 was around six percent, but it shot up to around 27 percent in 2003, and was at 19 percent in 2005 (having declined to seven percent in 2004). These variations may reflect no more than random fluctuations and relatively small sample sizes, but they merit further study.

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4. The Supreme Court ruled in *Lindh* that habeas petitions filed before the effective date of AEDPA would not be governed by the statute. We therefore began our analysis with calendar year 2000 in a rough effort to exclude most of the habeas petitions that would continue to be adjudicated under pre-AEDPA law.

5. Our data also capture the distinction between cases where an inmate obtained a certificate of appealability (COA) and those where he did not. Under AEDPA, before a U.S. Court of Appeals may adjudicate the merits of a claim on which a death row inmate has been denied relief, the inmate must make a "substantial showing of denial of a constitutional right" and obtain from either the District or Circuit Court a COA to that effect (28 U.S.C. §2253(c)(2)). The statute has been interpreted to mean that the issue the inmate seeks to have adjudicated is "debatable" among reasonable jurists (*Slack v. McDaniel* 2000:484; *Miller-El v. Cockrell* 2003).



## The Road Ahead

We can think of three possible explanations for the contemporary state of affairs described by the data we have collected. One is that death penalty trials are fairer today and involve dramatically fewer constitutional violations than was the case a decade ago. There is no evidence in support of this hypothesis and a good deal against it (American Bar Association 2003:928–930; Death Penalty Information Center 2007; Lindell 2006).

A second possible explanation is that the trials are just as unfair today as they once were but death row inmates are obtaining relief in state courts and therefore do not need to resort to federal court as frequently. Although more detailed statistical studies would be welcome, this hypothesis, too, may appropriately be described as distinctly implausible. Liebman *et al.* (2000), for example, found low reversal rates in the state courts in Texas and Virginia, and a later study, that included an analysis of some post-AEDPA cases, found that the Texas and Virginia reversal rates remained low (Lofquist 2002:1513–1520).

The third possibility is that trials are just as unfair today as they ever were, and that state courts continue to deny relief to death row inmates, but that AEDPA now precludes the federal courts from issuing relief that they would have issued prior to AEDPA's enactment. Although this explanation seems to be the most likely one—and, indeed, we predict that it will prove to be correct—empirical validation of it will require careful analysis since, as indicated above, the legal environment for death row inmates was darkening in any event in the years before AEDPA took effect.

Such a study could be designed in several ways. One would be to focus on individual judges of the Courts of Appeals. Suppose that a particular judge voted to grant relief in capital habeas corpus cases at a 40% rate in the period 1981–1986, at a 30% rate in 1986–1991, at a 25% rate in 1991–1996, and at a 5% rate in both 1996–2001 and 2001–2006. And suppose further that this pattern—a sharp drop in votes to grant relief by the same judge following the enactment of AEDPA—turned out to be typical. Such findings would certainly be strongly suggestive that AEDPA, rather than the doctrinal changes made by the Supreme Court before the enactment of the statute, caused the drop.

Another highly important need is the compilation of a comprehensive and detailed database recording the grounds on which habeas relief is being granted or denied. Only with this information in hand will policymakers be able to sensibly assess and address the underlying public policy issues. As matters currently stand, when proposals for legislative reform of the capital habeas corpus process are made to Congress they are tested by a process consisting of no

more than a duel of anecdotes. Given the stakes, this practice should be unacceptable to any serious person—which is precisely why such mainstream groups as the American Bar Association, the United States Judicial Conference, and the Conference of Chief Justices have all told Congress that it should provide for an independent empirical study of the current workings of the system before legislating (McMillion 2006).

We agree, and would only add our hope that the contents of legislative proposals be guided by the empirical findings. If, for instance, AEDPA, rather than any improvement in the fairness of state court proceedings, has caused the decline in grants of relief, then one might plausibly seek to improve the quality of defense representation in capital cases in those courts at trial, on direct appeal, and in state post-conviction proceedings (American Bar Association 2003:924–935; Freedman 2003b:1100–1103; Freedman 2006b:190–191).

Regardless of their views on the death penalty, legislators, social scientists, lawyers, and ordinary citizens might well benefit from pausing to reflect that each execution takes place in the name of all of us.

## AEDPA Stats — Totals 2000–2006

Judicial Circuit	Relief Denied			Relief Granted			Unresolved			UNFILTERED HITS
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL			
1st	0	0	0	0	0	0	0	0	9	
2d	0	0	0	0	0	0	0	0	22	
3d	5	3	1	2	3	2	16	58	58	
4th	49	5	1	0	5	0	60	75	75	
5th	175	7	4	4	8	4	202	282	282	
6th	35	9	3	5	14	2	68	139	139	
7th	15	1	3	2	0	0	21	53	53	
8th	17	3	2	3	3	1	29	44	44	
9th	8	0	1	6	5	0	20	136	136	
10th	45	1	5	10	3	0	64	113	113	
11th	42	2	1	1	4	2	52	103	103	
DC	0	0	0	0	0	0	0	3	3	
TOTAL	391	31	21	33	45	11	532	1037		
	422		54		56					

% TOTAL	73.50%	5.83%	3.95%	6.20%	8.46%	2.07%	100.00%
	79.32%			10.15%		10.53%	

Grant of a COA are treated as "Unresolved"  
 Denial of a COA are treated as "Relief Denied"  
 Grant of a COA where the denial was Affirmed are treated as "Affirmed Denial"  
 Grant of a SOE are treated as "Remanded Grant"  
 Denial of SOE are treated as "Relief Denied"

## AEDPA Stats — Year-By-Year

2000

Judicial Circuit	Relief Denied		Relief Granted		Unresolved		TOTAL
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	
1st	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0
3d	2	0	0	0	0	0	2
4th	13	1	0	0	0	0	14
5th	21	0	0	1	1	1	24
6th	4	0	0	0	1	0	5
7th	0	1	0	0	0	0	1
8th	1	0	0	1	0	0	2
9th	2	0	0	0	0	0	2
10th	8	0	0	2	1	0	11
11th	1	0	0	0	1	0	2
DC	0	0	0	0	0	0	0

TOTAL	52	2	0	4	4	5	63
	54		4				

% TOTAL	82.54%	3.17%	0.00%	6.35%	6.35%	7.94%	100.00%
	85.71%		6.35%				

## AEDPA Stats — Year-By-Year

2001

Judicial Circuit	Relief Denied			Relief Granted			Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL		
1st	0	0	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0	0	0
3d	0	0	0	0	0	0	0	0	1
4th	2	1	0	0	0	0	0	0	3
5th	17	1	1	0	1	1	21	1	21
6th	4	1	0	0	3	0	8	0	8
7th	2	0	0	0	0	0	2	0	2
8th	1	0	1	0	0	1	3	1	3
9th	1	0	0	0	0	1	2	1	2
10th	8	0	1	4	0	0	13	0	13
11th	2	0	0	1	0	1	4	1	4
DC	0	0	0	0	0	0	0	0	0

TOTAL	37	3	3	6	4	4	57
	40		9		8		

% TOTAL	64.91%	5.26%	5.26%	10.53%	7.02%	7.02%	100%
	70.18%		15.79%		14.04%		

## 2002

% TOTAL	77.78%	6.06%	3.03%	5.05%	8.08%	0.00%
	83.84%			8.08%	8.08%	100.00%

## AEDPA Stats — Year-By-Year

2003

Judicial Circuit	Relief Denied		Relief Granted		Unresolved	
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant
1st	0	0	0	0	0	0
2d	0	0	0	0	0	0
3d	1	0	0	0	0	0
4th	11	0	1	0	0	0
5th	25	0	0	1	0	1
6th	4	0	0	2	1	1
7th	0	0	1	0	0	0
8th	2	0	1	0	1	0
9th	0	0	0	2	0	0
10th	5	1	1	3	0	0
11th	5	0	1	9	1	0
DC	0	0	0	0	0	0

TOTAL	53	1	5	17	3	2
	54		22		5	

% TOTAL	65.43%	1.23%	61.17%	20.99%	3.70%	2.47%
	66.7%		27.16%		6.17%	

100.00%

## AEDPA Stats — Year-By-Year

2004

Judicial Circuit	Relief Denied			Relief Granted			Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL		
1st	0	0	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0	0	0
3d	0	2	0	0	0	1	0	0	3
4th	4	1	0	0	0	1	0	0	6
5th	21	1	1	0	1	1	1	1	25
6th	3	1	0	1	1	1	1	1	7
7th	6	0	0	0	0	0	0	0	6
8th	4	1	0	0	0	0	0	0	5
9th	3	0	0	1	2	0	0	0	6
10th	1	0	1	1	1	0	0	0	4
11th	3	0	0	0	1	0	0	0	4
DC	0	0	0	0	0	0	0	0	0

TOTAL	45	6	2	3	8	2	66		
	51		5		10				

% TOTAL	68.18%	9.09%	3.03%	4.55%	12.12%	3.03%	100.00%		
	77.27%		7.58%		15.15%				



## AEDPA Stats — Year-By-Year

2005

Judicial Circuit	Relief Denied			Relief Granted			Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL		
1st	0	0	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0	0	0
3d	0	0	1	1	0	2	4	4	4
4th	8	0	0	0	1	0	9	9	9
5th	24	1	2	1	1	0	29	29	29
6th	7	3	1	1	3	1	16	16	16
7th	6	0	6	3	0	0	15	15	15
8th	1	1	0	0	0	0	2	2	2
9th	0	0	0	0	1	0	1	1	1
10th	4	0	0	0	0	0	4	4	4
11th	7	1	0	1	0	0	9	9	9
DC	0	0	0	0	0	0	0	0	0
TOTAL									
	57	6	10	7	6	3	89	89	89
%									
	64.04%	6.74%	11.24%	7.87%	6.74%	3.37%	100.00%	100.00%	100.00%
%									
	64.04%	70.79%	19.10%	10.11%	10.11%	3.37%	100.00%	100.00%	100.00%

## AEDPA Stats — Year-By-Year

2006

Judicial Circuit	Relief Denied			Relief Granted			Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL		
1st	0	0	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0	0	0
3d	1	1	0	0	1	0	0	0	3
4th	7	0	0	0	1	0	0	0	8
5th	34	2	1	3	1	1	42	1	42
6th	8	3	1	2	3	0	17	0	17
7th	1	0	0	0	0	0	1	0	1
8th	4	0	0	1	1	0	6	0	6
9th	2	0	0	0	1	0	3	0	3
10th	4	0	0	0	0	0	4	0	4
11th	15	0	0	0	0	0	15	0	15
DC	0	0	0	0	0	0	0	0	0

TOTAL	76	6	2	6	8	1	99
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% TOTAL	76.77%	6.06%	2.02%	6.06%	8.08%	1.01%	100.00%
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## AEDPA Stats — Subsection 1—COA Granted by District Court

2000

Judicial Circuit	Relief Denied			Relief Granted			Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL		
1st	0	0	0	0	0	0	0		
2d	0	0	0	0	0	0	0		
3d	1	0	0	0	0	0	1		
4th	0	0	0	0	0	0	0		
5th	9	0	0	0	1	0	10		
6th	3	0	0	0	1	0	4		
7th	0	0	0	0	0	0	0		
8th	0	0	0	0	0	0	0		
9th	0	0	0	0	0	0	0		
10th	6	0	0	2	0	0	8		
11th	0	0	0	0	1	0	1		
DC	0	0	0	0	0	0	0		

TOTAL	19	0	0	2	3	0	24		
	19								

% TOTAL	79.17%	0.00%	0.00%	8.33%	12.50%	0.00%	100.00%		
	79.17%								

## AEDPA Stats — Subsection 1—COA Granted by District Court

2001

Judicial Circuit	Relief Denied			Relief Granted			Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL		
1st	0	0	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0	0	0
3d	0	0	0	0	0	0	0	0	0
4th	0	0	0	0	0	0	0	0	0
5th	8	0	0	0	0	0	0	0	8
6th	1	0	0	0	2	0	0	0	3
7th	1	0	0	0	0	0	0	0	1
8th	1	0	0	0	0	0	0	0	1
9th	0	0	0	0	0	0	0	0	0
10th	3	0	1	2	0	0	0	0	6
11th	1	0	0	0	0	0	0	0	1
DC	0	0	0	0	0	0	0	0	0

TOTAL	15	0	1	2	2	0	20
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% TOTAL	75.00%	0.00%	5.00%	10.00%	10.00%	0.00%	100.00%
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## AEDPA Stats — Subsection 1—COA Granted by District Court

2002

Judicial Circuit	Relief Denied		Relief Granted		Unresolved		TOTAL
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	
1st	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0
3d	1	0	0	0	1	0	2
4th	0	0	0	0	0	0	0
5th	3	0	0	0	1	0	4
6th	1	0	0	0	0	0	1
7th	0	0	0	0	0	0	0
8th	3	1	0	1	0	0	5
9th	0	0	0	0	0	0	0
10th	6	0	0	0	0	0	6
11th	7	1	0	0	0	1	9
DC	0	0	0	0	0	0	0

TOTAL	21	2	0	1	2	1	27
	23		1		3		

% TOTAL	77.78%	7.41%	0.00%	3.70%	7.41%	3.70%	100.00%
	85.19%		3.70%		11.11%		

## AEDPA Stats — Subsection 1 — COA Granted by District Court

2003

Judicial Circuit	Relief Denied			Relief Granted			Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL		
1st	0	0	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0	0	0
3d	0	0	0	0	0	0	0	0	0
4th	0	0	0	0	0	0	0	0	0
5th	5	0	0	1	0	0	0	0	6
6th	2	0	0	1	1	1	1	1	5
7th	0	0	0	0	0	0	0	0	0
8th	1	0	0	0	0	0	0	0	1
9th	0	0	0	1	0	0	0	0	1
10th	1	0	0	2	0	0	0	0	3
11th	2	0	1	0	1	0	1	0	4
DC	0	0	0	0	0	0	0	0	0

TOTAL	11	0	1	5	2	1	20
	11		6		3		

% TOTAL	55.00%	0.00%	5.00%	25.00%	10.00%	5.00%	100.00%
	55.00%		30.00%		15.00%		

## AEDPA Stats — Subsection 1 — COA Granted by District Court

2004

Judicial Circuit	Relief Denied		Relief Granted		Unresolved		TOTAL
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	
1st	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0
3d	0	1	0	0	0	0	1
4th	0	0	0	0	0	0	0
5th	5	1	0	0	1	0	7
6th	2	0	0	0	0	0	2
7th	1	0	0	0	0	0	1
8th	2	1	0	0	0	0	3
9th	1	0	0	0	1	0	2
10th	1	0	1	0	1	0	3
11th	1	0	0	0	0	0	1
DC	0	0	0	0	0	0	0

TOTAL	13	3	1	0	3	0	20
	16		1		3		

% TOTAL	65.00%	15.00%	5.00%	0.00%	15.00%	0.00%	100.00%
	80.00%		5.00%		15.00%		

## AEDPA Stats — Subsection 1 — COA Granted by District Court

2005

Judicial Circuit	Relief Denied		Relief Granted		Unresolved	
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant
1st	0	0	0	0	0	0
2d	0	0	0	0	0	0
3d	1	0	0	0	0	0
4th	5	0	0	0	0	0
5th	4	0	0	0	0	0
6th	6	1	0	0	2	0
7th	1	0	0	0	0	0
8th	0	1	0	0	0	0
9th	0	0	0	0	1	0
10th	4	0	0	0	0	0
11th	3	1	0	0	0	0
DC	0	0	0	0	0	0

TOTAL	24	3	0	0	3	0
	27	0	0	0	3	30

% TOTAL	80.00%	10.00%	0.00%	0.00%	10.00%	0.00%
	90.00%	0.00%	0.00%	0.00%	10.00%	100.00%



## AEDPA Stats — Subsection 1 — COA Granted by District Court

2006

Judicial Circuit	Relief Denied			Relief Granted			Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL		
1st	0	0	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0	0	0
3d	1	1	0	0	1	0	3	0	3
4th	2	0	0	0	0	0	2	0	2
5th	8	0	0	0	1	0	9	0	9
6th	5	2	1	1	2	0	11	0	11
7th	0	0	0	0	0	0	0	0	0
8th	3	0	0	1	0	0	4	0	4
9th	2	0	0	0	1	0	3	0	3
10th	4	0	0	0	0	0	4	0	4
11th	6	0	0	0	0	0	6	0	6
DC	0	0	0	0	0	0	0	0	0

TOTAL	31	3	1	2	5	0	42
	34	3	3		5		

% TOTAL	73.81%	7.14%	2.38%	4.76%	11.90%	0.00%	100.00%
	80.95%	7.14%	7.14%		11.90%		

## AEDPA Stats — Subsection 2—COA Denied by District Court

2000

	Relief Denied			Relief Granted			Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL		
1st	0	0	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0	0	0
3d	1	0	0	0	0	0	0	0	1
4th	0	0	0	0	0	0	0	0	0
5th	0	0	0	0	0	0	0	0	0
6th	1	0	0	0	1	0	0	0	2
7th	0	0	0	0	0	0	0	0	0
8th	0	0	0	0	0	0	0	0	0
9th	0	0	0	0	0	0	0	0	0
10th	1	0	0	0	0	0	0	0	1
11th	1	0	0	0	0	0	0	0	1
DC	0	0	0	0	0	0	0	0	0
TOTAL	4	0	0	0	1	0	1	0	5
% TOTAL	80.00%	0.00%	0.00%	0.00%	20.00%	0.00%	20.00%	0.00%	100.00%

## AEDPA Stats — Subsection 2—COA Denied by District Court

2001

	Relief Denied			Relief Granted		Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL	
1st	0	0	0	0	0	0	0	
2d	0	0	0	0	0	0	0	
3d	0	0	0	0	0	0	0	
4th	1	0	0	0	1	0	2	
5th	1	0	0	0	1	0	2	
6th	1	0	0	0	1	0	2	
7th	1	0	0	0	0	0	1	
8th	0	0	0	0	0	0	0	
9th	0	0	0	0	1	0	1	
10th	1	0	0	0	0	0	1	
11th	1	0	0	0	0	0	1	
DC	0	0	0	0	0	0	0	

TOTAL	6	0	0	0	4	0	10	
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% TOTAL	60.00%	0.00%	0.00%	0.00%	40.00%	0.00%	100.00%	
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## AEDPA Stats — Subsection 2 — COA Denied by District Court

2002

	Relief Denied			Relief Granted		Unresolved		TOTAL
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant		
1st	0	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0	0
3d	0	0	0	0	0	0	0	0
4th	0	0	0	0	0	0	0	0
5th	0	0	0	0	0	0	0	0
6th	1	0	0	0	1	0	0	2
7th	0	0	0	0	1	0	0	1
8th	1	0	0	0	0	0	0	1
9th	0	0	0	0	0	0	0	0
10th	2	0	0	0	0	0	0	2
11th	1	0	0	0	0	0	0	1
DC	0	0	0	0	0	0	0	0

TOTAL	5	0	0	0	2	0	7

% TOTAL	71.43%	0.00%	0.00%	0.00%	28.57%	0.00%	100.00%
	71.43%	0.00%	0.00%	0.00%	28.57%	0.00%	100.00%

## AEDPA Stats — Subsection 2—COA Denied by District Court

2003

	Relief Denied		Relief Granted		Unresolved		TOTAL
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	
1st	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0
3d	1	0	0	0	0	0	1
4th	2	0	0	0	1	0	3
5th	2	1	0	0	1	0	4
6th	1	0	0	1	0	0	2
7th	0	0	0	0	0	0	0
8th	1	0	0	0	0	0	1
9th	0	0	0	0	0	0	0
10th	0	0	0	0	0	0	0
11th	0	0	0	0	0	0	0
DC	0	0	0	0	0	0	0

TOTAL	7	1	0	1	2	0	11
	8		1		2		

% TOTAL	63.64%	9.09%	0.00%	9.09%	18.18%	0.00%	100.00%
	72.73%		9.09%		18.18%		

## AEDPA Stats — Subsection 2—COA Denied by District Court

2004

	Relief Denied		Relief Granted		Unresolved		
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant	TOTAL
1st	0	0	0	0	0	0	0
2d	0	0	0	0	0	0	0
3d	0	0	0	0	1	0	1
4th	2	0	0	0	4	0	6
5th	2	1	1	0	6	0	10
6th	0	0	0	1	0	1	2
7th	0	0	0	0	0	0	0
8th	2	0	0	0	0	0	2
9th	1	0	0	1	0	0	2
10th	1	0	0	0	1	0	2
11th	0	0	0	0	0	0	0
DC	0	0	0	0	0	0	0

TOTAL	8	1	1	2	12	1	25
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% TOTAL	32.00%	4.00%	4.00%	8.00%	48.00%	4.00%	100.00%
	36.00%		12.00%		52.00%		



## AEDPA Stats — Subsection 2—COA Denied by District Court

2006

	Relief Denied		Relief Granted		Unresolved	
	Affirm Denial	Reverse Grant	Conviction Vacated	Sentence Vacated	Remanded Denial	Remanded Grant
1st	0	0	0	0	0	0
2d	0	0	0	0	0	0
3d	0	0	0	0	0	0
4th	5	0	0	0	1	0
5th	7	0	0	0	1	0
6th	2	1	0	1	1	0
7th	1	0	0	0	0	0
8th	1	0	0	0	1	0
9th	0	0	0	0	0	0
10th	0	0	0	0	0	0
11th	7	0	0	0	0	0
DC	0	0	0	0	0	0

TOTAL	23	1	0	1	4	0
	24		1		4	

% TOTAL	79.31%	3.45%	0.00%	3.45%	13.79%	0.00%
	82.76%				13.79%	
						100.00%



## Summary of All Federal Capital Habeas Dispositions, 2000–2006

### Rate of Total Relief Granted—2000 to 2006

Circuit	Total Cases (filtered)	Granted (Raw #)	Granted (%—rounded to 3rd decimal point)
1st	0	n/a	n/a
2d	0	n/a	n/a
3d	16	3	18.75
4th	60	1	1.667
5th	202	8	3.960
6th	68	8	11.765
7th	21	5	23.81
8th	29	5	17.241
9th	20	7	35.00
10th	64	15	23.438
11th	52	2	3.846
<b>Average</b>	<b>48.364</b>	<b>4.909</b>	<b>12.68</b>

### Rate of COA's granted (by Either District Court or Court of Appeals)—2000 to 2006

Circuit	Relief Denied by DC	COA granted by Either (Raw)	Rate of COA granted by either (%)
1st	0	n/a	—
2d	0	n/a	—
3d	13	11	84.616
4th	59	27	45.763
5th	198	86	43.434
6th	60	49	81.667
7th	16	6	37.5
8th	24	22	91.667
9th	16	11	68.75
10th	57	38	66.667
11th	51	43	84.314
<b>Average</b>	<b>44.9091</b>	<b>26.636</b>	<b>54.944</b>

**Rate of Relief Granted Upon Grant of COA  
(by Either Court) — 2000 to 2006**

Circuit	# of COA's Granted	Relief Granted As result of COA	Rate (%)
1st	n/a	n/a	n/a
2d	n/a	n/a	n/a
3d	11	0	0
4th	27	0	0
5th	86	4	4.651
6th	49	6	12.245
7th	6	0	0
8th	22	1	4.546
9th	11	3	27.27
10th	38	8	21.053
11th	43	1	2.326
<b>Average</b>	<b>26.636</b>	<b>2.091</b>	<b>6.554</b>

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