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

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This project was supported by Award No. 2006-IJ-CX-0020, awarded by the National Institute of Justice, Office of Justice Programs, United States Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the Department of Justice.

ACKNOWLEDGMENTS

This project could not have been conducted without the help of many talented people who contributed their time and expertise.

We would first like to express our gratitude to the members of our Advisory Committee: Mr. Paul Bottei, Assistant Federal Public Defender, Middle District of Tennessee; Ms. Gena A. Bunn, Chief, Capital Litigation, Office of the Attorney General of Texas; Mr. Ronald Eisenberg, Deputy District Attorney, Office of the Philadelphia Attorney General; the Honorable Frances C. Gull, Allen Superior Court, Allen County, Indiana; Dr. Roger A. Hanson, Hanson & Associates; the Honorable Elizabeth A. Jenkins, U.S. Magistrate Judge, Middle District of Florida; Attorney Mark E. Olive; and the Honorable Roger Vinson, U.S. District Court for the Northern District of Florida. The Advisory Committee did not write or approve the report, and any findings or conclusions contained in this report do not necessarily reflect the views of the Committee. The Committee's role in this research was, however, vital. Each of its members spent days providing us with candid and helpful feedback. After assisting us to determine what information would be most important to collect, they helped us interpret and supplement our initial findings. We are also grateful for the time and effort of Dr. Emery Lee and Professor Jon Gould of the Federal Judicial Center, who contributed their insights at our second Committee meeting.

We were fortunate to have the generous support of the Vanderbilt Law School, including its Cecil D. Branstetter Litigation & Dispute Resolution Program, which provided funding for the data collection phase of this study. The assistance of more than a dozen talented Vanderbilt law students made this project possible. Ms. Jillean Dubatowka and Mr. Gray Proctor deserve special thanks for working on the project for two years. The complicated task of managing dozens of changing data files from several locations around the country was made possible by the able oversight of Mr. Jason Bradley, Senior Systems Administrator at Vanderbilt Law School. Ms. Marita Bush and Mr. Jason Hunt provided excellent administrative support for the project. Numerous faculty colleagues at Vanderbilt Law School and Vanderbilt University provided invaluable assistance at various stages of this project, including Professors Joni Hersch, Tracey George, Chris Guthrie, Suzanna Sherry, Edward Rubin, Margaret Blair, John Goldberg, Susan Kay, Stefanie Lindquist, and Richard Nagareda.

Special thanks are due Ms. Amy Spencer-Westercamp and Mr. Neil LaFountain at the National Center for State Courts for their tireless efforts as part of the project team.

The support of the National Institute of Justice included not only its funding for completion of the project, but also the advice and assistance provided by Dr. Linda Truitt and others at the U.S. Department of Justice. For this assistance we are deeply appreciative.

Finally, we would like to thank the many federal judges and all of the pro se and death penalty law clerks, attorneys, and court staff around the country who were so helpful to us in providing case documentation and information about case processing.

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PART I. INTRODUCTION

The purpose of this study is to provide empirical information about habeas corpus cases filed by state prisoners in U.S District Courts under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). This information is for policymakers who design or assess changes in habeas law, for litigants and courts who address the scope and meaning of the habeas statutes, and for researchers who seek information concerning the processing of habeas petitions in federal courts.

This introduction first describes federal habeas review and the current statutory scheme. It then outlines five categories of empirical information about habeas review that are examined in this study. Finally, this introduction summarizes the basic features of study design and methodology.

A. Federal habeas review and the current statutory scheme

The writ of habeas corpus is a remedy regulated by statute and available in federal court to persons "in custody in violation of the Constitution . . . ."[1] Most state prisoners who seek federal habeas relief challenge their state criminal convictions or sentences in federal court under 28 U.S.C. § 2254, after they have already lost their attempts to secure relief in state court through whatever appeal and post-conviction proceedings are provided to them by state law. When a federal court grants a writ of habeas corpus, it orders the state court to release the prisoner, or to repeat the trial, sentencing, or other proceeding that led to the prisoner's custody. This order can come years after the prisoner's original conviction and sentence, and may be based on new grounds or on claims that the state courts had previously concluded did not warrant relief. It is not surprising, then, that habeas review has long been a controversial component of the relationship between the federal courts and state governments.

The current habeas provisions are a legislative response to several decades of change in the federal oversight of state criminal proceedings. In the 1950s, 1960s, and early 1970s, the U.S. Supreme Court interpreted the Due Process Clause of the Fourteenth Amendment to guarantee to state criminal defendants many of the procedural protections that had previously been enjoyed only by defendants in federal criminal proceedings. At the same time, the Court expanded the scope of the writ, allowing more opportunities for state prisoners to obtain relief in federal court when actions of state police, prosecutors, and judges violated their constitutionally protected rights. In combination, these two trends produced an explosion in habeas filings.[2]

By the 1980s, the Supreme Court's decisions began to narrow access to habeas relief for state prisoners. For example, the Court limited the circumstances under which a judge could grant the writ based on a claim that the state prisoner had failed to raise properly in state court, a defense to habeas relief known

[1] 28 U.S.C. § 2241. The statutory provisions governing habeas relief for both federal and state prisoners, 28 U.S.C. §§ 2241- 2264, were supplemented by the Rules Governing Section 2254 Cases in the United States District Courts and Rules Governing Section 2255 Cases in the United States District Courts, effective February 1, 1977.

[2] *See, e.g.*, David L. Shapiro, *Federal Habeas Corpus: A Study in Massachusetts*, 87 HARV. L. REV. 321, 321-24 (1973) (collecting authority); *Report to the Attorney General on Federal Habeas Corpus Review of State Judgments*, 22 U. MICH. J. L. REF. 901, 946-47 (1988-89) (number of state prisoner applications grew from about 1000 in 1961 to nearly 10,000 in 1987); Christopher E. Smith, *Judicial Policy Making and Habeas Corpus Reform*, 7 CRIM. J. POLICY REV. 91, 96 (1995) (filings went from less than 900 in 1960 to over 13,000 in 1993); Fred L. Cheesman II, Roger A. Hanson, and Brian J. Ostrom, *A Tale of Two Laws: The U.S. Congress Confronts Habeas Corpus Petitions and Section 1983 Lawsuits*, 22 LAW & POLICY 89, 93 (2000) (graph showing how growth in habeas petitions outpaced increases in prison population).

as "state procedural default."[3] In addition, the Court held in *Teague v. Lane*[4] that a federal court must evaluate a state court decision based upon the federal law that existed at the time that decision was made; federal courts could not grant the writ because of a state court's failure to apply a later interpretation of the Constitution that was more favorable to a criminal defendant.[5]

For a majority of the members of Congress in the early 1990s, the Court's decisions did not adequately address growing concerns about federal court interference with the finality of state criminal judgments and about delay in the processing of habeas cases. After considering various legislative proposals for years, Congress passed the Antiterrorism and Effective Death Penalty Act ("AEDPA") in 1996, limiting federal habeas review.[6] Although more than a decade has elapsed since the enactment of AEDPA, no research has examined the processing of cases under the Act's provisions.

As its title suggests, AEDPA included provisions that address death penalty cases in particular. Responding to what a House report characterized as "acute problems of unnecessary delay and abuse in capital cases,"[7] the Act included new time periods during which a federal court must conclude its review of a habeas petition that has been filed by a state prisoner sentenced to death.[8] These special disposition deadlines for capital habeas cases have yet to be enforced. The statute conditions their application upon a prior finding that the state has met certain standards for the provision of competent counsel to capital defendants in state post-conviction proceedings. No state has yet met the specified standards. In 2006 this portion of the statute was amended. The amendments shifted to the Attorney General of the United States the authority to determine if a state has established a program adequate to trigger the disposition deadlines.[9] They also changed the disposition deadline itself so that district courts have 450 days to dispose of a capital habeas case from start to finish.

The remaining provisions of the Act govern all habeas cases, non-capital as well as capital. Included were the following five changes:

* The Act established a **statute of limitations for filing**. Under the Act, a state prisoner must seek relief in federal court within one year of the conclusion of either the direct appeal of his state judgment or the expiration of time for seeking such appeal. 28 U.S.C. § 2244(d)(1)(A). If the prisoner promptly seeks collateral review of his judgment in state court before coming to federal court, the limitations period will be

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[3] *See* Coleman v. Thompson, 501 U.S. 722 (1991); Schlup v. Delo, 513 U.S. 298 (1995).
[4] 489 U.S. 288 (1989).
[5] *See also* Stone v. Powell, 428 U.S. 465 (1976) (habeas review unavailable to state prisoners who alleged that their custody was the product of unreasonable searches or seizures); Brecht v. Abrahamson, 507 U.S. 619 (1993) (standard of review for harmlessness on habeas); John H. Blume, *AEDPA: The "Hype" and the "Bite,"* 91 CORNELL L. REV. 259, 266-68 (2006) (summary of 10 decisions between 1976 and 1995, characterized as "cutbacks on habeas corpus").
[6] Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 (1996). *See, e.g.,* S. REP. NO. 104-23 (1995); Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, Report on Habeas Corpus in Capital Cases, 45 CRIM. L. RPTR. 3239 (BNA) (Sept. 27, 1989) ("Powell Report") (proposing statutory revisions imposing filing time limits and reporting finding that 80% of the time spent in collateral review of death penalty cases occurs outside of state proceedings); *Habeas Corpus Legislation, Hearings on H.R. 4737, H.R. 1090, H.R. 1953, and H.R. 3584, Before the Subcommittee on Courts, Intellectual Property, and the Administration of Justice of the H. Committee on the Judiciary,* 101st Congress, No. 145 (May 24 and June 6, 1990).
[7] H. CONF. REP. 104-518, at 111 (1996). *See also* Alex Kozinski & Sean Gallagher, *Death: The Ultimate Run-On Sentence,* 46 CASE W. RES. L. REV. 1 (1995-1996).
[8] 28 U.S.C. §§ 2261-2266.
[9] 28 U.S.C. § 2266(b)(1)(A), effective March 9, 2006.

tolled until that collateral review in the state courts has been concluded.[10] Prior to the Act, federal courts were authorized by Rule 9 of the Rules Governing Section 2254 cases to dismiss a habeas petition that was filed long after the conviction and sentence, but only if the court concluded that 1) the petitioner previously knew or should have known of the existence of the grounds raised in the petition, and 2) the delay resulted in the state being prejudiced in its ability to respond to the petition.[11]

* The Act authorized federal judges to **deny on the merits any unexhausted claim.** An unexhausted claim is a claim that the petitioner failed to present to the state courts for decision before including it in a federal petition. 28 U.S.C. § 2254(b)(2). Prior law required federal courts to dismiss an unexhausted claim without prejudice. The petitioner then could litigate that claim in state court, and subsequently file anew in federal court.

* Habeas petitions are not resolved by trial. If fact-finding is required, the court may hold an evidentiary hearing. The Act prohibited a federal judge from holding an **evidentiary hearing** in a habeas case when the petitioner had failed to develop the facts in state court unless the facts supporting the claim would establish the petitioner's innocence of the underlying offense, and the claim relies on either 1) a new rule of criminal procedure that the Supreme Court has decided must apply retroactively, or 2) factual information that the petitioner could not have discovered earlier. 28 U.S.C. § 2254(e).[12] Restrictions on evidentiary hearings before AEDPA were not nearly as exacting.[13]

* The AEDPA restricted the circumstances under which a federal court is permitted to entertain a **successive petition**. It requires prior authorization from the court of appeals, and bars entirely federal court review of any claim that a petitioner had included in a prior petition. 28 U.S.C. § 2244(b).

* The Act also mandated a new **standard of review** for evaluating state court applications of constitutional law and determinations of fact. The new standards require federal courts to give greater deference to state decisions. The Act prohibits federal judges from granting relief for any claim adjudicated on the merits in state court unless the state decision rejecting the claim is 1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or is 2) "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).[14]

B. Research goals of the study

"The adjudication of habeas corpus applications lies at perhaps the lowest visibility level of any of the processes of the federal district courts."[15]

Since the enactment of AEDPA, its provisions have been continually litigated. Each year, more than 18,000 cases, or one out of every 14 civil cases filed in federal district courts, are filed by state prisoners

[10] The statute provides that the prisoner's effort to secure state collateral review must be "properly filed" before it will stop the clock on the one-year period for filing in federal court. 28 U.S.C. § 2244(d)(2). *See also* Evans v. Chavis, 546 U.S. 189 (2006); Carey v. Saffold, 536 U.S. 214 (2002).
[11] *See* Day v. McDonough, 547 U.S. 198, n.1 (2006); Fed. R. § 2254 Cases 9, Committee Note (1976).
[12] Williams v. Taylor, 529 U.S. 362 (2000). When there has been no such failure to develop facts in state court under § 2254(e), the district court must exercise its discretion in deciding whether to grant an evidentiary hearing. If the existing "record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing." Schriro v. Landrigan, 127 S. Ct. 1933, 1940 (2007).
[13] *See* Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992).
[14] Williams v. Taylor, 529 U.S. 420 (2000).
[15] Shapiro, *supra* note 2, at 337.

seeking habeas corpus relief, and more than 6000 of these cases reach the courts of appeals.[16] During each term, the Supreme Court devotes a considerable portion of its limited docket to the application or interpretation of AEDPA. Habeas litigation is also a recurring topic of legislative attention.[17]

Despite the salience of contemporary habeas litigation to policy makers, little empirical information about it exists. Diverse groups including the United States Judicial Conference,[18] the Conference of Chief Justices, the Conference of State Court Administrators,[19] and the American Bar Association,[20] have recognized the need for empirical study of litigation under AEDPA to assist courts and legislators as they continue to craft and evaluate changes in habeas law. The empirical questions and assumptions about habeas litigation that have been raised in debates about the appropriate scope of habeas review provide the starting point for the research questions in this study. These issues fall into five general categories:

1) Time before filing. Concern about undue delay in seeking habeas relief led to the provision in AEDPA establishing a statute of limitations for filing**.** The limitations provision remains controversial. It is not known whether it has made any difference in the length of time that elapses before federal filing nor how frequently it is applied to prevent review of claims on the merits.

2) Claims for relief. One feature of several current as well as proposed procedural rules for habeas review is differential treatment based on some showing of actual innocence by the petitioner.[21] No information is available, however, concerning the frequency or success of these claims, either as an independent basis for relief,[22] or as a means of avoiding a procedural hurdle.[23] It is also unknown how often petitioners challenge only their sentences and not their convictions.

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[16] Administrative Office of the Courts, Judicial Business of the U.S. Courts 2006, Tables B1-A, C-2.

[17] For recent debates over amendments to the habeas statutes, see Legislative Hearing on H.R. 3035, the "Streamlined Procedures Act of 2005," before the Subcommittee on Crime, Terrorism, and Homeland Security**,** November 10, 2005, http://judiciary.house.gov, hereinafter House Hearings; Hearing on "Habeas Corpus Proceedings and Issues of Actual Innocence," July 13, 2005, before the Committee on the Judiciary of the U.S. Senate, http://judiciary.senate.gov/hearing.cfm?id=1569 (hereinafter "Senate Hearings").

[18] Judicial Conference of the United States, Leonidas Ralph Mecham, Secretary, *Letter to Honorable Arlen Specter, Chairman, Committee on the Judiciary, United States Senate*, dated September 26, 2005 (hereinafter Judicial Conference Letter).

[19] Conference of Chief Justices and the Conference of State Court Administrators, *Joint Resolution 16 "In Support of Gathering Further Information Concerning the Effects of the Anti-Terrorism and Effective Death Penalty Act of 1996 to Determine Whether Amendments are Needed*, adopted August 3, 2005, access at http://ccj.ncsc.dni.us/CriminalAdultResolutions/resol16EffectsAntiTerrorismEffectiveDeathPenaltyActof1996.html.

[20] *See also* Anne M. Voigts, *Narrowing the Eye of the Needle: Procedural Default, Habeas Reform, and Claims of Ineffective Assistance of Counsel*, 99 COLUMB. L. REV. 1103, 1109 (1999) (noting "few empirical studies . . . despite the fact that many of the most hotly-debated issues in the debate over habeas involve empirical questions").

[21] *See* S. 1088, 109th Cong. (2005)(proposing special rule for innocence claims based on DNA); Brian M. Hoffstadt, *How Congress Might Redesign a Leaner, Cleaner Writ of Habeas Corpus*, 49 DUKE L. J. 947 (1999-2000) (listing specific claims that should be cognizable in habeas cases and others that should not). In recent years, exonerations have generated for some a heightened concern about the ability of the criminal justice system, including habeas review, to prevent and remedy inaccurate convictions. *See* Joshua Marquis, *The Myth of Innocence*, 95 J. CRIM. L. & CRIMINOLOGY 501 (2005); Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 94 J. CRIM. L. & CRIMINOLOGY 523 (2005).

[22] *See* Herrera v. Collins, 506 U.S. 390 (1993).

[23] *See, e.g.*, Senate Hearings, *supra* note 17. *Compare* Thomas Dolgenos, Testimony before the Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, House of Representatives, November 10, 2005, at 3 ("Almost every habeas petitioner claims that he is innocent." If the "innocence standard is set too low . . . courts will be deluged with dubious claims . . . .") *with* Seth Waxman, Testimony before the Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, House of Representatives, November 10, 2005, at 6 ("It is often only after discovery is granted, or a procedurally defaulted claim is heard, that evidence of innocence emerges.")

3) The operation of defenses.

Statute of limitations. The ongoing controversies about the limitations provision would benefit from accurate information about how much time is elapsing between the state judgment and the federal filing, which cases take longer to get to federal court, how often cases are dismissed as time-barred, how many cases involve a ruling that tolls the statute of limitations, and for what reasons.[24]

Exhaustion of claims in state court. The exhaustion requirement has resulted in several divided Supreme Court decisions,[25] as well as proposed amendments in recent bills. However lawmakers have as yet no up-to-date information about how often petitions include unexhausted claims or what courts presently do with those claims.[26] It is not known how often courts use a "stay and abeyance" procedure to allow a petitioner to pursue unexhausted claims in state court without risking a late filing,[27] or the length of such stays.

Successive petitions. Among the most controversial provisions in AEDPA are those barring petitioners from returning to federal court with new constitutional claims, but there is no information available about how many repeat petitions are turned away or what claims are not reviewed as a result.

Procedural default. Some consider the default defense too generous to petitioners, others consider it too restrictive.[28] No information exists about how often the defense is employed to bar review, nor how many defaulted claims are addressed because the judge has concluded that the state procedure

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(http://judiciary.house.gov/hearings.aspx?ID=128). *See also* Nicholas Berg, *Turning a Blind Eye to Innocence – The Legacy of* Herrera v. Collins, 42 AM. CRIM. L. REV. 121 (2005) (claiming that based on a review of published decisions since *Herrera*, at least 173 petitioners have raised bare-innocence claims, and only a handful received relief).

[24] *See, e.g.*, Pace v. DiGugliemo, 544 U.S. 408 (2005) (declining to decide whether "equitable tolling" is permissible); Lawrence v. Florida, 127 S. Ct. 1079 (2007) (same, but assuming the availability of equitable tolling for purposes of decision, also finding "attorney miscalculation is simply not sufficient to warrant equitable tolling, particularly in the postconviction context where prisoners have no constitutional right to counsel"). *Compare* H.R. 3035, 109th Cong. (2005) (bill that would bar equitable tolling) with Limin Zheng, *Actual Innocence as a Gateway Through the Statute of Limitations Bar on the Filing of Federal Habeas Corpus Petitions*, 90 CAL. L. REV. 2103 (2002) (supporting an actual innocence exception to the statute of limitations, referencing pre-AEDPA empirical research). *See also* Blume, *supra* note 5, at 289 n. 143 ("Due to the large number of unpublished district court orders dismissing habeas petitions as untimely, many of which are not appealed, it is impossible to say with precision how many petitions have been deemed untimely. However, the number is definitely in the thousands."); Bryan A. Stevenson, *Confronting Mass Imprisonment and Restoring Fairness to Collateral Review of Criminal Cases*, 41 HARV. C.R.-C.L. L. REV. 339, 349, 358 (2006) (stating AEDPA's statute of limitations "has barred thousands of prisoners from review of their constitutional claims because, without counsel, they could not timely file their pleadings," and that "[r]eform is absolutely critical if meaningful remedies are going to reduce the number of innocent and wrongly convicted people currently in prison").

[25] *E.g.*, Rhines v Weber, 544 U.S. 269 (2005); Lawrence v. Florida, 127 S. Ct. 1079 (2007).

[26] *E.g.*, Duncan v. Walker, 533 U.S. 167 (2001) (Breyer, J., dissenting) (citing Roger A. Hanson & Henry W.K. Daley, *Federal Habeas Corpus Review: Challenging State Court Criminal Convictions*, Washington, D.C., U.S. Department of Justice, Bureau of Justice Statistics (Sept. 1995 NCJ 155504), http://www.ojp.usdoj.gov/bjs/pub/pdf/fhcrcscc.pdf).

[27] For a sampling of references to these issues, see Rhines v Weber, 544 U.S. 269 (2005); Pace v. DiGuglielmo, 544 U.S. 408, 429 (2005) (Stevens, J., dissenting) (stay and abeyance procedure will result in "a flood of protective filings in the federal district courts"); *Duncan*, 533 U.S. at 192 (2001) (Breyer, J., dissenting) (stay and abeyance will ameliorate unfairness but will add to the burdens on district courts); Dolgenos Testimony, *supra* note 23, at 8 ("many such stay orders [are] issued . . . ensuring years of new delays").

[28] *See, e.g.*, House Hearings, *supra* note 18; Stevenson, *supra* note 24, at 350 (stating that "in death penalty cases, the great majority of substantive claims alleging constitutional violations . . . are procedurally barred").

isnot "adequate" or "independent,"[29] that the petitioner has established "cause" and "prejudice," or that enforcing default would produce a "miscarriage of justice."[30]

4) Time for processing. The 1996 Act was prompted in part by frustration over delays that accompanied the review of state criminal judgments in federal court, particularly in capital cases.[31] Delay in the processing of habeas cases was again the topic of attention in the most recent round of legislative proposals.[32] The only information available concerning processing times after the enactment of AEDPA is that reported by the Judicial Conference of the United States. In the summer of 2005, it reported to the Senate Judiciary Committee that the median time from filing to disposition was six months for non-capital habeas cases in district courts in 2004, but was more than 24 months in capital cases. As of 2004, the Judicial Conference reported, about 46% of state capital habeas petitions had been pending for more than three years.[33]

5) Merits review and case outcomes. Perhaps no empirical question about the habeas remedy is as important as how many cases end in a grant of relief for the petitioner. Surprisingly, the answer after AEDPA is unknown. Nor is it known what proportion of cases involve evidentiary hearings, what percentage of claims are addressed on their merits, or how often the new deferential review of 28 U.S.C. § 2254(d) is being applied.[34] Without this information, lawmakers and courts have little basis on which to evaluate efforts to expand or restrict the scope of habeas review.

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[29] *See* Dolgenos Testimony, *supra* note 23, at 10-11. For an overview of state procedural default, see WAYNE R. LA FAVE, JEROLD H. ISRAEL & NANCY J. KING, 6 CRIMINAL PROCEDURE § 28.4 (2d ed. 2004).

[30] No research exists to assist courts in testing assumptions about the use of procedural default such as "habeas corpus petitions that advance a substantial claim of actual innocence are extremely rare," Schlup v. Delo, 513 U.S. 298 (1995). In addition to these defenses, we examined the application of Teague v. Lane, 489 U.S. 288 (1989), to bar review, and also whether habeas review had been waived as part of a plea agreement. *See* Nancy J. King & Michael E. O'Neill, *Appeal Waivers and the Future of Sentencing Policy*, 55 DUKE L. J. 209 (2005); Anup Malani, *Habeas Settlements*, 92 VA. L. REV. 1 (2006).

[31] "One of the statute's purposes is to 'reduce delays in the execution of state and federal criminal sentences, particularly in capital cases.'" Rhines v. Weber, 544 U.S. 269, 276 (2005) (quoting Woodford v. Garceau, 538 U.S. 202, 206 (2003). *See also* Stephen J. Spurr, *The future of capital punishment: determinants of the time from death sentence to execution*, 22 INT'L REV. OF ECON. 1 (2002) (analyzing review time through 1997 for death row inmates, noting "a widely held belief that the lower federal courts . . . are responsible for a substantial portion of the delay in death penalty litigation"). This remains a key concern behind recent legislative proposals. *See* Lisa M. Seghetti & Nathan James, Federal Habeas Corpus Relief: Background, Legislation, and Issues, Congressional Research Service (February 1, 2006). http://www.opencrs.com/rpts/RL33259_20060201.pdf.

[32] *See* HR 3035, 109th Cong. (2005).

[33] Judicial Conference Letter, *supra* note 18.

[34] *E.g.*, Schriro v. Landrigan, 127 S. Ct. 1933, 1954 (2007) (Stevens, J., dissenting) ("habeas cases requiring evidentiary hearings have been 'few in number'"); Carol S. Steiker & Jordan M. Steiker, *A Tale of Two Nations: Implementation of the Death Penalty in "Executing" Versus "Symbolic" States in the United States*, 84 TEX. L. REV. 1869, 1902 (2006) (claiming district courts in Ninth Circuit are 50% more likely than those in Fifth Circuit to hold evidentiary hearings); Stevenson, *supra* note 24, at 350 (claiming "most prisoners' complaints about wrongful convictions, illegal sentences, and other errors for which there is a constitutional remedy are never addressed on the merits").

C. Prior research

***Post-AEDPA**:* The only empirical information concerning habeas litigation under AEDPA presently available is in the annual civil case datasets compiled and maintained by the Administrative Office of the United States Courts (AO), available at www.icpsr.umich.edu. These datasets include, for each case, filing and termination dates, disposition information, whether the petitioner had counsel, and if the petitioner received in forma pauperis status. Two previous studies used the AO data to investigate *filing rates* in habeas cases before and after AEDPA,[35] but they did not investigate what happened to these cases after they were filed. Although the variables in the AO data report four types of dismissals and judgments at various stages, few of these options resemble what actually happens in habeas cases.[36] Moreover, information about which party prevailed is missing for most habeas cases.[37] The values for filing and termination dates do provide a rough baseline for predictions of processing time. They indicate that most non-capital cases take less than a year to complete, while a large proportion of capital cases take more than three years to complete.[38] A new comprehensive study of processing time in *capital* habeas cases by the Federal Judicial Center is underway, but has not yet been completed.

***Pre-AEDPA**:* We know more about the processing of habeas cases prior to AEDPA. Using data collected from *non-capital* cases that were decided in the early 1990s, two studies provide a baseline against which the findings of this study can be compared. Hanson and Daley examined over 2000 habeas cases terminated in the year 1992 under pre-AEDPA law, collecting data from court documents at courthouses in 18 districts in nine states.[39] They reported disposition time, offense and sentence, representation, frequency and disposition of claim types, type of disposition, and reasons for dismissal. Flango examined over 1600 cases that were terminated in 1990 and 1992 in eight districts from four states, and reported type of offense, sentence, and method of conviction, representation, claims raised, prior petitions, rates of relief, and reasons for dismissal.[40]

For *capital* habeas cases prior to AEDPA, two studies provide some baseline information. In 1995 the Federal Judicial Center reported on disposition times in district courts for capital habeas cases which had been

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[35] Fred L. Cheesman II, Brian J. Ostrom & Roger A. Hanson, A Tale of Two Laws Revisited: Investigating the Impact of the Prisoner Litigation Reform Act and The Antiterrorism and Effective Death Penalty Act (2004), Williamsburg, VA, National Center for State Courts, NIJ 2001-IJ-CX-0013, http://www.ncsconline.org/WC/Publications/Res_PreCiv_TwoLawsRevPub.pdf; John Scalia, Prisoner Petitions Filed in U.S. District Courts, 2000, with Trends 1980-2000, Washington, D.C., U.S. Department of Justice, Office of Justice Programs (Jan. 2002 NCJ 189430), http://www.ojp.usdoj.gov/bjs/pub/pdf/ppfusd00.pdf. *See also* Cheesman et al., *supra* note 2.

[36] Administrative Office of the United States Courts, Civil Statistical Reporting Guide, Version 2.1 (1999). For example, the variable "procedural progress" appears to be of little if any value in habeas cases. We examined the AO data for the 25 capital cases in our sample that we found had been terminated after evidentiary hearings. In the AO data, 7 of these cases were missing any value for this variable, another seven indicated "judgment on a motion," three had "no court action," three were "order entered," or "order decided," another three "other," and one marked "pretrial conference."

[37] For this reason, it is risky to attempt to draw conclusions about habeas litigation in the district courts based on the AO data. *See* Blume, *supra* note 5, at 284-85 (noting rates of success in courts of appeals, but also detailing reliability problems with district court data).

[38] Judicial Conference Letter, *supra* note 18.

[39] Hanson & Daley, *supra* note 26.

[40] Victor E. Flango & Patricia McKenna, *Federal Habeas Corpus Review of State Court Convictions*, 31 CAL. W. L. REV. 327 (1994-1995); VICTOR E. FLANGO, HABEAS CORPUS IN STATE AND FEDERAL COURTS (1994) (National Center for State Courts, SJI-92-14M-B-055). Studies conducted even earlier included Richard Faust, Tina J. Rubenstein & Larry W. Yackle, *The Great Writ in Action: Empirical Light on the Federal Habeas Corpus Debate*, 18 N.Y.U. REV. L. & SOC. CHANGE 637 (1990-1991); Paul H. Robinson, *An Empirical Study of Federal Habeas Corpus, Review of State Court Judgments*, Washington D.C.: U.S. Department of Justice, Federal Justice Research Program Office for Improvements in the Administration of Justice, JADAG-79-C-0002 (July 1979).

terminated between July 1988 to September 1994, measuring from file date to termination date.[41] Examining all 500 terminated petitions (*excluding* 264 cases that were still pending), the mean disposition time was 15 months, the median was nine months. Among districts with ten or more capital petitions, AL-N and AR-E averaged the longest processing time, with TX-S and FL-N the shortest. First petitions averaged 17 months for disposition time. Sixty-nine of the 413 death row inmates represented in the disposition data (17%) filed more than one petition. Among the 634 death row inmates represented in the 764 pending and terminated cases, 87 had filed more than one petition (14%).

A team of six researchers reported in 2004 their examination of federal habeas review of cases filed by petitioners who were sentenced to death in 1990 or earlier and who had completed federal review by 1995.[42] Examining case-level information from published decisions, the authors evaluated the effect of various factors on the probability of relief in the federal courts. For most cases this meant the final outcome at the court of appeals level. For cases receiving relief in federal courts, invalid instructions were the most frequent reason given for overturning a death sentence, followed by the denial of the effective assistance of counsel, and then prosecutor and police misconduct (including *Brady* and *Batson* claims).Whether the defendant's lawyer was from out of state was significantly associated with relief, as was the existence of an evidentiary hearing on state collateral review, the presence of more aggravating factors at sentencing, and the granting of a evidentiary hearing in federal court. The number of claims raised was also significant. A greater number of claims *lowered* the probability of relief. This study also found that, on average, cases in which the petitioner's conviction or sentence was invalidated in federal court took two years longer than cases in which the petitioner was denied relief.[43]

D. Study design and methodology

Information sought.

Descriptive. Because this is the first empirical examination of the application of AEDPA, the most important contribution of the present study may be to provide a thorough catalogue of descriptive information about habeas litigation. For each of the five general features of habeas review outlined above, the study collected detailed information for both capital and non-capital cases. Part II reports these descriptive findings, as well as additional descriptive information about other features of habeas litigation that were collected in order to conduct the comparative and explanatory analyses summarized below.

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[41] Scott Gilbert & Patricia Lombard, A Report to the Conference of Chief Circuit Judges and Circuit Executives: An Analysis of Disposition Times for Capital Habeas Corpus Petitions, Federal Judicial Center (Sept. 1, 1995).

[42] Jeffrey Fagan, James S. Liebman, Valerie West, Andrew Gelman, Alexander Kiss & Garth Davies, *Getting to Death: Fairness and Efficiency in the Processing and Conclusion of Death Penalty Cases after* Furman, *Final Technical Report*, Dept. of Justice Document No. 203935, Award Number 2000-IJ-CX-0035 (Feb. 2004). No cases with sentences later than 1990 had yet been reviewed by *federal* courts at the time of the study. Of the 596 federal habeas outcomes examined, only 14 cases involved sentences imposed in 1987 or later. *Id*. at 40, Table 11. *See also* Andrew Gelman, James S. Liebman & Valerie West, *A Broken System: The Persistent Patterns of Reversals of Death Sentences in the United States*, 1 J. OF EMPIRICAL LEG. STUD. 209-261 (Issue 2, July 2004) (reporting on same study, 240 invalidations in 598 federal cases); James S. Liebman, Jeffrey Fagan, Andrew Gelman, Valerie West, Garth Davies & Alexander Kiss, *A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It*, Feb. 11, 2002.

[43] *See also* Barry Latzer & James Cauthen, Justice Delayed? Time Consumption in Capital Appeals: A Multistate Study (March 2007 NCJ 217555, 2004-IJ-CX-0005), http://www.ncjrs.gov. The authors examined processing time for state direct appeals of capital cases in 14 states. Processing time was not related to how many staff attorneys supported the court, and caseload was only slightly influential. Cases took significantly less time when the appellate court affirmed rather than reversed the trial court's capital judgment, when the state had a single level of appellate review, or when the state had a legal rule directed to increasing appellate efficiency in capital cases. Spurr, *supra* note 31, studied time from sentence to removal from death row through 1997, but did not separate out time spent in state court from time in federal court. Spurr predicted that after AEDPA, the overall time for processing capital cases through execution would continue to decline.

Comparative. Part III of this report first builds upon research prior to AEDPA to examine the differences between pre-AEDPA and post-AEDPA processing of habeas cases in order to identify the possible effects of the 1996 amendments. Second, because so much of habeas policy is driven by capital cases (although capital cases make up only a tiny portion of all habeas filings), the report also examines the differences between the processing of capital and non-capital habeas cases.

Explanatory. The study reports in Part IV additional explanatory analyses of the data directed at these particular questions: 1) For capital cases, what features are associated with longer periods before filing? 2) For both capital and non-capital cases, what features are associated with longer processing time? and 3) For capital cases, what features are associated with the likelihood of relief?

Sampling strategy.

We elected to examine cases that had been *filed* no earlier than 2000, rather than select a sample of cases *terminated* during a specified period. This strategy has three advantages. First, it limited the cases in the study to cases processed after the Supreme Court had settled some of the more fundamental questions about the application of AEDPA that had divided lower courts through 1999. Second, it provided a consistent cohort of observations for predicting the likelihood of termination and the likelihood that the writ would be granted. Third, it facilitated the collection of much of the data from the internet, as explained below. To select cases, we first merged the AO data sets reporting district court civil terminations from 2000 through 2005 and civil cases pending in district court in 2005. This merged set was then reduced to only those cases that were coded by the AO as general or capital habeas cases that had federal question as the basis for jurisdiction. This excluded cases suits against federal authorities.

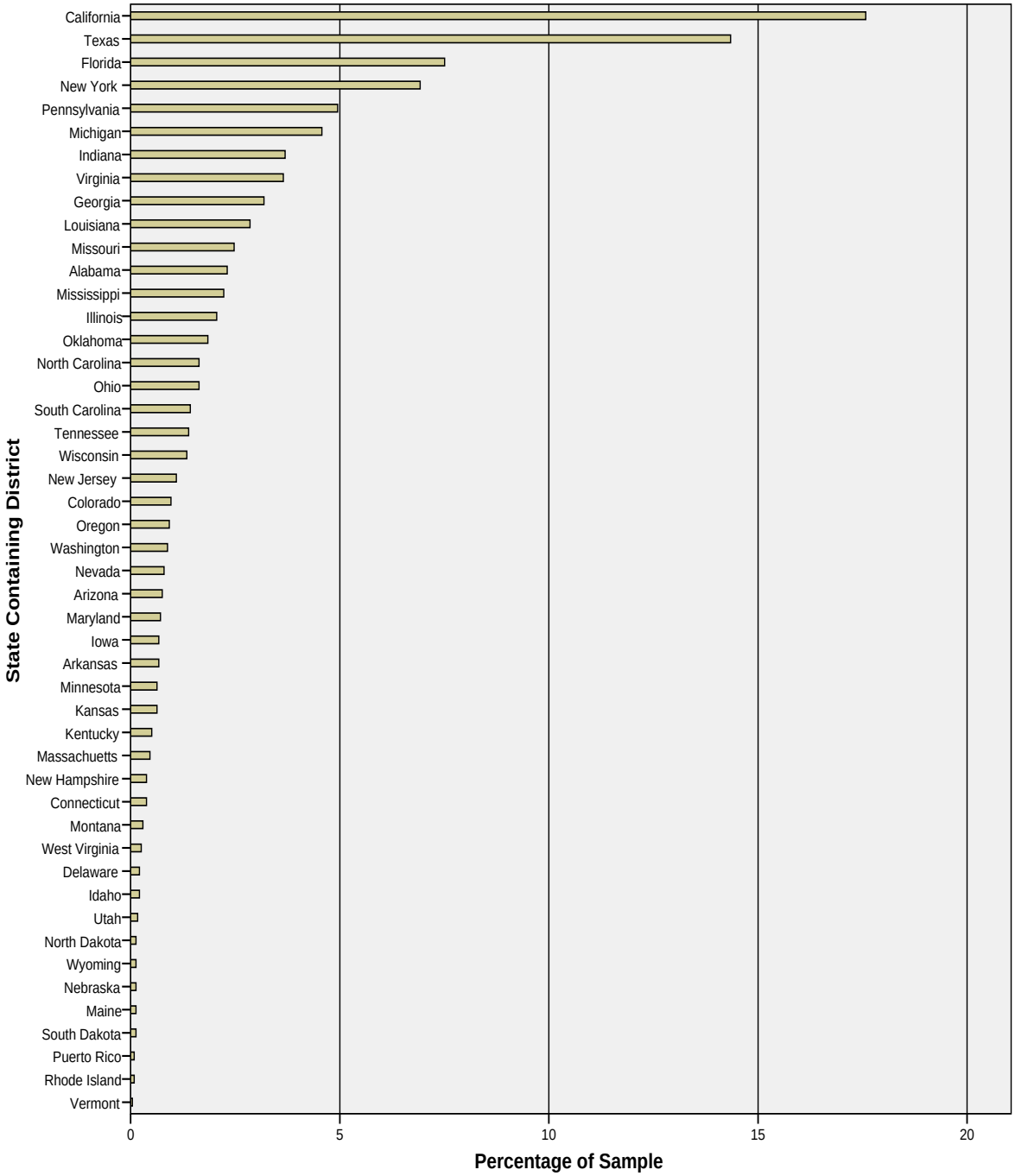
As the sole method of data collection for *non*-capital cases, we elected to examine documents posted on PACER, the on-line filing system of the federal courts. Availability of documents on PACER for cases that were started in 2002 or earlier was insufficient, so we limited our sample to cases begun in 2003 and 2004.[44] Because *capital* cases take several years to complete, however, the capital case sample required that cases started prior to 2002 be included, cases for which PACER would not provide adequate information. Therefore, capital case data was collected from original case documents at courthouses and federal archives, as well as from online research.

Non-capital sample. To construct the non-capital case sample, we selected at random from the merged set described above, 7.5% of the general state habeas cases which had been filed in calendar year 2003 (with docket numbers beginning "03"), and 7.5% of those started in 2004. We selected cases by docket number rather than file date, because we learned that the file date recorded in the AO data was often later, sometimes much later, than the date the case began. From this group, we deleted duplicate cases with the same docket sheet, cases that turned out to be mislabeled as state non-capital habeas cases,[45] and cases that despite their docket numbers were actually started prior to 2003 or after 2004. Our final sample numbered 2384 non-capital cases**,** approximately 6.5% of all 36,745 non-capital 2003-2004 habeas filings by state prisoners during the sample period. The geographic distribution of cases in the sample is consistent with the geographic distribution of the 36,745 cases. The number of cases from California, Texas, Florida, and New York reflect the large prison populations in those states. See Figure 1.

[44] Research has only recently used the PACER method as an increasing number of districts have posted more case documents on line. *E.g.*, Gillian Hadfield, *Where Have All the Trials Gone? Settlements, Non-trial Adjudications and Statistical Artifacts in the Changing Disposition of Federal Civil Cases*, 1 J. OF EMPIRICAL LEG. STUD. 705 (2004).

[45] Mislabeled cases included those filed by prisoners challenging federal detention, a death sentence, or prison conditions.

Figure 1. (NC)[46] Percentage of cases in sample, by state.



Capital case sample. Because of the need to read documents in capital cases on site, it was not feasible to code a random nationwide sample. Instead, the capital case sample was drawn from districts with the highest volume of capital habeas filings. According to the annual reports of the AO, in only thirteen districts were 20 or more capital habeas cases filed during the years 2001-04 (the four most recent years' figures available at the time of study design): TX-S, TX-E, TX-N, TX-W, PA-E, OH-N, OH-S, CA-C, AZ, NV, AL-N, FL-M, and OK-W.

[46] Throughout the report, Table and Figure headings use (C) to designate capital cases and (NC) to designate non-capital cases.

These 13 districts were selected as the basis for the capital case study. Cases from these districts comprised over 60% of the capital habeas cases filed nationwide from 2001 through 2004. We then selected from the merged set of all habeas cases described earlier all of state capital habeas cases started in these 13 districts during 2000, 2001, and 2002. To those, we added dozens of capital habeas cases started in the same years in those same districts that were *not* included in the AO data sets, but which were found by searching PACER.[47] Deleted were duplicates of other cases already in the sample; two next-friend actions; a few cases that were found when coded to be non-capital cases or Section 1983 cases; one case where the judge applied pre-AEDPA law; and numerous cases which began prior to 2000, despite a docket number starting with "00".[48]

The final sample was 368 capital cases, representing filings by 348 death row inmates. The sample includes more than half of the capital habeas cases filed nationwide during the period, spans six federal circuits and nine states from all regions of the country.[49] See Table 1. Over 14% of the cases are from the Ninth Circuit (from California, Arizona, and Nevada), a circuit that has been particularly salient in policy debates. More than half of the cases in our capital case sample are from the state of Texas. As a result, we have attempted at various points to indicate when the results in Texas differ from the results in other locations.

Table 1. (C) Number and percentage of cases in capital case sample, by district.

District	*N*	*Percentage of sample*
TX-S	87	23.6
TX-N	45	12.2
TX-W	33	9.0
OH-N	29	7.9
TX-E	27	7.3
OH-S	21	5.7
AL-N	20	5.4
AZ	20	5.4
NV	20	5.4
PA-E	19	5.2
OK-W	18	4.9
FL-M	16	4.3
CA-C	13	3.5
Total	368	100.0 %

[47] These additional cases were either "mc" cases which had not been incorporated into the docket sheet of a subsequent "cv" case (the AO data did not include cases designated "mc"), or "cv" cases which did not appear in the AO data. These additional cases were located using the following PACER searches: 1) a search of the 13 districts for any case designated casetype = 535 using *PACER file date* between January 1, 2000 and December 31, 2002; 2) a search of the 13 districts for any case by a party having the same name as the petitioners in the cases we had found so far; and 3) a search in the three districts that use mc cases regularly (TX-S, OH-S, PA-E) for cases designated 535 with *PACER file date* between January 1, 2003 and December 31, 2003.

[48] We also deleted the last 11 of 13 cases which had been filed in a short period by one mentally unstable petitioner in FL-M; and the last 6 of 9 cases filed by another mentally unstable petitioner in the TX-E. The filings in these discarded cases were all summarily rejected by the court due to their vexatious nature. Because of the large number of these cases, keeping them in the sample would have skewed the results for these particular districts. We did retain in the sample these petitioners' first filings and initial subsequent filings to which the courts applied a successive petition analysis.

[49] It is not clear whether or how excluding districts with few capital cases influences the study's findings. Taking processing time as one example, a district with fewer capital cases may have more resources to process these cases more quickly, or, alternatively, the judges and litigants in a district with fewer capital cases may take much longer with one of these when it does come along than do judges and litigants in districts where they occur more frequently.

Data collection and variables. Initial data collection was completed in the spring and summer of 2006 by a closely supervised team of Vanderbilt law students, each of whom had had prior coursework in criminal procedure and prior work experience either in the criminal justice system or in empirical research about the federal courts.[50] All non-capital cases that had been coded as pending were recoded in late October 2006, and all capital cases coded as pending were recoded at the end of November 2006.

Data collected for each case included: demographic information about the prisoner; the nature of the state decision challenged; information about the petitioner's state offense and sentence; proceedings in state courts; petitions; amendments to petitions; in forma pauperis and representation status; post-petition pleadings (answers, motions, and replies); magistrate judge involvement; discovery; evidentiary hearings; stays; rulings on certificates of appealability; number of claims raised; and number of docket entries. The timing of various procedural events was tracked with over a dozen separate date variables. Information on each individual claim was collected, including claim type (about 100 separate claim types were tracked and then later aggregated into a smaller number of claim-type variables), the application of each of six different defenses, type of disposition, and reason for disposition for each claim. A list of variables collected appears in Appendix E.

PART II. DESCRIPTIVE FINDINGS

A. Petitioner demographics

PETITIONER RACE/ETHNICITY

- CAPITAL CASES. For all but one of the 368 capital cases, the race/ethnicity of the petitioner was available either from court documents or internet resources (including WESTLAW, LEXIS, and state corrections websites).[51]
  - 41% (151) of capital cases were filed by white prisoners, 59% (216) were filed by prisoners who were identified in court documents or state corrections websites as Latino or Hispanic, African-American, Asian, or Native American.
  - The proportion of white death row inmates in our sample (41%) is lower than that on death row nationwide on January 1, 2003, which was 45%. This is probably because the percentage of whites on death row in Texas, which dominates our capital sample, has been lower than the national percentage. For most variables, race/ethnicity was not associated with significant differences. For example, the same percentage of white petitioners received relief as non-whites.

- NON-CAPITAL CASES. Data collection for the thousands of non-capital cases was limited to documents that could be viewed through PACER. Those documents typically did not include information about the race of the petitioner, so race information was not available for 97% of the non-capital cases. Inferences based on the tiny proportion of our sample where such information

[50] After intensive training in January and February of 2006, a pilot study was completed, using 12 capital cases filed in districts other than the 13 districts in our study sample, and 100 non-capital cases randomly selected from those filed in 2002 nationwide (a year prior to our sample period). The pilot study included duplicate coding of the same cases, and allowed troubleshooting of issues related to coding, PACER access, courthouse access, technical communication, data merging, conversion, and analysis. The results of the pilot study were discussed at the first meeting of the Advisory Committee, after which the codebook was finalized. Among the other steps taken to maximize reliability, capital coding commenced after non-capital coding, and was completed by just four individuals: Professor King and three of the most seasoned coders.

[51] Race/ethnicity of the victim was not collected, but would be a sensible variable to research and add to the capital data in the future.

did appear (as in cases where it was mentioned in connection with a jury selection challenge, for example) would be inappropriate, so we do not include race in the analyses of non-capital cases.

PETITIONER GENDER

- CAPITAL CASES. In 1.1% (4) of the 368 capital cases, the petitioner was a woman. The proportion of female to male death row inmates in our sample was three to 346 or 0.86% (one woman filed two cases). At the beginning of our sample period on January 1, 2000, 1.4% of capital prisoners nationwide were female.[52]

- NON-CAPITAL CASES. 3.8% (90) of the non-capital cases in our sample were filed by women prisoners. This roughly approximates the percentage of women serving relatively lengthy sentences in the nation's state prisons at the end of 2003. At that time 4.4% of all violent offenders were women (5.7% of those convicted of murder; 4.0% robbery).[53] In comparisons, cases filed by female prisoners generally did not differ from those filed by males across most measures.

B. State proceedings

NOTE ON STATE INFORMATION FOR NON-CAPITAL CASES: *The information about state proceedings in non-capital cases reported below should be considered with caution. In just over half the cases in our non-capital case sample, information about many features of the underlying state criminal proceedings was available from PACER. State information was generally not available in cases in which no documents were accessible from the docket sheets. As a result, the availability of information about state proceedings was very low in some districts, and high in others. In many additional cases the documents filed in federal court could be accessed from PACER but did not contain information about the petitioner's state proceedings. For example, state information was missing in a higher percentage of the cases in which prisoners challenged an administrative decision other than the underlying state criminal judgment, such as a disciplinary proceeding, as well as in more abbreviated cases, such as those voluntarily withdrawn, terminated by transfer to another district, or dismissed as successive.*

CONVICTION OFFENSE, NUMBER OF COUNTS, SENTENCE

- CAPITAL CASES. 155 (42%) of the capital cases were filed by petitioners who were convicted of another crime in addition to capital murder. 104 of these cases involved three or more convictions. The most frequent second conviction for those capital petitioners convicted of more than one offense was another murder (72), followed by robbery (26), kidnapping (10), and rape (10). Murder and robbery topped the list of third convictions as well, followed by burglary and kidnapping.

- NON-CAPITAL CASES. Of the 63.4% (1512) cases with conviction information,
  - 27 (1.8%) had been convicted of capital murder but not sentenced to death. For 372 (24.6%) non-capital murder was the most serious offense of conviction. In another 26 cases the most serious offense of conviction was manslaughter. Altogether 28.2 % of the prisoners with conviction information had some sort of homicide as their most serious offense of conviction.

[52] Tracy L. Snell, BJS Bulletin, Capital Punishment 1999 (Dec. 2000 NCJ 184795), http://www.ojp.usdoj.gov/bjs/pub/pdf/cp99.pdf.
[53] Paige M. Harrison & Ellen J. Beck, BJS Bulletin, Prisoners in 2005 (Nov. 2006 NCJ 215092), http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf.

Other than murder, the crime most frequently coded as the most serious offense of conviction was sexual assault (15.4%). Other common crimes for petitioners in our sample were robbery (13.6 %) and drug offenses (13.0%). Assault (9.6), burglary (5.2) kidnapping (3.6), property offenses (3.7), other felonies (3.3), weapons (1.5), and arson (.4) accounted for the remainder. Five cases had a misdemeanor as the most serious offense of conviction. 37 cases (2.4%) involved custody without a conviction.

- Information on the number of counts of conviction was available for 62.3% (1511) cases. Of these, 772 (51.1%) were convicted of more than one offense and 428 (28.3%) were convicted of three or more counts of conviction.
- 60% of the non-capital cases had information on the type of sentence imposed in state court. Of those 27.7% were serving life sentences. Of the remainder, the average sentence being served was 20 years. Only 12% of those with a term of years were serving five years or less, 25% were filed by prisoners sentenced to 30 years or more.

TRIAL OR PLEA CONVICTION

- CAPITAL CASES. 95% of the capital petitioners had had a jury trial; seven had bench trials, nine pleaded guilty to capital murder and one entered a nolo plea. The 10 petitioners who did not go to trial
  - raised fewer claims on average (22 v. 28);
  - took less time to get to federal court (average 5.0 yrs compared to 7.4 yrs), but stayed longer;
  - were more likely to be still pending in federal court (40%, four of the 10) compared to 25.5% of those tried; and
  - did not raise any innocence claims, compared to 11.2% of cases tried.

- NON-CAPITAL CASES. For non-capital cases, information on what sort of plea or trial led to the petitioner's conviction was available in 1294 (54.2%) of the cases. Of these
  - 64.9% (840) involved petitioners who had gone to trial. Of those tried, 86% (726) had jury trials; 6.5% (55) had bench trials; for 7% (59) the type of trial was not available.
  - 32.2% (417) of the 1294 cases involved convictions by guilty or nolo pleas. Of the pleas, 11% (46) were pleas of nolo contendre.
  - Compared to cases filed by prisoners who went to trial, cases filed by plea-convicted prisoners
    - took less time to resolve in federal court using all measures, and were less likely to be stayed for exhaustion or less likely to remain pending;
    - were more likely to involve a challenge to an administrative decision, a plea or plea negotiations, or to sentence alone;
    - were more likely to be dismissed as barred by the statute of limitations, and more likely to be dismissed without reaching the merits; and
    - were less likely to raise innocence or insufficiency of evidence.

REVIEW IN STATE COURT

- CAPITAL CASES.
  - All capital petitioners in our sample had appealed their state judgments prior to starting their federal cases. All but three of these had pursued state post-conviction review. (For an additional three cases, this information was unavailable.)
  - Of the 87% (320) cases with information about representation on state post-conviction review, 98% (315) of these had counsel; two did not.

- NON-CAPITAL CASES.
  - Of the 1333 or 55.9% cases with information about whether a direct appeal had been filed, 78.6% had appealed. Of the 1274 or 53.4% with information on whether the petitioner had pursued state post-conviction review, 73.0% (931) had done so.
  - Information on whether the non-capital petitioners had counsel during state post-conviction review proceedings was available from PACER in too few cases to report.

TIME BETWEEN STATE JUDGMENT[54] AND FEDERAL FILING

- CAPITAL CASES.
  - The interval between state judgment and federal filing averaged 7.4 years, with a median of 6.5 years, and ranged from a minimum of 30 days to a maximum of 20.6 years. One in ten cases took more than 13.8 years to reach federal court. Another one in ten cases took three years or less.
  - The period varied between states. See Table 2. Petitioners from OK-W reached federal court sooner, and more consistently sooner than petitioners from other states, in an average of 3.8 years. Alabama death row prisoners reached federal court an average of 12.2 years following their state judgments.[55]

Table 2. (C) Days from state judgment to federal filing, by state.[56]

State containing district	*Average period in days*	*# of cases*	*Std. deviation*
Alabama	4467	20	1156
Florida	4070	16	1343
Pennsylvania	4001	19	1447
California	3967	12	1528
Nevada	3357	19	2004
Ohio	2875	49	1554
Arizona	2834	20	1112
Texas	2180	192	1303
Oklahoma	1386	18	389
Total	2693	365	1565

  - Cases ending in a grant of relief took longer to get to federal court than those in which there was either no termination or no relief. See Table 3. Cases dismissed as successive petitions took an average of 11.2 years, compared to an average 6.5 years for non-successive petitions.

Table 3. (C) Days from state judgment to federal filing, by grant.

	Mean days/yrs	*n*	*Std. dev.*	*Median days/yrs*
Writ not granted	2670/7.3	332	1556	2343/6.4
Claim granted	2923/8.0	33	1661	2846/7.8
Total	2693/7.4	365	1565	2380/6.5

[54] The date of state judgment was calculated as the later of any of the following dates when available: date of conviction, date of sentence, or the date the judgment was entered.
[55] For a detailed explanation of factors contributing to the longer period for state court review of death sentences in California as compared to Texas, see Steiker & Steiker, *supra* note 34, at 1875-1901.
[56] Three cases lacked information concerning dates of state proceedings.

- NON-CAPITAL CASES. The date of the petitioner's state judgment, conviction or sentence was available from PACER in 54.5% (1299) of the non-capital cases (57% of the non-transferred cases). Of those:
  - An average of 6.3 years elapsed from the prisoner's state judgment to the filing of the federal habeas case, ranging from 32 days to 35 years, and varied by state. See Table 4. The median period was 5.7 years.
  - Prisoners convicted of murder averaged an 8.0-year interval between state judgment and federal filing.
  - Prisoners challenging only sentencing reached federal court 9.6 years after their judgments; those challenging conviction alone, 5.1 years
  - Prisoners raising a challenge to a revocation decision filed their petitions an average of 10.7 years after their state judgments, compared to 5.8 for others
  - Cases barred by the statute of limitations averaged an interval of 7.8 years, while cases not barred averaged an interval of 5.6 years
  - The interval for cases with at least one defaulted claim averaged 5.1 years; for cases with no defaulted claims the average was 6.5 years
  - Cases with all claims unexhausted reached federal court in an average of 4.0 years after state judgment
  - Cases in which the defendant had appealed his judgment took less time to get to federal court than those with no appeals, while state post-conviction proceedings were associated with longer intervals

Table 4. (NC) Days from state judgment to federal filing, selected states.[57]

State containing district	*Mean in years*	*# cases with info*	*% cases w/ info*	*Std. dev.*
Massachusetts	12.4	8	73	3760
Arkansas	7.5	12	75	2631
Louisiana	7.3	54	79	2290
Florida	7.1	127	71	2529
Michigan	6.8	83	83	2086
North Carolina	5.0	28	72	2163
Missouri	4.7	47	80	995
Nevada	4.1	15	79	539
Ohio	3.5	28	72	937

C. Representation of petitioner in federal court

IN FORMA PAUPERIS RULINGS

- CAPITAL CASES.
  - 86% of the cases included an IFP motion, and 89% of these were granted.
  - IFP motion practice varied considerably between districts. In CA-C, 12 of 13 cases had no IFP motions docketed; in OK-W, 14 of 18 IFP motions were denied. The percentage of motions granted elsewhere ranged from 56% (FL-M) to 85% (AZ, NV).

[57] Limited to states with more than 10 cases in the study, and with filing period information in more than 70% of those cases. Among the states not represented in this table because less than 70% of the cases from the state included information about judgment date are four of the six states with the highest volume of habeas filings: California (17.6% of total sample); Texas (14.3% of sample); New York (6.9% of sample); and Pennsylvania (4.9% of sample).

- NON-CAPITAL CASES. 56.1% included an IFP motion; only 62% of these were granted. In 2.4% cases, an IFP motion was granted by the court of appeals.

PETITIONER'S COUNSEL

- CAPITAL CASES.
  - Only 26 of 368 cases involved petitioners who remained pro se. Of these 26 cases, 21 were dismissed without reaching the merits on any claim, and nine lacked any petition.
  - 12.5% of the petitioners had counsel when they first filed. Of these 46 cases, 18 included retained or volunteer (not appointed) attorneys, 18 were appointed, and for 10 cases attorney type was unclear. Most of the petitioners in PA-E had counsel at the outset, as a result of an arrangement with the defender office to represent capital petitioners in that district. AL-N, the only state in our sample that does not provide counsel for state post-conviction review of death cases, had the largest proportion of cases with counsel who had not been appointed by the court. State law in Texas required state post-conviction counsel to file a motion for appointment of counsel in federal court for the capital petitioner, so this motion typically was the first document filed in capital habeas cases from Texas.
  - The court appointed counsel in 300 (81.3%) cases after the case commenced.
  - Substitution of petitioner's counsel was docketed in 54 (14.6%) of the capital cases. This, too, varied by district. Nearly half (10 of 21) of the cases in OH-S had substitutions; only two of 45 cases in TX-N did.

- NON-CAPITAL CASES.
  - 95% (2271) of the petitioners were pro se at the beginning of the case. Of the 114 petitioners with a lawyer at the beginning of the case, half of the attorneys were retained, four were appointed, the source of counsel in the remaining cases with counsel could not be determined.
  - 74 of those who started pro se received counsel at some point in the case.[58] Overall, 92.3% (2202) of the cases involved no petitioner's counsel.
  - Although representation was rare in most districts, in OR an attorney was appointed in 86.4% of the cases (19 of 22).
  - In comparisons, representation was associated with longer processing times.
  - Of cases with attorneys, 36 involved the substitution of petitioner's counsel during the case. This appeared to be associated with longer processing times.

D. The petition

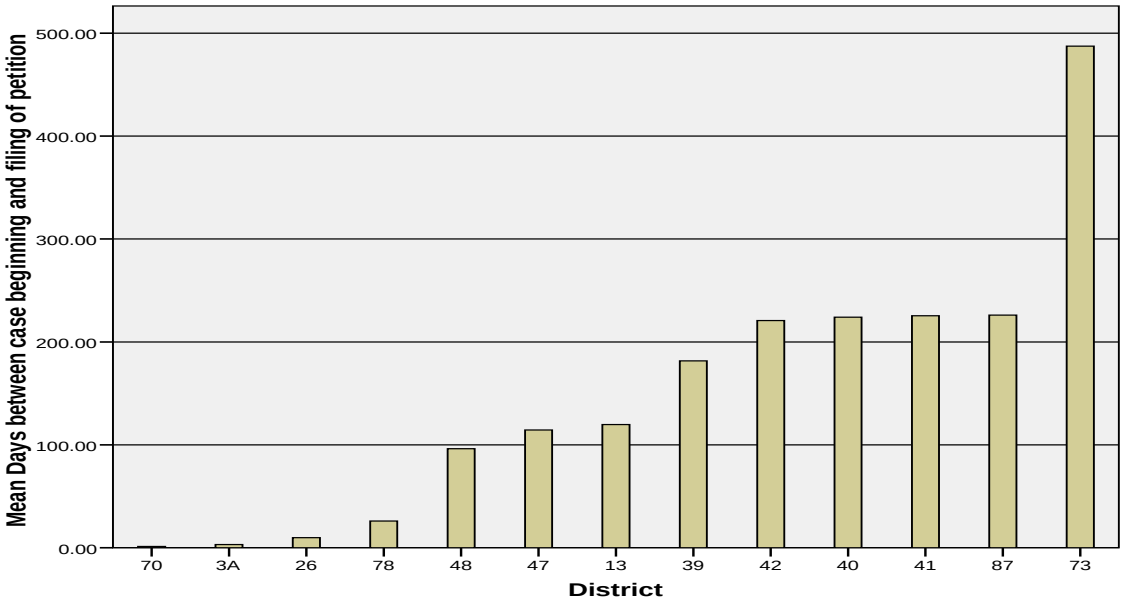
TIMING OF FIRST PETITIONS

- CAPITAL CASES.
  - 19 cases were terminated with no petition ever filed. In 115 (32.9%) of the cases in which a petition was filed, the petition commenced the case. Overall, the interval between the start of the case and the petition averaged 5.3 months; the median interval was three months.
  - The time before a petition was filed varied between districts. See Figure 2. Cases from CA-C took on average 16 months before any petition was filed, compared to cases from PA-E and AL-

[58] For example, Rule 8 of the Rules Governing Section 2254 Cases provides for the appointment of counsel in a habeas case by a state prisoner if an evidentiary hearing is ordered. Rule 6 authorizes the appointment of counsel if the court grants leave to employ discovery devices and the participation of counsel is deemed "necessary for effective utilization of [such] procedures." *See also* 18 U.S.C. § 3006A(a)(2)(B); 28 U.S.C. § 2254(h).

N where all cases began with petitions. This is probably related to differences among districts in the process for appointing counsel in these cases, and the availability of counsel, with some districts relying upon either federal or state defender offices primarily or exclusively, others upon panel attorneys.

Figure 2. (C) Days from first docket entry to petition, by district. [59]



- NON-CAPITAL CASES.
  - In 71 cases (3.6% of the 1986 cases terminated other than by transfer to another district), no petition was ever filed.
  - Of the 2314 non-capital cases in which a petition was filed and the case was not transferred, in 92.7% (2145) the petition commenced the case.
  - Among the cases that involved time between the beginning of the case and the filing of a petition, the longest interval was almost two years. However, in only 1% of the cases did more than two months elapse between the beginning of the case and the filing of the petition.

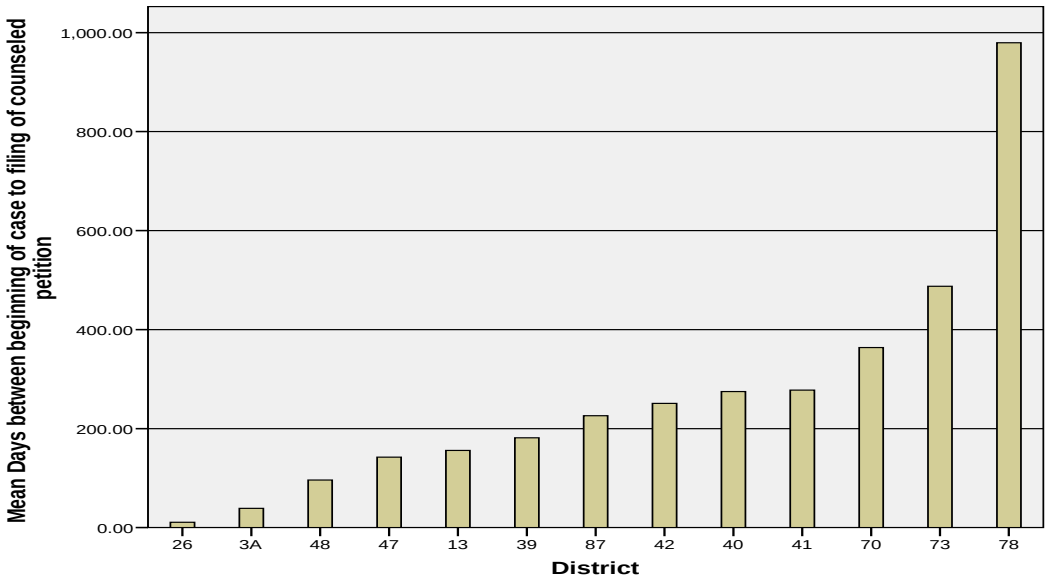
[59] Districts numbers are those assigned in the Administrative Office of the Courts data sets, as follows:

13 PA-E
26 AL-N
3A FL-M
39 TX-N
40 TX-E
41 TX-S
42 TX-W
47 OH-N
48 OH-S
70 AZ
73 CA-C
78 NV
87 OK-W

TIMING OF COUNSELED PETITIONS

- CAPITAL CASES. 88.9% of the cases in the sample included a counseled petition.
  - In most of the districts in the study, a motion for appointment of counsel was filed and granted prior to the preparation and filing of a counseled petition.
  - The average interval between the beginning of the case and the filing of a counseled petition was 8.2 months.
  - The interval varied between districts. See Figure 3. The longest time period was in NV, where on average, nearly three years passed between the beginning of the case and the filing of a counseled petition. Most of this time in NV fell between the first petition and the counseled petition, while in other districts, like CA-C, where the first petition was also the counseled petition, the bulk of time elapsed prior to the filing of any petition. Compare Figure 2.

Figure 3. (C) Days from first docket entry to counseled petition, by district.



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

- NON-CAPITAL CASES. The number of non-capital cases with counsel was small (188) and the number with counseled petitions was even smaller – only 6% (137) cases out of our sample of 2384.
  - 111 (81%) of these 137 counseled petitions were filed the day the case began.
  - The average interval from commencement of case to the filing of a counseled petition was about two months, but that is attributable to some particularly lengthy intervals between the commencement of a case and the filing of the counseled petition, the longest of which lasted more than two years (858 days).
  - Only three of the seven cases that received a grant included a counseled petition.

E. Type of proceeding challenged

NOTE: NON-CAPITAL CASE CLAIM INFORMATION. Information about claims, and often about defenses, was available only in cases with documents linkable through the docket sheet from PACER, and only when those documents discussed claims. Information was available in 64% of the cases in the sample (1521). The unavailability of claims information was distributed among states and districts. Table 5 presents availability in states with over 20 cases in the sample.

Table 5. (NC) Percentage of cases with claim type information, states with over 20 cases.

State	*# with claims info*	*% w/ claims info*	*total cases from state*	*State*	*# w/ claims info*	*% w/ claims info*	*total cases from state*
Ohio	35	89.7%	39	Illinois	31	63.3%	49
Missouri	52	88.1%	59	N. Carolina	23	59.0%	39
Louisiana	58	85.3%	68	Georgia	44	57.9%	76
Alabama	45	81.8%	55	Washington	12	57.1%	21
Indiana	72	81.8%	88	Pennsylvania	67	56.8%	118
Texas	277	81.0%	342	California	233	55.6%	419
Michigan	87	79.8%	109	New York	90	54.5%	165
Florida	137	76.5%	179	Tennessee	13	39.4%	33
Oklahoma	32	72.7%	44	Colorado	7	30.4%	23
S. Carolina	24	70.6%	34	Wisconsin	10	30.3%	33
New Jersey	17	65.4%	26	Mississippi	15	28.3%	53
Oregon	14	63.6%	22	Virginia	11	12.6%	87

CHALLENGES TO DECISIONS OTHER THAN CRIMINAL JUDGMENTS

- CAPITAL CASES. Five of the capital petitions challenged only the constitutionality of the method of execution or the petitioner's competency for execution, not the state judgment. All of these cases were in Texas, none received relief, and two were dismissed as successive.

- NON-CAPITAL CASES. Information about what proceeding was being challenged was available in 1837 (77.1%) of our non-capital sample. The following percentages are of these 1837 cases, unless otherwise noted.
  - 19.3% (356), or nearly one in every five cases with information about what proceeding was challenged, did *not* challenge the constitutionality of the underlying state judgment at all.
  - 29 (1.5%) cases, filed in 15 different states, involved constitutional challenges to *pretrial* custody by state officials.[60]
  - 327 (17.8%) alleged a constitutional flaw in a post-commitment administrative proceeding. The administrative challenges are particularly concentrated in two states, Texas and Indiana. Administrative challenges constitute 34.8% (111 of 342) cases from the Texas districts and 60.7% (54 of 89) from Indiana. Of the districts with over 20 cases in the sample, frequent administrative challenges also appear in CA-E (21.7%), PA-M (32.1%), and FL-N (21.2%).

[60] Among the challenges to pretrial custody that may be considered under 28 U.S.C. § 2241 by habeas courts before the state prosecution runs its course is a claim that the prisoner is being put in jeopardy twice for the same offense. *E.g.*, Walck v. Edmondson, 472 F.3d 1227 (10th Cir. 2007).

- 203 (13.3%) of all cases with claims information included at least one claim objecting to a disciplinary decision; 131 (8.6%) included at least one objection to a decision concerning parole or probation revocation or release.
- Challenges to prison disciplinary decisions were routine in Indiana, where 53.8% of all habeas cases with claims information raised such a challenge. Challenges to parole revocation and release decisions were more evenly distributed among states.

SENTENCE CHALLENGES

- CAPITAL CASES.
  - 21 cases (5.1%) raised challenges to the sentence alone. All of those cases were in Texas. At least eight cases challenged the conviction alone.
  - 29.0% of the capital cases challenged the sufficiency of evidence supporting a sentencing factor. This challenge was most frequent in NV, OK, OH, and AZ.
  - 40.4% raised a challenge to a ruling excluding or admitting evidence at sentencing, a claim that was raised in only 26.9% of the cases in Texas.
  - *Apprendi/Ring* claims were raised in 54 cases and were most common in Arizona where 75% (15 of the 20 cases) were *Ring*-related. 79 cases raised a claim under either *Roper*, *Atkins*, or *Ring*. Of the 25 cases raising *Roper* or *Atkins*, 15 were from Texas (8% of the 193 capital cases from that state), and six (12% of the 50 cases) from Ohio.

- NON-CAPITAL CASES.
  - Of the 1521 cases with claims information available, at least 21% (325) raised challenges to the sentence alone. Another 271 (17.8%) challenged only the conviction. The remaining cases with claims information included claims that could have been directed at either sentence or conviction.
  - 16 (1%) cases challenged evidentiary rulings at sentencing.
  - 57 (3.7%) alleged insufficient proof of a sentencing enhancement. An *Apprendi* violation was alleged in 41 (2.7%) of the cases. One in four of the *Apprendi* claims was raised by a petitioner in California.[61]

F. Claims raised

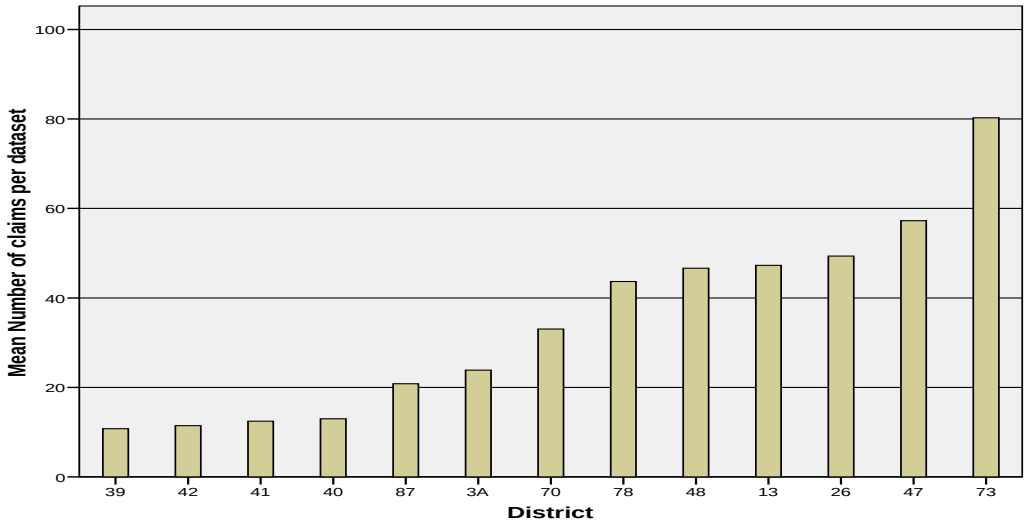
NUMBER OF CLAIMS RAISED PER CASE

- CAPITAL CASES. Capital petitions included more claims than non-capital petitioners.
  - The average number of claims was 28; the median, 18.
  - Two cases had more than 200 claims. In 5% of the capital cases, the petitioner raised more than 88 claims.[62]
  - 90% raised 63 or fewer claims, 21% raised five or fewer claims and 30 cases raised one claim.
  - Fewer claims were raised in Texas than in other states. In CA-C, petitions included 80 claims on average, nearly six times the average number in Texas districts.[63] See Figure 4.

[61] In Cunningham v. California, 127 S. Ct. 856 (2007), the Court invalidated California's sentencing scheme as violating *Apprendi/Blakely*. Less than 40% of all 2384 cases in the sample were commenced after *Blakely* was handed down in June 2004.

[62] Multiple claims of the same type directed at different facts were eliminated after coding where necessary to reduce the data size to 88 claim fields per case. At least one claim of each different claim type was retained. The number of individual claims originally coded was retained as a separate variable.

Figure 4. (C) Claims per case, by district.



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

- NON-CAPITAL CASES. Non-transferred, terminated cases with claims information available averaged four claims per case, with a median of three claims.
  - Just one claim was raised in 28.7% of the 1521 cases for which we had claims information.
  - Five or fewer claims appeared in 77.3% of the 1521 cases with claims information that were pending or terminated other than by transfer.
  - One case had 131 claims, all the rest had 49 or fewer.

COUNSEL-RELATED ERROR

- CAPITAL CASES.
  - 81.0% (299) of the capital cases included at least one claim alleging the ineffective assistance of counsel (hereinafter "IAC"). 123 of these cases raised at least one IAC claim regarding *appellate* counsel.
    - 29% of the Texas cases lacked a single IAC claim compared to only 8.0% of cases from districts outside of Texas.
    - Three of the 69 cases without an IAC claim received relief on another ground, five remained pending, 47 were dismissed without reaching the merits, including two transfers and eight dismissed voluntarily.
    - 30 of the 33 grant cases (91%) included an IAC claim.
  - Right to counsel claims that were not based on ineffective assistance, including the denial of counsel altogether, *Ake* claims, interference with counsel, and denial of the right to self-representation, were raised in 86 or 23.3% of the capital cases.

- NON-CAPITAL CASES.
  - 768 or 50.4% of the 1521 non-capital cases with claims information included at least one claim of ineffective assistance, including 10% raising ineffectiveness of *appellate* counsel.
  - 57 (3.7% of 1521) included at least one right to counsel claim other than IAC.
  - Of the seven grant cases, two included an IAC claim.
  - Of the 59 cases alleging new evidence of innocence, 75% also raised IAC.

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[63] *See also* Steiker & Steiker, *supra* note 34, at p. 1877 (noting that on direct appeal of capital cases in Texas, briefs are limited to 125 pages, while California rules allow 280 pages).

EVIDENTIARY RULINGS

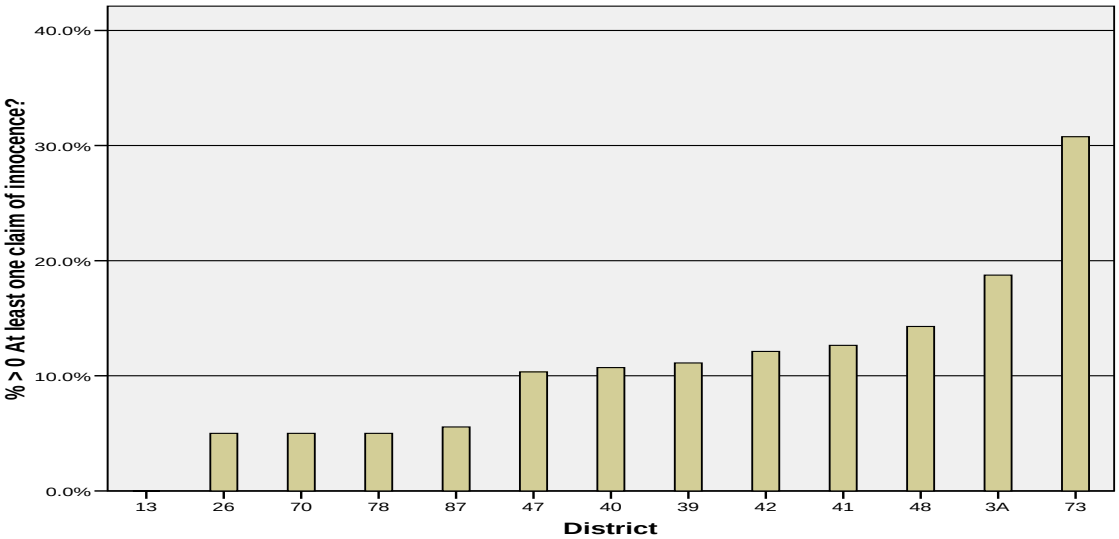
- CAPITAL CASES.
  - 169 (45.8%) included at least one challenge to a ruling admitting or excluding evidence at the guilt phase (other than a confession or statement, and other than a ruling based on the Fourth Amendment).
  - The use of the petitioner's confession or statement at guilt or sentencing was challenged in 104 (18.2%) cases.
  - Search and seizure issues were raised in 45 (12.2%) of cases (including both free-standing Fourth Amendment claims and *Kimmelman* claims).

- NON-CAPITAL CASES.
  - 301 (19.8% of 1521) included at least one challenge to a guilt-phase ruling admitting or excluding evidence, other than a confession or statement and other than a ruling based on the Fourth Amendment.
  - The use of the petitioner's confession or statement at guilt or sentencing was challenged in 82 cases (5.4% of 1521).
  - Search and seizure issues were raised in 131 cases (8.6% of 1521), including both free standing Fourth Amendment claims and *Kimmelman* claims.

NEW EVIDENCE OF INNOCENCE, INSUFFICIENT EVIDENCE OF GUILT

- CAPITAL CASES.
  - 94 cases (25.5%) included a claim of insufficient evidence of guilt. Ten of the 33 grant cases included such a claim.
  - A free-standing claim of innocence (defined as new evidence of innocence of the offense of conviction -- either DNA or non-DNA) was raised in 40 (10.8%) cases. None of these were filed in PA-E, but this claim appeared in over 30% of cases filed in CA-C. See Figure 5.
  - Of the 33 cases granted relief, five included such a claim. One of the 40 cases containing this kind of claim was dismissed as successive, two were time-barred.

Figure 5. (C) Percentage of cases with at least one claim of innocence, by district.



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

- NON-CAPITAL CASES. Of the 1521 non-capital cases with claims information,
  - More than 18.9% (288) included a claim of insufficient evidence of guilt. Two of these cases received relief.
  - A free-standing claim of innocence (defined as new evidence of innocence of the offense of conviction -- either DNA or non-DNA) was raised in only 59 (3.9% of 1521) cases. None received a grant of relief on any claim.

JUDGE OR JURY BIAS, SELECTION, MISCONDUCT, OR INSTRUCTIONS

- CAPITAL CASES. Almost all capital petitioners were convicted by a jury.
  - Jury instructions and judicial comments to the jury were challenged in 68.3% of the cases.
  - Jury selection or bias was challenged in 161, 43.6%.
  - Jury misconduct or tampering issues were raised in 69, 18.7%.
  - Judicial bias at any stage was alleged in 55, 14.9%.

- NON-CAPITAL CASES. Of the 1521 non-capital cases with claims information
  - Jury instructions and judicial comments were challenged in 221 (14.5%) cases.
  - Some aspect of jury selection or jury bias was challenged in 90 (5.9 %).
  - Jury misconduct or tampering was raised in 35 cases (2.3%).
  - Judicial bias at any stage of the process was protested in 45 cases (3.0%).

PROSECUTOR COMMENTS; LOST, UNDISCLOSED, OR FALSE EVIDENCE

- CAPITAL CASES.
  - 177 (48.0%) raised at least one claim challenging the constitutionality of conviction or sentence based on improper comments by the prosecutor.
  - 159 (43.1%) raised a claim that the state had lost evidence, failed to disclose evidence, or presented false evidence.

- NON-CAPITAL CASES.
  - 154 (10.1% of 1521) raised a claim of improper comments by the prosecutor at trial or sentencing.
  - 197 (13.0%) raised a claim that the state lost evidence, failed to disclose evidence, or presented false evidence.

GUILTY PLEA AND NEGOTIATION CHALLENGES

- CAPITAL CASES. Only 10 capital petitioners pleaded guilty to capital murder. A total of 15 cases (4.0%) included either a claim of ineffective assistance of counsel regarding a plea or plea negotiations, or a claim challenging the validity of the plea itself.

- NON-CAPITAL CASES. Of the 1521 non-capital cases with claims information, a claim of ineffective assistance of counsel regarding a plea or plea negotiations, or a claim challenging the validity of the plea itself was raised in 224 (14.8% of 1521) cases.

COMPETENCE, PRESENCE AT TRIAL, PUBLIC, OR SPEEDY TRIAL

- CAPITAL CASES.
  - The right to a public or speedy trial, delay in review proceedings or in charging, or the denial of the right of the defendant to be present at trail was raised in 44 (11.9%) cases.

- Competency of the petitioner was an issue in 49 (13.3%).

- NON-CAPITAL CASES. Of 1521 non-capital cases with claims information
  - Presence, speedy, or public trial claims were raised in 81 (5.3%).
  - Competency of the petitioner was an issue in 27 or 1.8%.

DOUBLE JEOPARDY AND APPEAL-RELATED CLAIMS

- CAPITAL CASES.
  - 14 or 3.7% of cases raised a double jeopardy issue.
  - 67 (18.2%) included a challenge based on the denial or delay of appeal or trial transcript.

- NON-CAPITAL CASES. Of 1521 non-capital cases with claims information,
  - 84 (5.5%) raised a claim of double jeopardy.
  - 81 (5.3%) included a claim of denial or delay of an appeal or trial transcript.

G. Intermediate orders

TRANSFERS TO ANOTHER DISTRICT

- CAPITAL CASES. Of the 368 capital cases, only six (1.6%) ended by transfer to another district. These six cases averaged 8.8 months from start to finish.

- NON-CAPITAL CASES. 200 or (8.4%) cases ended by transfer to another district. These cases tended to be terminated early; 157 of the 200 had been transferred by the fifth docket entry. Some districts had more transferred cases than others. Among the districts with more than 10 cases in the sample: 40% of the cases filed in GA-M and over 30% in CA-S were transferred to another district. In California cases, judges indicated that it is general practice there to transfer habeas actions to the district in which the petitioner was convicted.

STAYS OF EXECUTION

- If an execution date had been set by the state, a petitioner could seek a stay of that execution from the federal court. Only 22.2% of the capital cases in our sample included a docket entry staying a petitioner's execution. While such stays were routine in AZ (90%), and in PA-E and CA-C (each 69%), none of the cases from FL-M were stayed, and most of the other districts afforded stays in fewer than 10% of the cases.

STAYS FOR STATE EXHAUSTION

- CAPITAL CASES. 63 (17%) cases included at least one stayed period allowing the petitioner to go back to state court and exhaust claims.[64]
  - only 19 of these 63 stayed cases had been terminated in federal court by the end of November 2006, the rest were still pending.
  - Stayed cases had on average a longer period of time before reaching federal court (7.8 years compared to 7.3 years), but the median period for stayed and non-stayed cases was the same.

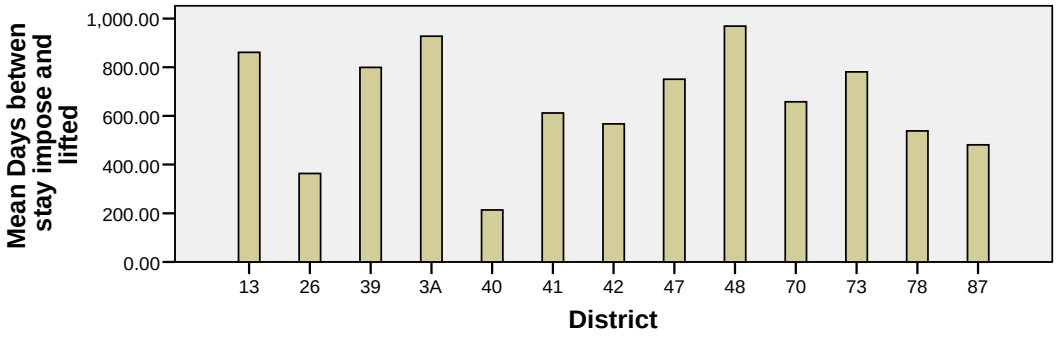
[64] A check in May 2007 of docket sheets revealed that in some of these cases that were pending but not stayed in November 2006, stays subsequently had been imposed.

- Stay practices vary widely by district. See Table 6. In CA-C, most cases are stayed for state exhaustion. Stays are the exception in Texas districts.[65]

Table 6. (C) Percentage of cases stayed, by district.

District	*Percentage cases stayed in district*	*Total number cases from district*
CA-C	53.8	13
FL-M	43.8	16
PA-E	36.8	19
OK-W	33.3	18
NV	30.0	20
OH-S	28.6	21
AZ	15.0	20
TX-W	12.1	33
OH-N	10.3	29
AL-N	10.0	20
TX-S	9.2	87
TX-E	7.1	28
TX-N	4.4	45

Figure 6. (C) Length of stays for exhaustion, by district.[66]



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

- Including the stays from the pending cases, the average stay for exhaustion in a capital case has lasted nearly two years (23 months; median = 22 months) so far. See Figure 6.

[65] Some of the variance in the use of stays among courts could be related to circuit case law. Decisions from the Third, Sixth, and Ninth Circuits encouraged the use of the stay device during the relevant period, Crews v. Horn, 360 F.3d 146, 151-154 (3d Cir. 2004) (when confronted with a petition containing an unexhausted claim, the federal court should stay the action whenever dismissal would expose the petitioner to the limitations period of the habeas statute); Palmer v. Carlton, 276 F.3d 777, 781 (6th Cir. 2002); Kelly v. Small, 315 F.3d 1063, 1070 (9th Cir. 2003). The Capital Habeas Case Management and Budgeting Plan for the Ninth Circuit, the circuit containing three of the districts with the longest disposition times and the most cases pending, states that holding the case in abeyance is a "nearly universal practice." The plan is available on line at www.cacd.uscourts.gov, under documents. Decisions from the Fifth Circuit upheld the district court's discretion to refuse a stay, or endorsed alternative dispositions of an unexhausted claim, such as finding the claim defaulted or denying it on the merits. *E.g.*, Brewer v. Johnson, 139 F.3d 491 (5th Cir. 1998). Circuit law would not explain, however, the difference between FL-M with 44% of its cases stayed and AL-N with only 10% of its cases stayed.

[66] The length of a stay was measured until lifted, or until the end of November 2006 when pending capital cases were last coded.

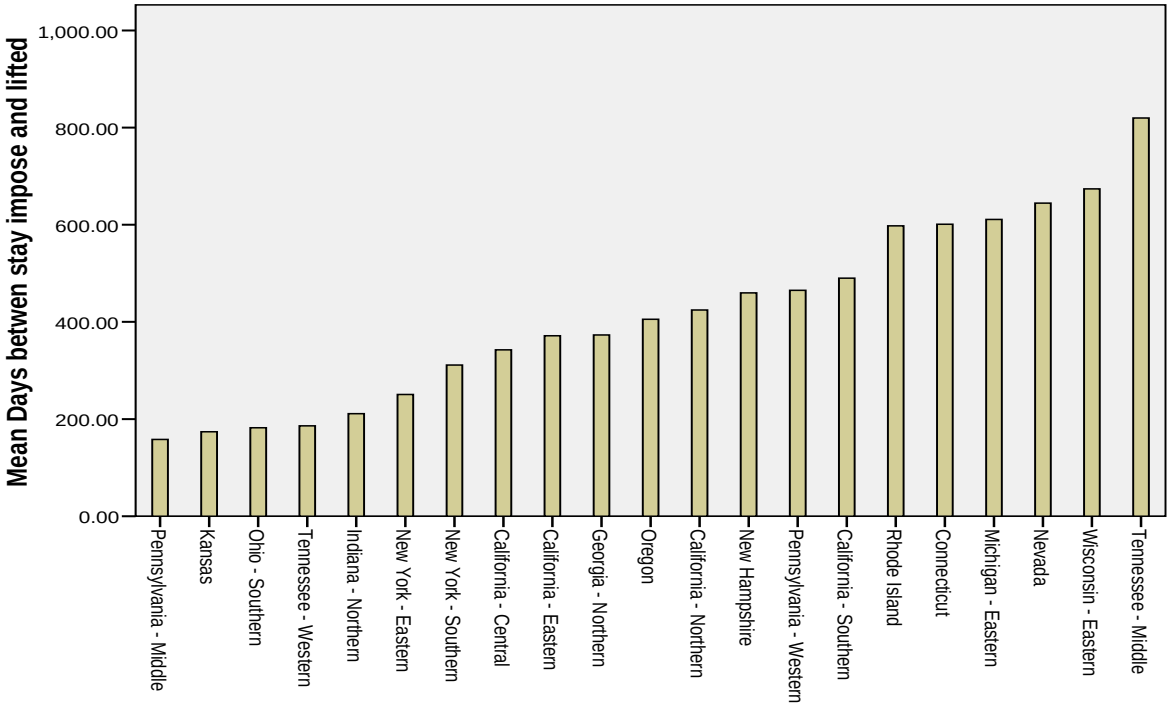
- In 12 cases (in seven districts) the court entered a second stay for state exhaustion (four cases), or a stay pending a federal decision in the court of appeals or U.S. Supreme Court (seven cases), or a stay for settlement negotiations. These extra stays[67] averaged 1.4 years (17.3 months) in length. One case from Houston was stayed *three* times, each time for a different federal decision, and was still pending when last coded. Cases stayed were more likely to remain pending than cases with no stay. See Table 7.

Table 7. (C) Percentage of non-transferred cases stayed, by whether case terminated.

Case stayed?	*Total cases*	*Number/% of stayed cases pending*	*Number/% of stayed cases terminated*
Not stayed	305	51/17%	254/83%
Stayed	63	44/70%	19/30%

- NON-CAPITAL CASES. In the non-capital sample, only 57 (2.6% of 2184 non-transferred cases) were stayed for exhaustion.
  - The average time for stays varied by district. See Figure 7. Including cases that were still stayed, at the end of October 2006, the average stay was 13.1 months. The shortest stay was just over two months (62 days). The longest that a non-capital case had been stayed was 2.25 years (820 days).

Figure 7. (NC) Average length of stays for exhaustion, including pending cases, by district.



[67] We did not rely entirely on the terminology used on the docket sheet to distinguish stays from other temporary closures or suspensions. Not counted as stays were time periods designated on docket sheets as "stays" or "closures" for "administrative" or "statistical" purposes, if the case was stayed or closed for a reason other than awaiting *another* court's decision. For example, some cases were "closed" or "stayed" in order to give the parties time to prepare pleadings or to give the federal judge time to decide matters in the federal habeas case itself. These time periods are functionally continuances, not stays. Although an interval for settlement negotiations in one case was probably more like a continuance than a stay, we included it with the stays.

- Of the stayed cases, 19 were terminated, 38 remained pending.
- Relatively few districts granted stays in non-capital cases; about half were from the Ninth Circuit (all but five from California), and another 35% were from either the Second or the Sixth Circuits. Of the 26 cases stayed in the Ninth Circuit, 19 were still pending, but less than half of the cases stayed in the Second or Sixth Circuit were still pending. Of the districts with over 20 cases in our sample, no cases were stayed in Texas, compared to other districts where stays were much more frequent, e.g., 11.0% of the cases in NY-E, and 22.2% of the cases in CA-C. The stays imposed in districts from MI, NY, and CA accounted for 63% of all stayed cases.

H. Litigation steps

AMENDED PETITIONS

- CAPITAL CASES. Amended petitions were filed in 35.2 % of the cases. (These included the first counseled petition when the original petition was filed prior to the appointment of counsel.)
  - In all districts except those in the Ninth Circuit – AZ, NV, and CA-C – cases without amended petitions were more frequent than those with amended petitions. In AZ 85% of the cases had amended petitions.

- NON-CAPITAL CASES. Only 11.8% (281) included an amended petition.[68]
  - Amended petitions were filed in 20% of cases with an attorney.
  - Over 18% of the cases in the Ninth Circuit included amended petitions. In CA-E, FL-N, and MS-S (districts with over 20 cases in the sample) more than 30% of the cases included amended petitions.

ANSWERS, MOTIONS, REPLIES

- CAPITAL CASES.
  - 306 cases included either an answer (also termed "response" to a show cause order or a "return") or a dispositive motion (motion for summary judgment or motion to dismiss) by the state (82.9% of all cases and 90.9% of cases with amended petitions). In 85% (260) of these cases the petitioner filed a reply or a "traverse."
  - Comparisons suggest that presence of these pleadings are unrelated to whether the case remained pending or received relief. However, NV, the district with the second highest percentage of pending cases, also had the lowest percentage of state pleadings (only nine of 20 cases). On average, several years elapsed prior to the filing of petitions in this district, so in many of the NV cases, state pleadings had *yet* to be filed.

- NON-CAPITAL CASES. Only 58.2% of non-capital cases included either an answer (response or return) or a motion to dismiss filed by the state. Over 40% of non-capital cases apparently were resolved without any such pleading.
  - 89.4% of the still pending cases included an answer or dispositive motion.
  - Among the states with over 20 cases in our sample, some had a much higher percentage of cases with these pleadings, e.g., over 70% of the cases from OH, OR, and MO.
  - In 66.3% (920) of the cases where the state filed an answer or dispositive motion, the petitioner filed some sort of reply to the state's pleading.

[68] Because amended petitions often follow the completion of a stay for exhaustion, we expect that in at least some of the several dozen cases that had been stayed and remained pending amended petitions are yet to be filed.

STATE RECORDS

- CAPITAL CASES. State records were entered separately on the docket sheet in 66% of all cases and in over 75% of the cases in TX, OH, and AZ. Of the 306 cases in which the state had filed either an answer or a dispositive motion, 77% also included the state record. The state record had been filed in only 14% of the 62 cases showing no answer or dispositive motion from the state. Of pending cases, 44% lacked state records compared to 29% of terminated cases. The record may yet be filed in many of these still pending cases.

- NON-CAPITAL CASES. In only 16.9 % (404) of the non-capital cases did a notation on the federal court docket sheet indicate that the state record had been filed. This appears to vary by state, with some states responding in fewer cases, or attaching exhibits instead of filing the record in federal court.[69]

DISCOVERY AND EVIDENTIARY HEARINGS

- CAPITAL CASES.
  - 12.5% of the cases included a deposition or a mental or physical examination.
  - 9.5% (35) or about one in 10 non-transferred cases had been granted an evidentiary hearing by the end of November 2006. Of the terminated, non-transferred cases in which a petition was filed, the percentage is 9.7% (24 of 248). 11% (10) of the 95 cases still pending had been granted an evidentiary hearing. Evidentiary hearings may yet be ordered in additional pending cases that were stayed, or that were at early stages of litigation when coding closed.
  - Ten of the 35 cases with hearings received relief (30.3% of all grant cases; grants made up 41.7% of the 24 terminated cases with petitions and hearings). Relief was ordered in only 23 (10%) of the 229 terminated cases with petitions but no hearings.
  - Some districts granted evidentiary hearings more frequently, ranging from nearly four of every 10 cases in OH-S to none of the 33 cases in TX-W. See Table 8.
  - 14 of the 35 evidentiary hearings were held by a magistrate judge.

Table 8. (C) Percentage of cases with discovery or evidentiary hearing, by district.

District	*Percentage with evidentiary hearings*	*Percentage with deposition or exam*	*Total cases from district*
OH-S	38	57	21
PA-E	16	11	19
OH-N	14	31	29
OK-W	11	6	18
AZ	10	25	20
TX-S	9	3	87
CA-C	8	23	13
TX-E	7	7	27
TX-N	7	7	45
AL-N	5	0	20
NV	5	10	20
FL-M	0	0	16
TX-W	0	12	33
Average/Total	9.5	1.5	368

[69] The record of state proceedings may be filed only after any stay for exhaustion is completed. Several cases in our sample were still stayed for exhaustion when coding closed.

- NON-CAPITAL CASES. Only six (0.3% of 2184 cases pending or terminated without transfer) included a deposition or examination. Only five of the 1986 cases terminated without transfer were provided with an evidentiary hearing, a rate of 0.3%, or one of every 397 cases terminated. Of all cases, including those still pending, nine included an evidentiary hearing, a rate of one of every 243 cases or (0.4%).

MAGISTRATE JUDGE USE

- CAPITAL CASES.
  - Of the 35 capital cases with evidentiary hearings, 14 were before a magistrate judge.
  - In 10.8% cases magistrate judges issued a report and recommendation ("R&R") relating to the disposition of any claim. Nearly one third of the cases in TX-E and OH-S included R&Rs. Of the 95 pending cases, many had been referred to magistrate judges, but had not yet reached the point where an R&R for disposition would have been filed.

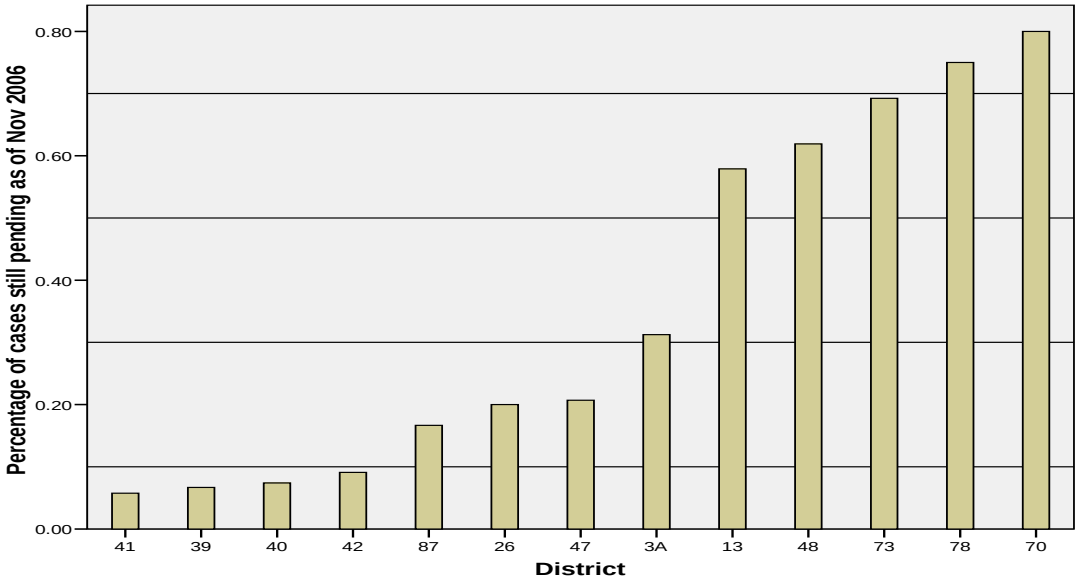
- NON-CAPITAL CASES.
  - About half of the cases included an R&R for disposition.
  - Of the nine evidentiary hearings, four were before a magistrate judge.

I. Processing time

PENDING (NOT TERMINATED) CASES

- CAPITAL CASES. 95 or 26% of the cases were unresolved as of the end of November 2006. Of the pending cases 67.7% had been stayed, 10.5% had been granted evidentiary hearings (versus 9.2% of the terminated cases); 27% had counsel substituted (versus 10.2% for terminated cases); seven had not yet filed a counseled petition (33 of terminated cases lacked counseled petitions). More than half of the cases in five districts remained pending. See Figure 8.

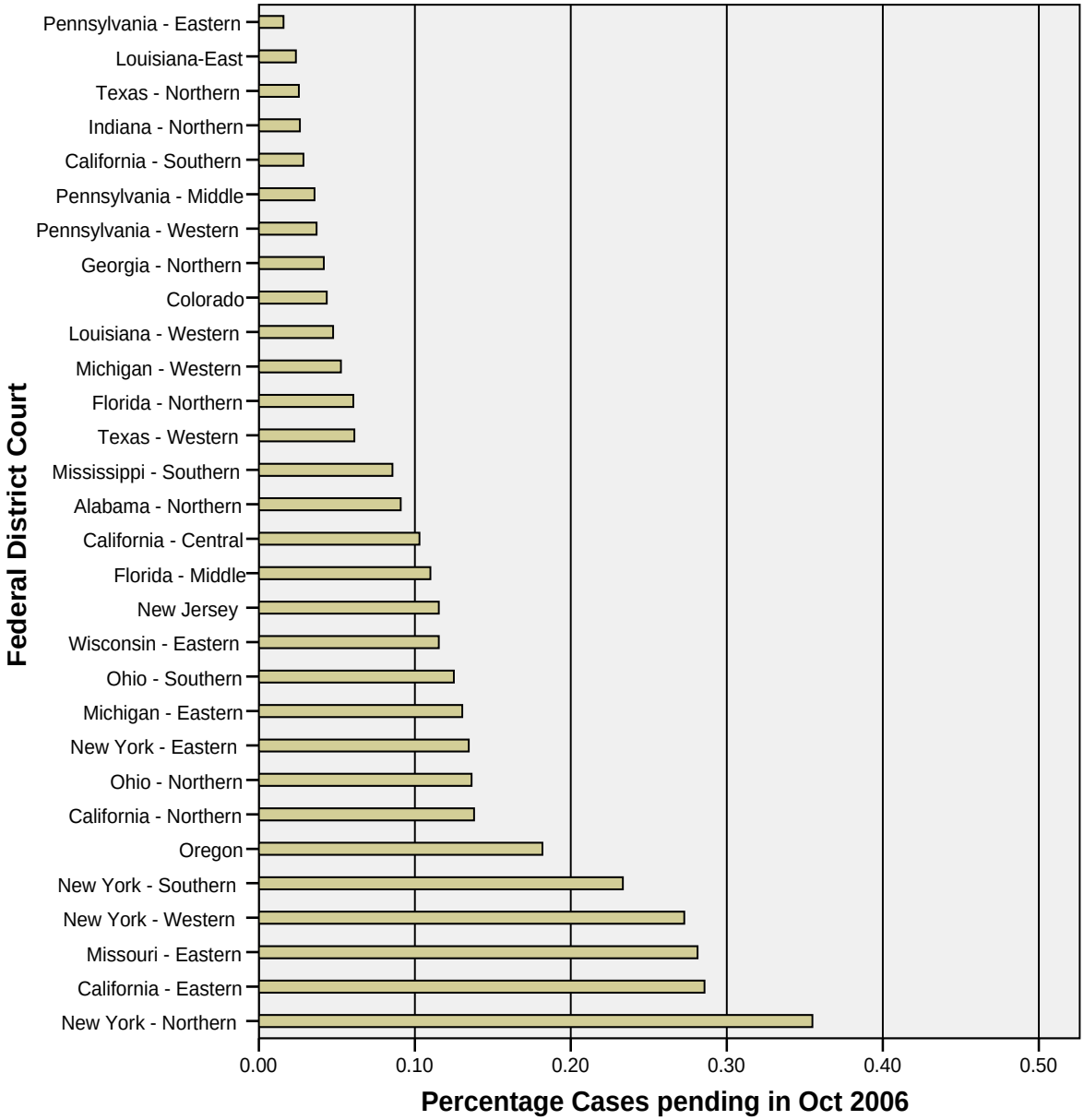
Figure 8. (C) Percentage of cases pending as of end of November 2006, by district.



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

- NON-CAPITAL CASES. Of the non-capital cases started in 2003 and 2004, 8.3% (198) were still pending at the end of October 2006 (9% of non-transferred cases).
    - Pending for an average of 30 months, these cases more frequently involved an amended petition, state pleading, stay, or a petitioner with counsel.
    - Of districts with more than 10 cases, NV had 44% pending, OK-N 38%. Of districts with over 20 cases in the sample, the four districts in NY were among the nine districts with the most cases unresolved. See Figure 9.

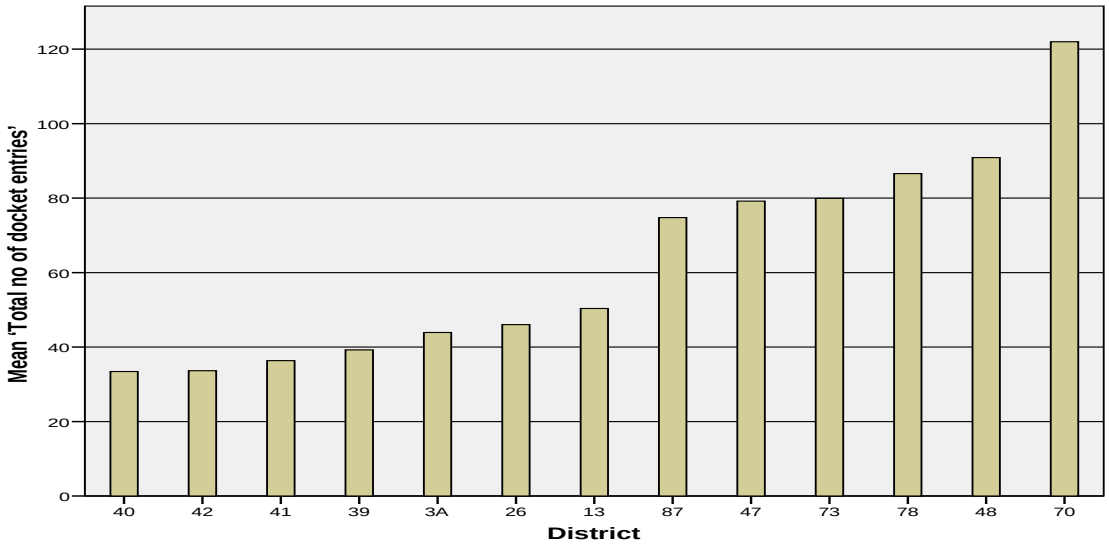
Figure 9. (NC) Percentage of cases pending, by districts with over 20 cases.



NUMBER OF DOCKET ENTRIES[70]

- CAPITAL CASES. The number of docket entries is one measure of the complexity of a case and the amount of activity in the case generated by the litigants, indicating separate motions, pleadings, events, etc. The average number of docket entries was 55, median 44. The amount of docket activity in the districts from the Ninth Circuit, Ohio, and Oklahoma exceeded that of other districts. See Figure 10. Arizona cases on average included far more activity than those in Texas, for example.

Figure 10. (C) Docket entries per case, by district.



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

- NON-CAPITAL CASES. The average number of docket entries was 18, the median 15. Compared to capital cases, there was less variation in the number of docket entries by location. However, the Ninth Circuit cases included the greatest number of docket entries, averaging 23 compared to an average of 16 for the other circuits. Cases including a magistrate judge's report and recommendation averaged 21 docket entries compared to an average of 15 for other cases.

DAYS TO TERMINATION FROM FIRST DOCKET ENTRY

Our variable BEG2TERM is the interval in days between the date of the first docket entry and the date of termination in district court. Date of termination is the later of either the date of the order terminating the case (including an order to transfer, dismiss, grant, or deny all claims in the petition) or the date of the order denying a motion to reconsider that order.[71] For capital cases we also checked for start dates not reflected in the "cv" (civil case) docket sheet. This occurred if the capital case was started as a miscellaneous case (usually with a motion for the appointment of counsel, designated with an "mc" instead of a "cv" in the docket number) and the "mc" case was closed at the same time that a new case by the same petitioner was started with a new number (usually upon filing of the petition, with the new case designated

[70] Measured as of date last coded. Non-capital cases that remained pending when first coded in the spring of 2006 were recoded in October 2007; capital cases that remained pending in the summer of 2006 were recoded in November 2006.
[71] *See* Latzer & Cauthen, *supra* note 43 (measuring processing time to end with motion for reconsideration ruling).

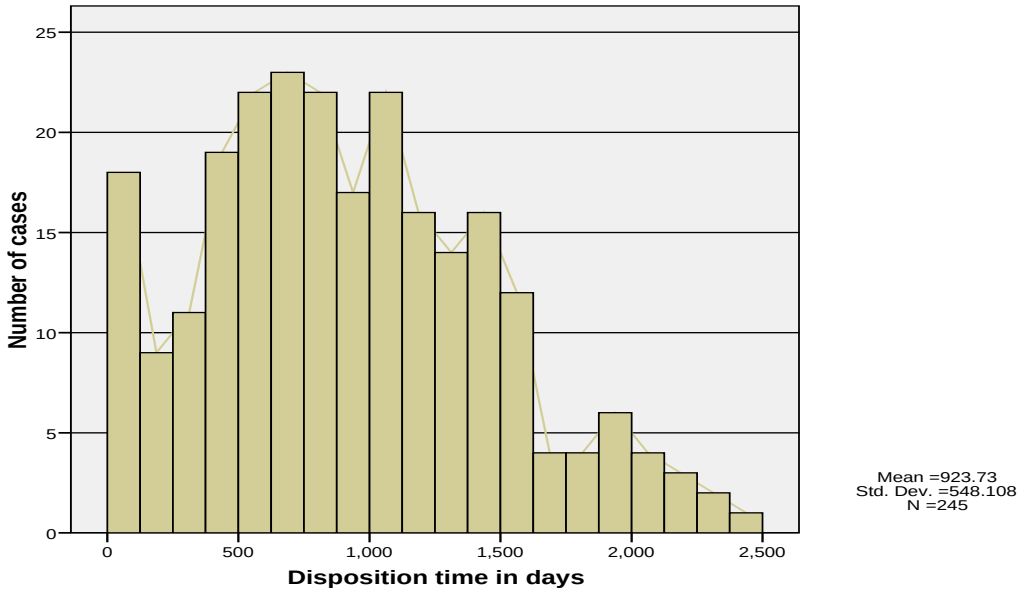
"cv"). In this situation the two cases were counted as a single case and the start date for the mc case was entered as the start date.[72]

We coded as separate cases two filings by a single capital petitioner with different docket numbers, if the first case terminated by *dismissal without prejudice* and the second case was commenced with a new docket number. Some districts would not dismiss in this situation but instead would stay the case, then reopen it, on the same docket sheet. This we would count as one case regardless of whether the docket sheet indicated that during the stay the case had been "stayed," "closed for statistical purposes," or "administratively closed" during the period in which exhaustion was taking place. In several of the districts that we examined, capital cases that were still open but stayed were designated as "closed" or "terminated," either in the AO data for the case or on the docket sheet. These districts included PA-E, TX-N, TX-S, TX-W, NV, and FL-M. We coded any case that was stayed, without disposition of all claims, as stayed and still pending.

- CAPITAL CASES.
  - Average time to resolve a non-transferred terminated case was 28.7 months, median 27.1 months. The longest terminated case took 6.8 years. Eight cases ended in one day or less, all in Texas, and all but one involved a successive petition. The six cases ending in transfer to another district took an average 8.8 months from start to transfer order, the 14 successive petitions averaged 50 days.
  - 10% of the 267 cases terminated without transfer were ended in about three months or less. Most of these were expedited dispositions other than successive petitions. See Figure 11. These expedited cases were included in the descriptive information reported below and in the comparisons with pre-AEDPA processing times, to be conservative. It is not known whether pre-AEDPA studies included or excluded capital cases that were terminated quickly before a petition was filed, by voluntary dismissal or otherwise. Judicial conference reports of termination times were based on all capital cases, presumably including those terminated quickly, before a petition was filed. Because information about only those cases fully litigated may be of interest to some readers of this report, the explanatory analyses in Part IV were conducted and reported both with and without the 10% shortest cases.
  - Grants took longer (3.4 years or 41 months) than denials or dismissals.
  - Average time to termination after at least one claim was considered on the merits was 2.7 years, compared to the average time to termination where no claims were considered on the merits. That average was about one and a half years.

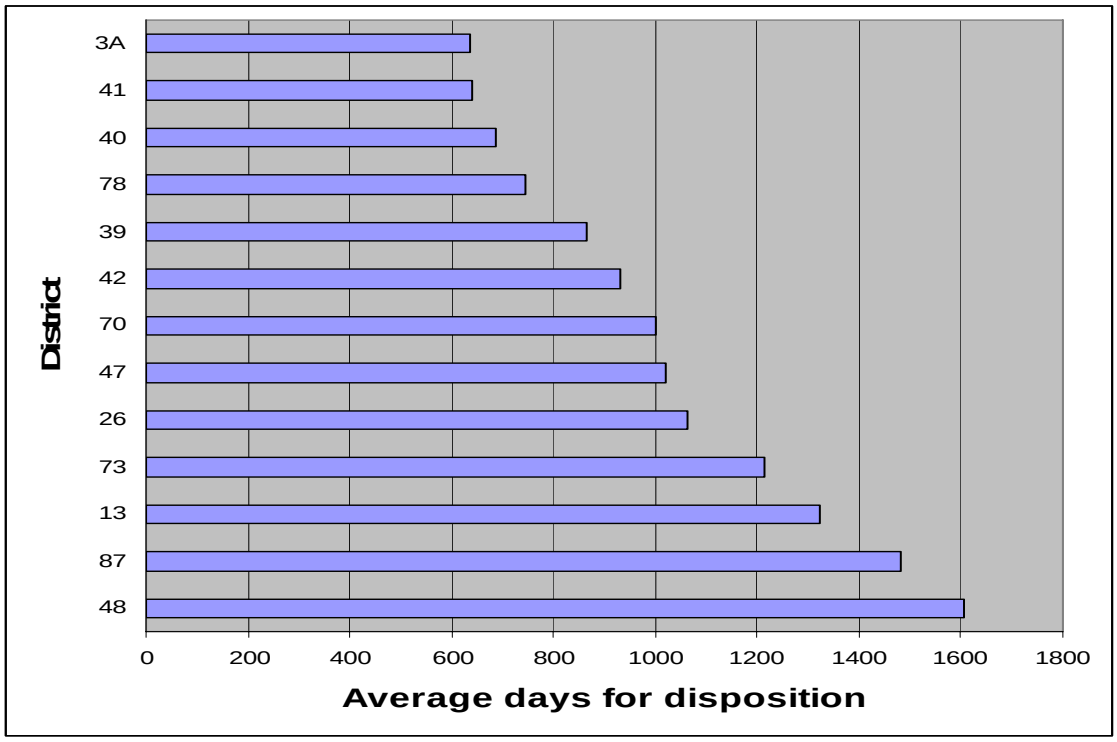
[72]The results for the Central District of California are probably understated. There were two separate death row inmates who began a case with one number, which was closed at some point during the time in which counsel was being appointed or discovery was underway. Then each petitioner started another case with another number after a short break. To be conservative, because of the short break between the two cases, rather than count these as one case, we counted the first segment as a separate case that closed, without a petition being filed. Had we coded these as continuous cases, instead of showing 13 cases with four of those terminating, the district would show instead 11 cases two of which had terminated, and the processing time for capital cases in this district would have been much longer. Also artificially shrinking the average time for disposition for this district is the fact that one of the terminated cases was a petition dismissed as incomprehensible within seven days of filing.

Figure 11. (C) Disposition time.[73]



- The average time to resolve terminated cases varied between districts, ranging from 1.8 years in FL-M to 4.4 years in OH-S. See Figure 12.

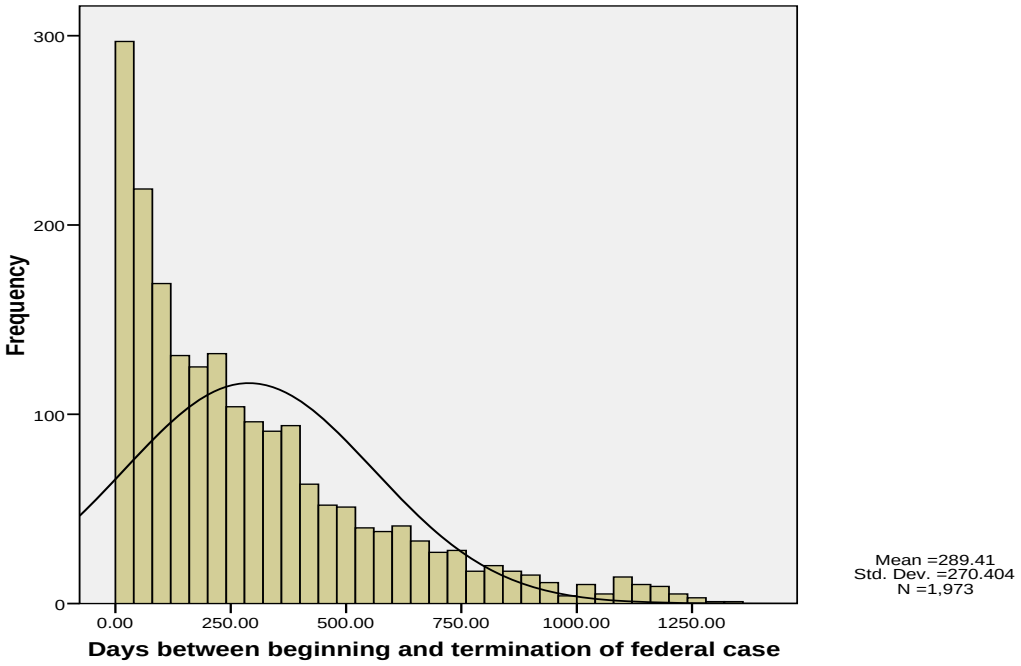
Figure 12. (C) Disposition time, by district.[74]



[73] Excluding cases dismissed as successive or transferred.
[74] Tranferred cases excluded.

- NON-CAPITAL CASES. The average overall processing time for all terminated, non-transferred cases in our sample was 9.5 months, with a median of 7.1 months. The longest terminated case lasted 3.7 years (1337 days), the 32 shortest cases were resolved on the same day they began. 90% of all cases (transferred cases included) were resolved within 22 months. Figure 13 shows that unlike the capital cases, most non-capital cases were ended early.

Figure 13. (NC) Disposition time.[75]



DAYS TO TERMINATION FROM THE FILING OF THE PETITION

- CAPITAL CASES. Subtracting from disposition time the period before any petition was filed reduced the average time until termination from 2.4 years to 2 years (740 days). Of terminated cases, the longest was 6.5 years, the shortest 255 days.

- NON-CAPITAL CASES. Measuring disposition time from the petition forward reduced the average processing time to 9.4 months from 9.5, and the median time to 7.0 from 7.1 months.

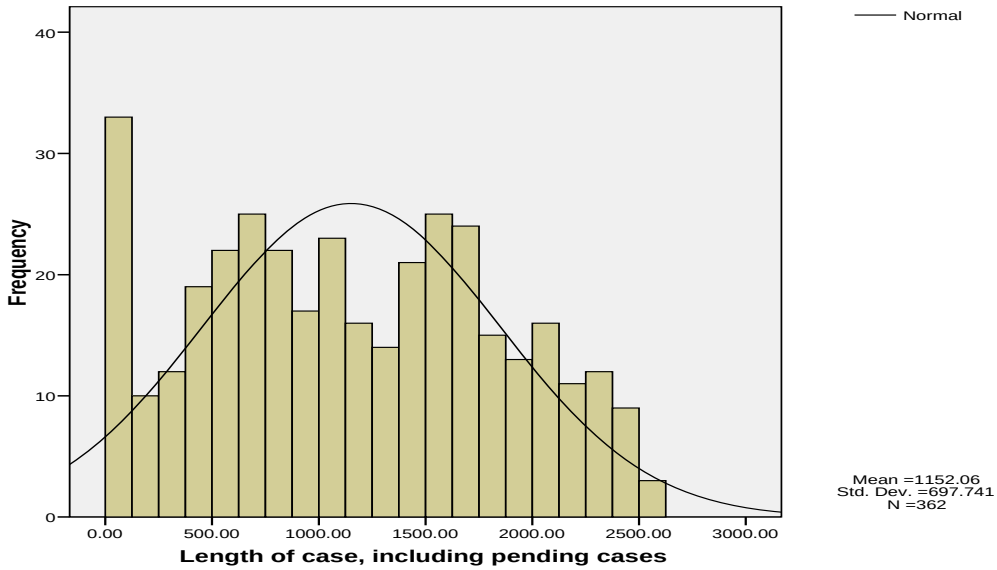
LENGTH OF CASE IN DAYS, INCLUDING PENDING CASES

Length of case is the time in days between the date of the first docket entry and either 1) the date the docket sheet was last coded in late 2006 (if the case was pending), or 2) the date the case was terminated in district court (if it was terminated). This is a better measure of how long these cases are taking because so many of them remain pending.

- CAPITAL CASES. Including pending cases raised the average time from 2.4 years to 3.1 years or 37.9 months. Median time was about 3 years or 36.5 months. Figure 14.

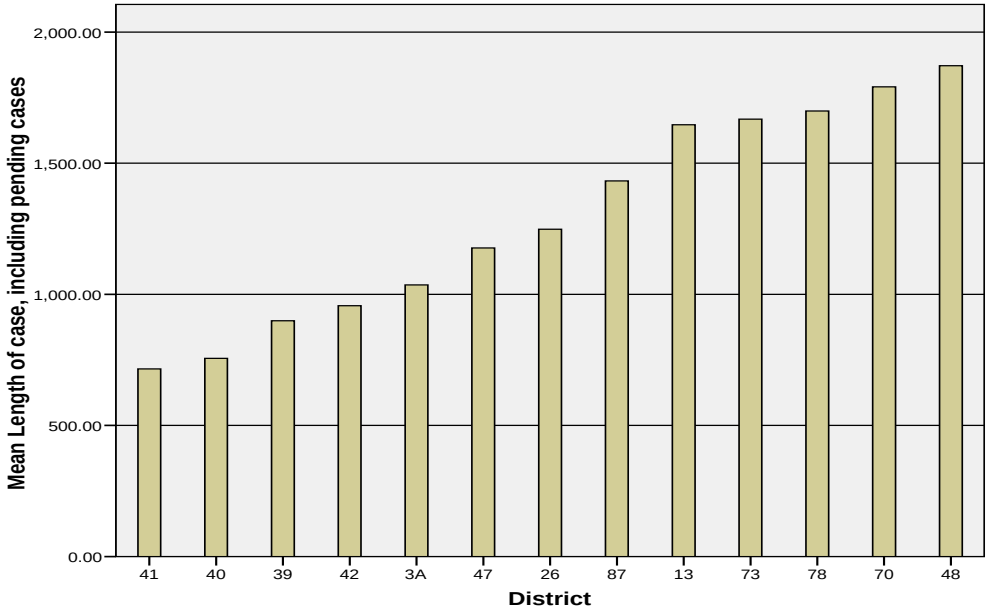
[75] Transferred cases excluded.

Figure 14. (C) Length of case in days, pending cases included.[76]



- Pending cases averaged 5.3 years (1935 days), the longest was 6.9 years and the shortest 3.9 years.
- Using this measure of processing time, the three districts in the Ninth Circuit along with the OH-S showed the highest averages among the 13 districts in the sample, and the four Texas districts showed the shortest average processing times. See Figure 15.

Figure 15. (C) Length of case in days, pending cases included, by district.[77]

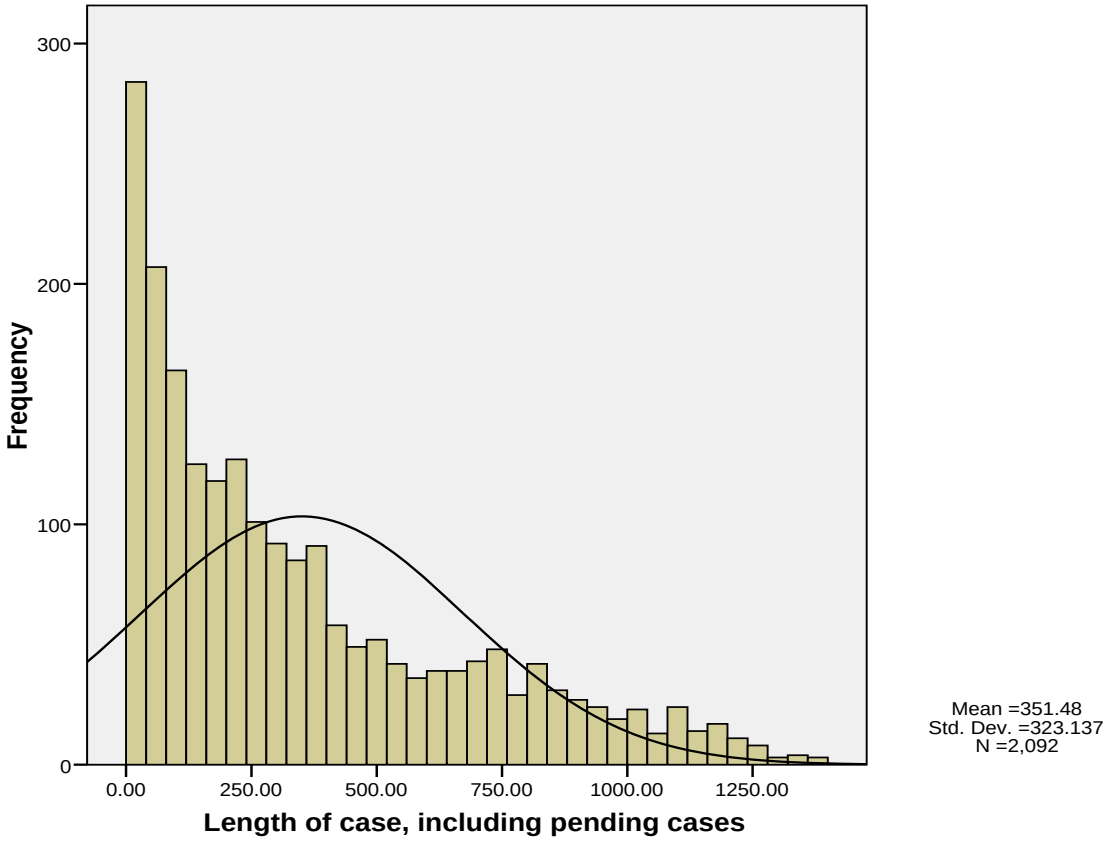


See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

[76] Transferred cases excluded.
[77] Transferred cases excluded.

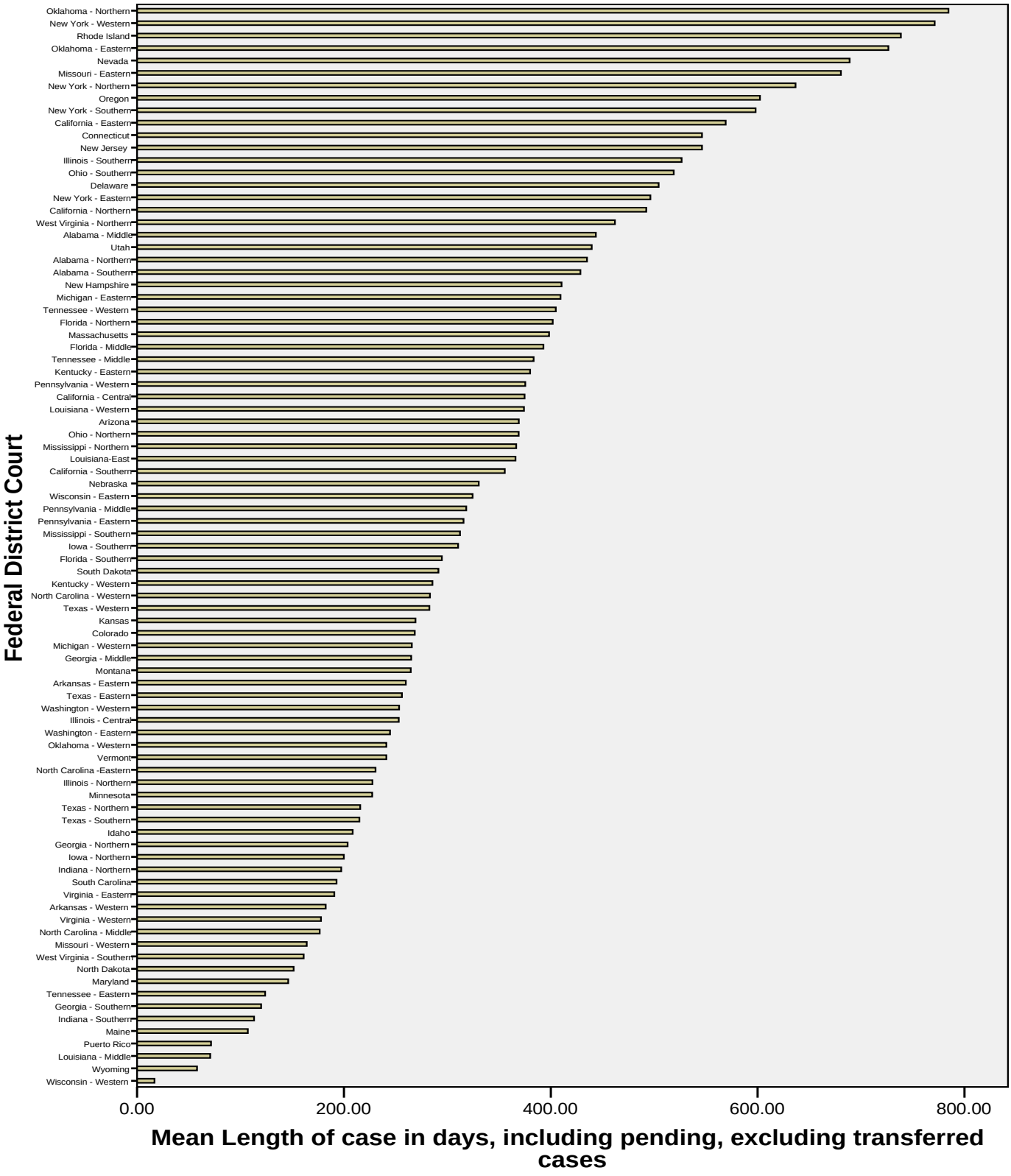
- NON-CAPITAL CASES. With the pending cases included, the average and median times for processing non-transferred cases jumped to 11.5 and 8.1 months, respectively. The longest non-capital case had been in district court for 3.8 years. See Figure 16. Generally, California and New York districts took longer to complete these cases than many other districts. See Figure17.

Figure 16. (NC) Length of case in days, pending cases included.[78]



[78] Transferred cases excluded.

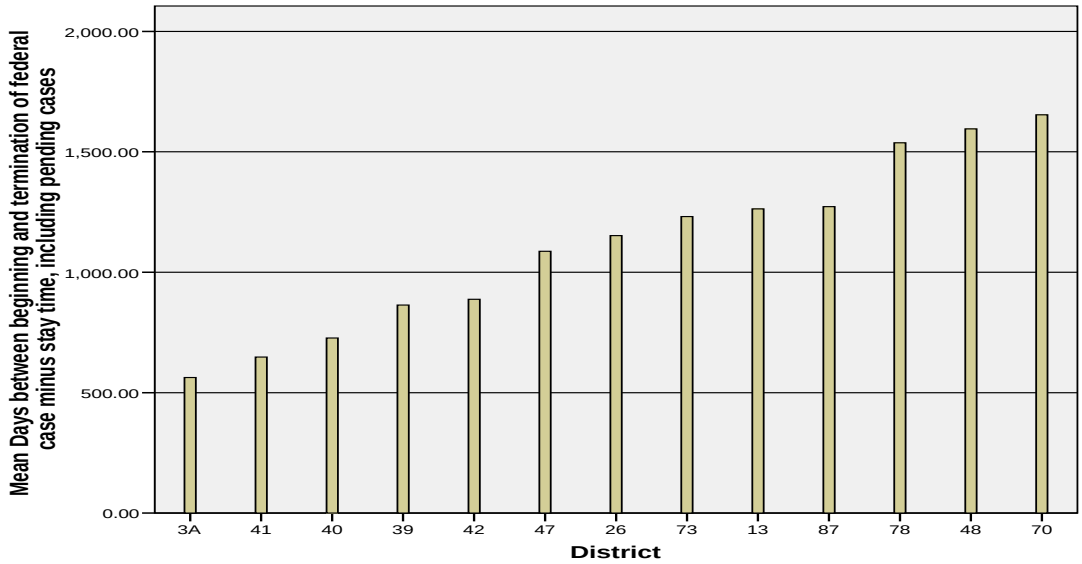
Figure 17. (NC) Length of case in days, including pending cases included , by district.



LENGTH OF CASE EXCLUDING STAYED TIME

- CAPITAL CASES. On average, after subtracting stayed periods the average time for processing all cases dropped from 3.1 years to 2.7 years (999 days). Subtracting stayed time, the average time that pending cases had been pending was reduced from 5.3 years to 4.2 years (1516 days). Excluding stayed time did not change the relative average speed among the districts. The same five districts (Texas plus FL-M) remained on the low end, and the same six districts (Ninth Circuit, OH-S, PA-E, and OK-W) remained on the high end. AL-N and OH-N remained in the middle of the pack. See Figure 18.

Figure 18. (C) Length of case in days, less stayed time, by district.



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

- NON-CAPITAL CASES. Subtracting the stays for exhaustion made little difference in disposition time for non-capital cases, the median length remained the same at 8.1 months, the average dropped from 11.5 to 11.2.

J. Non-merits dispositions

ALL CLAIMS DISMISSED WITHOUT REACHING MERITS

- CAPITAL CASES. Of the 234 cases terminated without relief or transfer (170), 72.6% included at least one claim considered on the merits. Non-merits dispositions included voluntary dismissal, dismissal as moot, time-barred, defaulted, or successive. Each of these are examined in more detail below. Fifteen cases were terminated before any petition was filed.

- NON-CAPITAL CASES. 631 of the 1311 cases terminated other than by transfer or grant with claims information (42%) had at least one claim denied on the merits.

STATUTE OF LIMITATIONS DISMISSALS

- CAPITAL CASES. The limitations defense was employed infrequently.
  - The limitations period for 32% of the petitioners began to run in 2000 or later.[79]
  - Only 11 cases included a ruling that a claim was time-barred (3.0% of all 368 and 4.1% of 267 terminated, non-transferred cases, and 4.7% of the 235 cases terminated without relief or transfer). See Table 9, showing time-barred cases by district. The procedural history of each of these cases is summarized in Appendix B.
  - Twelve of the capital cases included a ruling that one or more claims was *not* barred by that statute of limitations. Of these, 10 cases included a judicial finding of equitable tolling.[80] All but two were from Texas. Several of the equitable tolling decisions found fault with state habeas counsel. Of the cases in which the limitations period was equitable tolled, 10 were terminated and none of those received relief. Two remained pending. None included an evidentiary hearing.

Table 9. (C) Cases with at least one claim time-barred, by state.

State	*# cases time-barred*	*# cases terminated from state*	*Total # cases*
Texas	5	179	192
Alabama	3	16	20
Ohio	2	31	50
Florida	1	11	16
Pennsylvania	0	8	19
Arizona	0	4	20
California	0	4	13
Nevada	0	5	20
Oklahoma	0	15	18
Total	11	273	368

- NON-CAPITAL CASES. The one-year limitations period barred more than one in five non-capital cases terminated without transfer.
  - In 432 cases, 18.1% of all cases and 21.8% of 1986 non-transferred terminated cases, included a ruling that one or more claims was barred by the statute of limitations. Of the 1158 cases terminated other than by transfer that had claims information, the statute of limitations barred 261, or 22.5%.
  - Of the 432 time-barred habeas filers, 22 or 5.1% had counsel.
  - Only 8.4% of the cases raising challenges to an administrative decision were barred by the statute of limitations, a much smaller percentage than the portion of other cases held time-barred. This may illustrate the challenge of applying AEDPA's limitations provisions to cases that do not attack the underlying state conviction.
  - In at least 30 cases, the judge ruled that one or more claims was *not* barred by that statute of limitations. In 16 of these cases the judge concluded that the period was properly tolled for state proceedings. Twelve of these cases based the rejection of the state's defense on equitable tolling, one found that the state had waived the time bar. Of the 30 cases in which the judge rejected the time-bar, seven petitioners had attorneys, none were granted relief.

[79] The start date for the limitations periods was collected only in capital cases.

[80] Our coding would have missed cases with equitable tolling if 1) the district court had dismissed an earlier case by the same petitioner with the understanding that the statute would be equitably tolled until the petitioner returned to federal court, or that the post-exhaustion petition would "relate-back" to the original filing, and 2) this arrangement did *not* appear in the record of the post-exhaustion case coded. For cases using this process (decided prior to the Court's decision in Rhines v. Weber, 544 U.S. 269 (2005)), see RANDY HERTZ & JAMES LIEBMAN, 1 FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE § 5.2b n. 106 (5th ed. 2005).

SUCCESSIVE PETITION DISMISSALS[81]

- CAPITAL CASES. Only 14 of the 368 cases (3.8%) were found to be successive petitions by district courts, or 5.2% of 267 cases terminated without transfer, and 6.2% of the cases terminated without relief or transfer. Only one of the 14 cases included a claim of actual innocence. A finding of successiveness was rare or absent, except in TX-E where 21% of the cases there (six of 28) were found to be successive.

- NON-CAPITAL CASES. 138 cases (6.9% of the 1986 non-transferred terminated cases) were rejected as successive. These include 72 of the 1311 non-transferred terminated cases with claims information (5.5%) (8 of these cases included a claim of actual innocence), and 64 of 676 non-transferred terminated cases without claims information (9.5%).

WAIVER OF HABEAS REVIEW, SETTLEMENT

- We looked for evidence in the record that defendants were waiving habeas review by agreement. None of the 10 capital cases in which the petitioner had admitted guilt included a discussion of whether the petitioner had waived habeas review by agreement. Only one of the non-capital cases included a ruling on whether the petitioner had waived habeas review in his plea agreement. An unknown proportion of the voluntarily dismissed cases or cases dismissed as moot (see below) were ended by settlement. Evidence of settlement would not necessarily appear in the documents that were filed in the cases or available on PACER.

VOLUNTARY DISMISSALS

- CAPITAL CASES. In 31 cases (11.6% of 267 terminated, non-transferred cases) all claims were dismissed voluntarily. Nearly 39% (five of 13) cases in CA-C were voluntarily dismissed, while none of the 45 cases in TX-N were voluntarily dismissed. Only two of the 40 voluntarily dismissed cases involved a ruling that every claim was unexhausted.

- NON-CAPITAL CASES. All claims were voluntarily dismissed in 63 non-capital cases, or 3.2% of the 1986 cases terminated without transfer.

ALL CLAIMS DISMISSED AS UNEXHAUSTED

- CAPITAL CASES. In only nine cases (2.4% of 368, 3.4% of 267 terminated non-transferred cases) were all claims dismissed as unexhausted.[82]

- NON-CAPITAL CASES. In 216 cases (5.7% of all cases, 10.9% of terminated, non-transferred cases) all claims were dismissed as unexhausted. Among the 1311 non-transferred terminated cases with claims information, 9.8 (129) cases had all claims dismissed as unexhausted; 12.9 % (87 of 676) non-transferred terminated cases with no claims information were dismissed for this reason.

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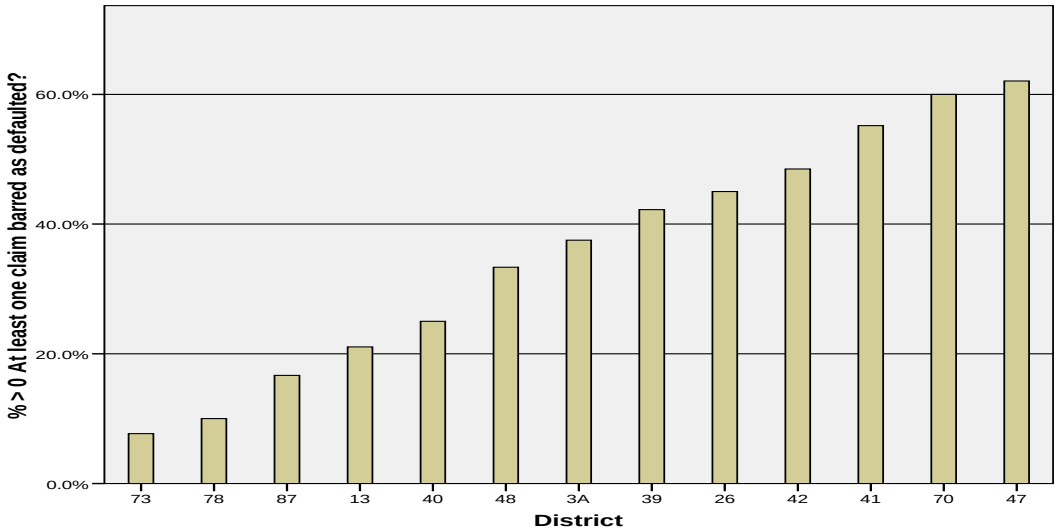
[81] This reports only district court determinations that a petition is successive and that it lacked authorization from the court of appeals. Tracking the number (or nature) of petitions turned away as successive in the courts of appeals was beyond the scope of this study.

[82] These figures include only cases in which the judge ruled each claim was not exhausted and do not include dismissals of mixed petitions, that is, petitions including exhausted and unexhausted claims. Nor does this figure include voluntary dismissals by the petitioner, some of which may be sought by the petitioner so that he can exhaust his claims in state court.

DISMISSALS FOR STATE PROCEDURAL DEFAULT

- CAPITAL CASES.
  - At least 156 cases (42.2% of 368 cases; 53.3% of terminated, non-transferred cases) included a ruling that at least one claim was barred by procedural default. These included cases with other claims still pending, and cases in which the judge reached the merits of the claim despite finding it defaulted.[83] In 11 (11.6%) of pending cases, at least one claim was dismissed as defaulted. The Ninth Circuit protocol for district courts includes a separate phase for consideration of procedural default[84] and it appeared that many of the cases in CA-C and NV had not reached that phase. See Figure 19.
  - The procedural default defense was rejected for at least one claim in 58 cases (16% of 368). In only one case was the reason for rejection stated as "miscarriage of justice," reflecting a concern about actual innocence. Several cases included a finding that the state procedural rule was not "adequate and independent," or a statement that the judge had found it more efficient to skip default analysis and reach the merits.

Figure 19. (C) Percentage of cases with a defaulted claim, by district.



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

- NON-CAPITAL CASES. 265 (13.3% of 1986 non-transferred terminated cases, and 19.4% of non-transferred terminated cases with claims information) included a ruling that a claim was defaulted. This includes cases with other claims pending and cases in which the defaulted claim was also addressed on the merits. 37 cases (1.7% of non-transferred cases) included a ruling rejecting the defense of procedural default. In many of these, the reason stated for reaching the merits was

[83] This number is underinclusive of the total number of cases involving at least one ruling of default, since in some cases if the judge noted as alternative reasons for dismissing a given claim that the claim failed on its merits and was either time-barred or unexhausted; the third reason for dismissal – default – would not be included in the analysis. A merits denial – even as an alternative ground - was always coded as the first reason for disposition, and statute of limitations as the second reason. Additional reasons for dismissal of a given claim were recorded in text fields so that they could be added later as a new variable if necessary.

[84] *See* Capital Habeas Case Management and Budgeting Plan for the Ninth Circuit, *supra* note 65. For a collection of various approaches adopted by district courts in handling motions and answers and records in these cases and a disucssion of the relative merits of requiring all issues and merits to be briefed at once or seriatim, see Ebert v. Clarke, 320 F. Supp. 2d 903 (D. Neb. 2004).

judicial economy. In no case was a defaulted claim addressed because that the court found that the failure to review the claim would result in a miscarriage of justice.

DISMISSED AS MOOT OR LACKING CUSTODY

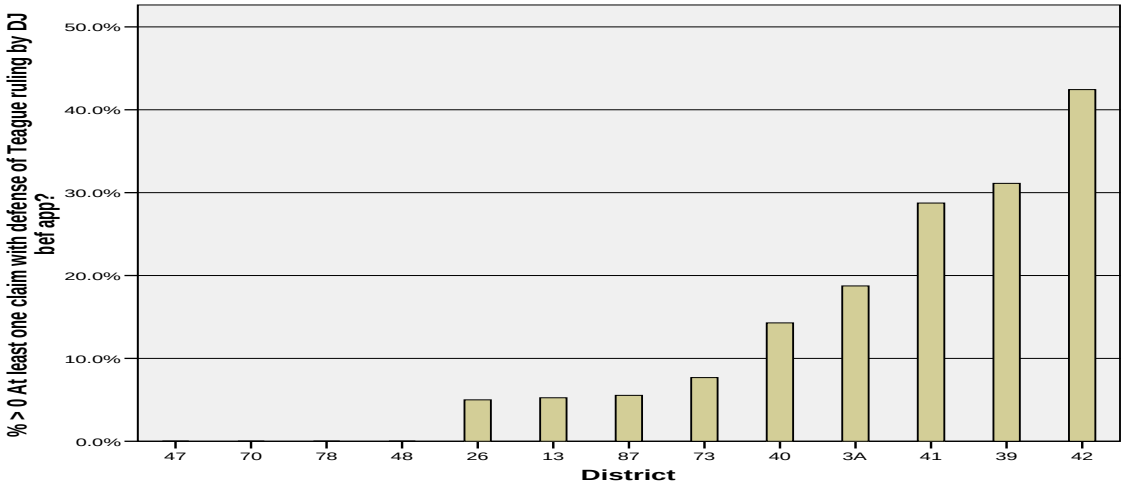
- CAPITAL CASES. At least eight cases involved a ruling that a claim was moot, including three cases in which the petitioner had died in prison. Several of the other cases with claims dismissed as moot involved a grant on another claim.

- NON-CAPITAL CASES. At least 23 cases[85] were dismissed as moot because the petitioner had died, had been released, or had received relief in state court. Seven of these cases were from Texas. Another 30 cases were dismissed because the person was not in custody as a result of the challenged state action. (35% of these cases were from California.) None of these moot or no custody cases involved a claim of innocence.

DISMISSED AS BARRED BY *TEAGUE*

- CAPITAL CASES. 64 (23.9% of 267 terminated, non-transferred cases) involved a ruling that one or more claims was barred by *Teague v. Lane*.[86] Almost all (89%) of these rulings were in Texas. See Figure 20.

Figure 20. (C) Percentage of cases with a *Teague*-barred claim, by district.



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

- NON-CAPITAL CASES. Only eight non-capital cases included a ruling that any claim was *Teague*-barred. In practice, it is possible that *Teague* may be raised by states' attorneys in connection with claims related to only capital sentencing proceedings, or that it may be subsumed under the new standard of review in § 2254(d).

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[85] This is the number of cases in which the reason for disposition of the *first* claim was coded as moot. Another three cases included moot as an alternative reason for dismissing the first claim. It is possible that even when a first claim was not moot, additional claims were moot. For example, if the state had granted relief from sentence this would render sentencing claims moot but may leave conviction claims as live controversies.

[86] *See supra* notes 4 & 30.

K. Merits dispositions

STANDARD OF REVIEW APPLIED

- CAPITAL CASES.
  - Of the cases including merits review of at least one claim, 27% applied to at least one claim a standard other than the § 2254(d) "unreasonable application of" or "contrary to" Supreme Court precedent.
  - Cases from Ohio and Oklahoma were more likely than cases from Texas to include the application of a standard other than that specified in Section 2254(d). See Table 10.

Table 10. (C) Standard of review applied, by district.

District	*total cases from district*	*cases terminated without transfer*	*# cases with merits review*	*# cases applying non-§ 2254 std*	*% of cases applying non-§ 2254 std*
OH-S	21	7	4	4	100%
OK-W	18	14	11	8	73%
OH-N	29	23	20	14	70%
AL-N	20	16	10	5	50%
PA-E	19	8	7	3	43%
AZ	20	4	3	1	33%
FL-M	16	10	7	2	29%
TX-E	27	25	18	5	28%
TX-S	87	82	60	10	17%
TX-W	33	29	25	3	12%
TX-N	45	40	37	0	0%
CA-C	13	4	1	0	0%
NV	20	5	3	0	0%
Total	368	267	206	55	27%

- NON-CAPITAL CASES. In 105 cases, judges applied a standard for reviewing the state decision other than the deferential standard set out in § 2254(d). About 16.6% of the 631 cases with at least one claim were denied on the merits. Alternative standards were used more frequently among cases attacking administrative decisions and not the underlying state judgment. This may reflect the challenges of applying AEDPA's provisions to this kind of claim.

HARMLESS ERROR

- CAPITAL CASES. Only four of the 267 cases terminated without transfer involved a finding that an error was not harmless. Each of these ended in a grant of relief. Three of these cases were from Texas, one from Ohio.

- NON-CAPITAL CASES. In only four cases, all of them granting the writ, did the judge find an error was not harmless. Most of the grants, see below and Appendix C, were based on grounds that were not subject to harmless error analysis.

GRANTS OF RELIEF

- CAPITAL CASES. All capital cases that received relief are described in Appendix C. Of all 368 cases, 33 received relief (this is 12.4% of 267 terminated non-transferred cases).[87]
  - Judges in PA-E granted relief in six of eight terminated non-transferred cases, while judges in TX-S granted relief in six of 80 terminated non-transferred cases. See Table 11. Outside of Texas, the grant rate was 17.9%.
  - 23 of the 33 cases receiving relief involved relief from sentence alone, not from conviction.
  - Relief was granted in 17% of the cases that involved an application of a standard other than that specified in § 2254(d) to one or more claims, compared to 11% of the cases in which all claims were reviewed using the deferential standard of § 2254(d).

Table 11. (C) Cases granted relief, by district.

District	*Number of cases granted*	*Percentage of terminated, non-transferred cases receiving a grant*	*Number of cases terminated w/o transfer*
PA-E	6	75%	8
AZ	2	50%	4
OH-S	2	29%	7
OH-N	4	17%	23
TX-W	4	14%	29
AL-N	2	13%	16
TX-N	4	10%	40
TX-E	2	8%	25
TX-S	6	7%	82
OK-W	1	7%	14
FL-M	0	0%	10
CA-C	0	0%	4
NV	0	0%	5
Total	33	12%	267

Table 12. (C) Percentage cases granted, by whether case includes claim type.

Type of Claim	*Percentage of cases raising claim that were granted relief*	*Percentage of cases not raising claim granted relief*
Roper/Adkins/Ring	24.1	21.4
judicial bias	23.1	10.9
IAC on appeal	20.3	9.0
claim of innocence	20.0	11.2
jury selection	18.1	8.3
improper argument	18.0	8.0
search and seizure	16.7	11.5
insufficient ev. guilt	16.1	10.8
ev. error guilt phase	15.9	9.6
Brady-related	15.3	9.8
sentence claim only	15.0	21.0
any IAC claim	14.4	3.6
IAC for sentencing	11.6	3.9

[87] Rechecking in May 2007 the docket sheets of capital cases pending in November 2006 revealed that only three additional cases had ended, two of them in grants. Recalculated, the grant rate would be 13.0% (35 of 270).

- Table 12 shows differences in grant rate by claim type. For example, less than 4% of the cases that did not raise any claim of ineffective assistance of counsel received relief compared to 14% of those that did raise such a claim.

- NON-CAPITAL CASES. Of the 2,384 cases in our random sample, only seven ended in a grant of relief for the petitioner. See Appendix C. This is a overall grant rate of 0.29%, or one out of every 341 cases filed.[88] As a percentage of the 1986 non-transferred, terminated cases, the grant rate is 0.35%, or only one in every 284 cases terminated without transfer.[89]
  - The average disposition time for the grant cases was 14.5 months compared to 9.5 months for other non-transferred terminated cases
  - The average time between state judgment and the beginning of federal habeas for the seven grant cases was *shorter*. It was 2.8 years compared to a 6.3 year-average for other cases.
  - All granted cases included orders that the prisoner be released or retried. Five of the granted cases involved challenges to a conviction, four were challenges to judgments after jury trials, one was a challenge to a guilty-plea conviction. One grant case was a pretrial challenge to the state's effort to retry the petitioner after a successful appeal; the federal court barred the state from proceeding. The final grant case was a challenge to a post-trial hearing; the federal court ordered a new hearing be conducted.
  - Two cases involved conviction for murder, one case each involved attempted murder, assault, robbery, or drugs. Two of the petitioners receiving relief were sentenced to life, the others to terms of imprisonment ranging from six to 40 years.
  - None of the cases ending in a grant raised a claim of innocence, only one grant was based on ineffective assistance.
  - None of the cases ending in a grant included an order of discovery, an order granting an evidentiary hearing, or a stay for exhaustion.
  - Three of the seven prisoners receiving relief had retained attorneys.

[88] Given the size of the sample, this suggests that the grant rate nationwide for all non-capital cases filed is no higher than 0.51% (one in every 196 cases) and no lower than 0.07% (one in every 1429 cases). Std. dev. For GRANT = .05412; Std. Error of the Mean for GRANT = (STD. Dev.) / (Sq. Rt. (N)) = .05412/ (SQ. RT (2,384)) = .0011084; t (.025, 2280) = 1.96. Confidence Interval = t (.025, 2280)* (Std. Error of the Mean for GRANT) = (1.96) * (.0011084) = .0021725. Upper limit on GRANT Rate = Mean value for GRANT+ Confidence Interval = .0029 + .0021725 = .0050725. Lower limit on GRANT Rate = Mean value for GRANT+ Confidence Interval = .0029 - .0021725 = .0007274.

[89] Rechecking in June 2007 the docket sheets for non-capital cases that were pending in October 2006 revealed that 69 additional cases had been terminated, only one of them (a jury bias claim) ending in a grant. This moved the grant rate up marginally to 0.34% instead of 0.29%.

L. Appeals

NOTICES OF APPEAL

- CAPITAL CASES. Of the 274 terminated capital cases, 70.8% included a notice of appeal filed by either party. A notice of appeal was more common in cases with at least one claim denied on the merits (91.4%) than in cases dismissed without reaching the merits. Of the 25 terminated cases raising a claim of innocence, 21 (84%) had a notice of appeal. A notice of appeal had been filed in 24 of the 33 grant cases (73%). (An unknown number of cases were coded immediately after termination, prior to the expiration of the period allowed for filing a notice of appeal; a notice of appeal may have been subsequently entered in these cases.)

- NON-CAPITAL CASES. Of terminations other than transfer, 693 (34.8%) had a notice of appeal. (An unknown number of cases were coded immediately after termination, prior to the expiration of the period allowed for filing a notice of appeal; a notice of appeal may have been subsequently entered in these cases.)

RULINGS ON CERTIFICATE OF APPEALABILITY ("CoA")

- CAPITAL CASES.
  - District courts reached a decision on a CoA in 193 cases, 133 of them from Texas. Of the 60 cases filed outside of Texas, judges granted a CoA in 70%. Texas district courts granted a CoA on any claim in 21% of the capital cases concluded.
  - The median time between termination and a CoA ruling by the district judge in these 193 cases was 32 days. There was great variation among the districts, ranging from a few days to several months. Texas cases averaged 27 days from judgment to a CoA ruling; cases in other states averaged 42 days.

- NON-CAPITAL CASES.
  - Of the terminated non-capital cases, 737 included a CoA ruling. In 711 (96%) of these, a CoA was denied on all claims; in only 26 (3.5%) did the judge grant a CoA on at least one claim.
  - The median interval from final order to a ruling on a CoA was just under one month (26 days), the average was more than five weeks (38 days). In 90% of the cases with a CoA ruling, that ruling was entered 84 days or less after the judgment. The longest period extended over two years (792 days). In nearly 37% of these cases the CoA ruling and case termination were simultaneous.[90]

[90] In an unknown proportion of these cases with simultaneous rulings, the judge had entered the initial final order disposing of claims prior to ruling on a certificate of appealability, and then later denied a motion for reconsideration. In these cases, the date on which the reconsideration was denied was entered as both the termination date and the date of the CoA ruling.

PART III. COMPARATIVE FINDINGS

A. Comparison with pre-AEDPA studies, non-capital cases

Comparing the findings of this study with the findings of earlier research about non-capital habeas cases reveals that AEDPA may have changed some important aspects of habeas processing, but that other aspects remain the same. The comparisons appear in table form in Table 13 and are highlighted below.

More serious offenders. Compared to before AEDPA, the information available suggested that a greater proportion of habeas cases were filed by petitioners convicted of homicide or sentenced to life imprisonment. Non-capital habeas filers continue to be predominantly those inmates serving lengthy sentences, sentences long enough for them to still be "in custody" by the time they have been through direct appeal and post-conviction proceedings in state court. The state exhaustion process can take several years. Most prisoners who are convicted of felonies have served their sentences by the time their state appeals have been completed.[91] Only 1.1% of those sentenced to prison in 1998 were sentenced to life,[92] yet cases filed by those serving life sentences made up 28% of all habeas cases that were filed in 2003 and 2004, up from 21% of habeas filings before AEDPA.[93] About 12.1% of state prisoners in 2005 were serving sentences for homicide,[94] yet more than 28% of cases with conviction information in our non-capital study were filed by prisoners convicted of homicide, up from 23% before AEDPA.

There could be several explanations for the increased proportion of filers who are serving life sentences or who have been sentenced for homicide. First, the proportion of prisoners serving life sentences or sentences for homicide in state prisons has increased somewhat post-AEDPA. Life sentences increased from 0.7% of all felony sentences of incarceration in 1992 to 1.1% in 1998.[95] In 1996 10% of inmates in state prisons were serving sentences for homicide, compared to more than 12% ten years later.[96]

Second, state appeal and post-conviction procedures could be taking longer to complete after AEDPA, so that fewer prisoners with shorter sentences remain in custody (and thus be eligible to challenge their state judgment in federal court) by the time state review processes are completed.[97] Additional research would be

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[91] According to an annual report based on large urban counties, only 32% of convicted felons were sentenced to prison. Of those sentenced to prison, the median sentence was less than three years, the average sentence was *less* than five years, and only 1% received life sentences. Thomas H. Cohen & Brian A. Reaves, Felony Defendants in Large Urban Counties, 2002 (Feb. 2006 NCJ 210818), http://www.ojp.usdoj.gov/bjs/abstract/fdluc02.htm.

[92] *See* Matthew R. Durose, David J. Levin & Patrick A. Langan, BJS Bulletin, Felony Sentences in State Courts, 1998, at 4 (Oct. 2001 NCJ 190103), http://www.ojp.usdoj.gov/bjs/pub/pdf/fssc98.pdf .

[93] We used the same measure for "life sentence" as Hanson & Daley, *supra* note 26, that is, any sentence including life with or without parole, as well as life with any term of years. Statistics about conviction types and sentences imposed are based on just over half of our cases where this information was available. *See* pages 19-21 *supra*. It is possible that the addition of the missing information would produce a different finding, including the finding that the proportion of habeas filers who are serving life sentences is the same or even lower than it was before the passage of AEDPA.

[94] *See* Harrison & Beck, *supra* note 53.

[95] *See* Patrick A. Langan & Helen A. Graziadei, BJS Bulletin, Felony Sentences in State Courts, 1992 (Jan. 1995 NCJ 151167), http://www.ojp.usdoj.gov/bjs/abstract/felsent.htm; Durose et al., *supra* note 92.

[96] *See* Christopher J. Mumola & Allen J. Beck, BJS Bulletin, Prisoners in 1996 (June 1997 NCJ 164619), http://www.ojp.gov/bjs/abstract/p96.htm, at Table 13; Harrison & Beck, *supra* note 53.

[97] This would be expected if between the mid-1980s and the mid-1990s there had been an increase in either the claims raised per state criminal appeal, or in the criminal caseload of state courts generally. It is also possible that the parole release rate for life prisoners has also declined. *See* Woods v. Marshall, 183 Fed. Appx. 620 (9th Cir. 2006)

required to examine these hypotheses. If further research confirms that this increase is an ongoing trend, prisoners serving life sentences could soon account for a third of all filings in non-capital cases.

Over 92% of non-capital petitioners filed and litigated their habeas cases without counsel, basically the same proportion that did so prior to AEDPA. This was expected. The law regarding the provision of counsel in federal post-conviction proceedings has remained unchanged.

No reduction in filing time. AEDPA's statute of limitations for filings was designed to reduce the delay between the imposition of judgment in state court and the review of that judgment in federal habeas corpus proceedings. Instead, the average period has increased from about five years before AEDPA[98] to over six years for the cases in this study filed in 2003 and 2004.[99] Even considering only the cases that were *not* time-barred by the new statute of limitations, the average filing period is 5.6 years, an increase of half a year from the average filing period before AEDPA. Cases that challenge post-conviction administrative decisions that revoked or denied good time or parole also tend, on average, to reach federal court later than cases that challenge the underlying state criminal judgment. Setting these administrative challenges aside and looking only at cases challenging state judgments that were *not* deemed to be barred by the statute of limitations, the average filing period is 5.1 years, still slightly longer than the pre-AEDPA average for all cases.

Two developments could explain this expansion of the filing period, despite AEDPA's one-year filing deadline. First, the one-year limitations period is tolled for "properly filed" direct and collateral state review proceedings. The increase in the pre-filing interval could be the result of an increase in the average time for direct and collateral review of state criminal judgments in state court over the period between the pre-AEDPA study and this study. Empirical information about the time for state post-conviction review is not yet available to test this hypothesis. A second explanation for an increase in the average time that elapses between state judgment and federal filing could be an increase in the proportion of non-capital habeas cases that challenge not the underlying state judgment but a later, post-conviction administrative decision. Unfortunately, there is no information on the proportion of habeas filings prior to AEDPA that challenged a good time or parole revocation or denial, so testing this hypothesis would also require additional research.

(noting "the statistics Woods adduces evidence a sharp decline in the number of life prisoners granted parole"). We also considered whether the rise in the proportion of all non-capital cases filed by lifers might be related to an increase in the proportion of cases challenging the administration of sentence (disciplinary hearings, parole release) rather than the underlying conviction, if those who are sentenced to life with the possibility of release have more opportunities to file these types of challenges than do prisoners serving shorter sentences. But we found that of the cases filed by prisoners serving a term of years *other* than life, 13% challenged the administration of sentence compared to only 6% of prisoners revealed to be serving life sentences. The data does not distinguish between life with and without possibility of parole.

[98] A study of cases filed in six districts in the mid-1970s found that "most petitioners filed [their federal habeas cases] within a few years of conviction."Allen et al., *Federal Habeas Corpus and Its Reform: An Empirical Analysis*, 13 RUTGERS L. J. 675, 704 (1982). A later study of cases that were terminated in 1992 from 18 districts found that the time period had stretched to five years. Hanson & Daley, *supra* note 26.

[99] This is based on the 57% of non-transferred cases in our non-capital cases that included information on state conviction, sentence, or judgment date. *See* page 21 *supra*. It is possible that, excluding the cases that are missing, this information inflates the average filing period nationwide, but we believe any bias would cut the other way. Two of the states with the longest periods for stays for exhaustion (an indication of lengthy state post-conviction processing) are California and New York. Over 55% of California cases lack state conviction, sentence, or judgment date information, 53% of cases from New York lack this information. Together these two states account for more than 29% of all cases that are missing this information. California also has a relatively high percentage of administrative challenges. These tend to be filed later than challenges to the state criminal judgment.

Table 13. (NC) Comparison of findings with findings of pre-AEDPA studies.

Feature		H&D	F&M	This study
Sample	Sample from how many districts	18	8	All districts
	Sample size – number of cases	1976 cases	3346 cases	2384 cases
	Sample strategy – how cases identified	1992 terminations	filings 1990-2	filings 2003-4
Conviction	% cases w/ homicide as most serious conviction	23	22	28[100]
	% tried by jury	n/a	66%petitioners	65% cases[101]
Sentence	% *cases* with life sentences imposed in state cour	21		28[102]
	Median sentence for petitioners with term of year	n/a	16-24 years	20 years
Filing time	Average time from judgment to federal filing	4.9 years		6.3 years [103]
Counsel	% *cases* with pro se petitioners	93	91	92
	% *cases* in which court appointed counsel	4	n/a	3
Claim type	% raising ineffective assistance of counsel	25% claims	45%petitioners	50% cases*
	% raising prosecutorial misconduct	6 (claims)	16 (petitioners)	23 (cases)*
	% raising jury instruction error	n/a	10 (petitioners)	15 (cases)*
	% raising Fourth Amendment violation	5 (claims)	14 (petitioners)	9 (cases)*
	% raising double jeopardy violation	n/a	4 (petitioners)	6 (cases)*
	% claim of invalid plea	n/a	8 (petitioners)	15 (cases)*
	% raising insufficient evidence	n/a	14 (petitioners)	19 (cases)*
Claim No.	% *cases* with one claim	31	27	29*
	% *cases* with 2 claims	26	27	16*
	% *cases* with 3 claims	30	21	14*
	% *cases* with 4 or more claims	11	25	41*
Disposition Type and Reason	% dismissed w/o reaching the merits	65 % claims		42 *
	% granted relief	1 (claims)	1.04(petitioners	0.35 (cases)
	% all claims dismissed for failure to exhaust	57 (claims)	32	11
	% dismissed because successive (same claim)	3 (claims)	2.0	6.8* combined
	% dismissed as abuse of the writ (new claim)	5 (claims)	2.6	
	% dismissed as time-barred	n/a	n/a	22
	% defaulted	12 (claims)	6.2 (cases)	13* (cases)
Disposition Timing (omitting transfer cases)	Median time beginning to termination	6 months	n/a	7.1 months
	10% quickest lasted	29 days or less	n/a	25 days or less
	10% slowest lasted	> 761 days	n/a	> 679 days
	25% quickest lasted	83 days or less	n/a	76 days or less
	25% slowest lasted	> 379 days	n/a	>412 days
	Average time to resolve on the merits	477 days	n/a	398
	Average time to resolve without reaching merits	268 days	n/a	204
	Average time to resolve case with single claim	211	n/a	203
	Average time to resolve case with two claims	270	n/a	323
	Average time to resolve any case with a grant	n/a	n/a	440 (14 mos)
	Average time to resolve any case with no grant	n/a	n/a	289 (9.5 mos)
	Average time in federal court (pending cases included, measured through October 2006)	n/a	n/a	11.5 mos

* Of the 64% non-transferred cases with claims information available

[100] Of the 66% of non-transferred cases with this information.
[101] Of the 57% of non-transferred cases with this information.
[102] Of the 60% of the non-transferred cases with this information.
[103] Of the 57% of the non-transferred cases with this information.

More claims raised per case. The proportion of non-capital cases with four or more claims has greatly increased. Prior to AEDPA, between 11% and 25% of cases included four or more claims. Over 41% now include four or more claims. There are at least two possible explanations for this jump in the number of petitions with four or more claims. The first is that AEDPA's limits on successive petitions may be prompting more petitioners to bring all of their allegations of error at once in a single petition. Second, it seems that many prisoners simply list all the claims raised earlier in state post-conviction proceedings. If the number of claims that are raised in state court is increasing, this may result in an increase in the number of federal claims as well.

The types of challenges that prisoners raise to their underlying convictions and sentences did not change much after AEDPA. About half of all petitioners raise an ineffective assistance claim, a proportion up only slightly from before AEDPA, and there is a slight increase in the proportion of cases raising prosecutorial misconduct, instructional error, invalid plea, double jeopardy, and insufficient evidence of guilt.

Many assume that habeas corpus as applied to state prisoners is only a remedy for addressing constitutional flaws in a state defendant's conviction or sentence. However, a sizeable portion of the habeas corpus cases filed in federal court challenged something else entirely: prison administrative decisions, parole and probation revocation proceedings, or pretrial detention.[104] Without better comparative information, we cannot know whether the frequency of these administrative challenges changed after AEDPA. The study suggests that administrative challenges make up a majority of habeas filings in at least one district, the Southern District of Indiana, and a large portion of the filings in several other districts.[105]

One in five cases dismissed as time-barred. Of the cases terminated in our study (excluding those ended by transfer), more than one of every five filings (22%) was dismissed as time-barred under AEDPA's new statute of limitations. It is not known how many cases prior to AEDPA were dismissed under Rule 9(a) for delay in filing. That information was not collected by the pre-AEDPA studies available to us as comparisons. Because the rule was much less stringent than the new limitations period, it was probably a much lower percentage.

Fewer cases dismissed for exhaustion. A smaller proportion of dismissals after the enactment of AEDPA were for failure to exhaust (11% of cases compared to between 32% and 57% before AEDPA). But one should not conclude from this that a greater proportion of petitioners under AEDPA are exhausting their claims before filing in federal court. Unexhausted claims may be dismissed after AEDPA for other reasons, including 1) return to state court would be barred by state law, so the claim is dismissed as procedurally defaulted; 2) the claim lacked merit and so is denied under AEDPA's provision that allows denial on the merits of unexhausted claims; or 3) the unexhausted claim was filed late, and is dismissed as time-barred.

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[104] Two studies evaluating habeas cases filed in the 1970s found that a large portion of these cases involved challenges to civil commitment, parole revocations, and pretrial restraint. *See* Shapiro, *supra* note 2, at 329-30 (noting that as many as 40% of the cases challenged something other than the validity of the petitioner's conviction), *id.* at 321 ("It is not correct to assume that the problem of federal habeas corpus for state prisoners is exclusively a problem involving attacks on state court convictions in criminal cases. A substantial number of other challenges to allegedly illegal detention must also be considered in appraising the merits of the federal habeas corpus jurisdiction."); Karen M. Allen, Nathan A. Schactman & David R. Wilson, *Federal Habeas Corpus and its Reform: An Empirical Analysis*, 13 RUTGERS L. J. 675, 675 (1981-1982). One of the two studies conducted immediately prior to AEDPA noted that only 3% of the cases raised challenges to prison decisions impacting good time credit, Flango & McKenna, *supra* note 40, and did not discuss parole-related challenges. Hanson & Daley, *supra* note 26, did not mention challenges to administrative decisions.

[105] Unlike many district forms and the AO's model petition form that ask only about the criminal judgment, the forms used in two districts with a high proportion of cases challenging something other than the state criminal judgment (IN-S and TX-S) specified which proceeding was challenged: the criminal judgment, a disciplinary hearing, or a revocation proceeding.

Predictions that the post-AEDPA practice of "stay and abeyance" would add to the burden of district courts[106] appear not to have been realized for non-capital cases, at least not by the time these cases were coded in 2006. By 2003 and 2004 (the time during which the non-capital cases in this study were filed), most circuits had endorsed the practice as a way of reconciling the state exhaustion requirement with AEDPA's filing deadline. Yet we found that stays were relatively rare in non-capital cases (less than 3% of cases), and concentrated in districts located in the Second, Sixth, and Ninth Circuits.

Procedural default unchanged. Default rules were not changed by AEDPA, and default appears to be applied by district courts at roughly the same rate as it was before AEDPA.

Successive petition dismissals in district courts unchanged. *District* courts are rejecting habeas filings as successive petitions today at about the same rate that second or successive petitions were rejected by district courts prior to AEDPA. AEDPA now requires a petitioner to obtain permission from the court of appeals before filing any second or successive petition, however. It is possible that many additional successive petitions are being turned away by the courts of appeals. Our findings reflect only those cases in which the petitioner came first to the district court before applying for permission to file a successive petition in the court of appeals. Without an evaluation of how many applications to the courts of appeals were rejected as successive (a task beyond the scope of this study), the overall effect of AEDPA's restrictions on successive petitions remains undetermined.[107]

The only study to examine the habeas filing rate per prisoner before and after the enactment of AEDPA found that rate in 2000 was no lower than it was before the passage of the successive petition bar in AEDPA.[108] A higher filing rate, despite vigorous enforcement of the successive petition bar by both district and appellate courts, could be related to any number of factors. They include a greater proportion of prisoners imprisoned for multiple judgments (each of them subject to a separate petition); an increase in the number of challenges filed by prisoners to administrative decisions concerning release or good time, objections that would not be considered successive to the prisoner's prior petition challenging the underlying state court judgment; or a response to particular decisions of the Supreme Court providing new grounds for objection that also would not be considered successive (more likely in capital cases). Additional research would be required to test these various hypotheses.

More merits dispositions. The study also suggests that even with the dismissal of late petitions, federal courts are reaching the merits of claims in a larger percentage of cases than they did before AEDPA.

Fewer writs granted. The rate at which the writ is granted by district courts has dropped. Prior to AEDPA, one in 100 cases resulted in relief. Our nationwide random sample of 2384 filings (1986 terminated, non-transferred cases) included only seven cases in which relief was granted, a rate of one in 284 cases.[109]

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[106] *See supra* note 27.

[107] Nor do we know how many of our district court cases were initiated only after a court of appeals had granted permission to file a successive petition. The litigation in the court of appeals would not necessarily be mentioned in the documents available from PACER in the district court file.

[108] *See* Cheesman et al., *supra* note 2; Cheesman et al., *supra* note 35 (using filing statistics and state-wide prison population figures from 1992 through December 2000, finding *no* decrease in the number of state habeas cases filed in district courts when compared to state prison populations after AEDPA).

[109] Shortly before this final report was submitted in July 2007, an additional check as of June of 2007 of the cases in the sample that had been pending revealed that 69 additional cases had been resolved, but only one had resulted in a grant of the writ. This was a case from LA-W, where the court found that the jury was biased due to the inclusion of a juror who failed to reveal that he was closely connected to the victim and her family and that his own father had been the victim of a prior offense by the defendant. The additional grant brings the grant rate up only slightly to one in every 257 cases instead of our initial finding of one in every 284 cases. These numbers are so small that confirmation of an overall decrease in relief would require additional research using a larger sample.

AEDPA contains several provisions that could contribute to a lower grant rate, including: 1) greater restrictions on evidentiary hearings; 2) limitations barring review of claims that might otherwise be found meritorious (successive petitions, statute of limitations); and 3) a more deferential standard of review for state decisions of both fact and law. Without also examining appellate outcomes, it is not possible to know whether AEDPA has reduced overall relief rates for non-capital petitioners.

It is also possible that the consideration of only district court orders that grant the writ may underestimate the role of habeas litigation in changing the terms of a prisoner's custody. Favorable outcomes for petitioners that would not show up as a grant could include the state's agreement, without court order, to reduce a sentence or conduct a resentencing, to vacate a conviction or retry a petitioner, to recalculate a release date, to reverse, dismiss, or redo a state administrative proceeding such as a disciplinary or revocation hearing, or even to commence or complete a proceeding that for one reason or another had stalled out.[110] If this occurs, the resolution could appear as a case in which every claim was dismissed, either because the petitioner sought a voluntary dismissal, or because the claims in the petition were found to be moot.

Longer processing time per case. Overall disposition time *per case* has increased on average since AEDPA. The quickest cases are disposed of even faster, but the 25% slowest now take a month longer. Taking into account pending cases, these non-capital cases average at least a year in federal court before they are completed. To the extent that AEDPA's provisions were designed to streamline the overall processing of individual *cases*, that result has not been achieved.

It is possible that measured per *prisoner*, rather than per *case*, time in federal court has been or will yet be reduced as a result of AEDPA. If the successive petition bar provides a greater deterrent to the filing of multiple petitions than that provided by pre-AEDPA law, or faster resolution of later filings, the result may be more time per case but less time per prisoner. However, information about the processing time per prisoner is unavailable for comparison before or after AEDPA.[111] This study, for example, sampled individual cases. We did not attempt to collect information on the number of habeas cases filed challenging a single judgment by a sample of state prisoners over the life of their confinement, or the total time for resolving all of those cases. It is not known, for example, what proportion of state prisoners before or after AEDPA filed one or more habeas petitions. Nor is it known whether multiple filers attacked the same or different state judgments or whether they attacked separate administrative rulings denying or revoking good time credits or parole, attacks that would not necessarily be affected by the limits on successive petitions.[112]

Mention should be made of another source of comparison for this study. In 2003 Judge Weinstein took on 500 non-capital habeas cases that had been pending in the Eastern District of New York for up to six years. (These 500 cases were not included in our study, as all of them had been filed prior to January 1, 2003.) The concentrated disposition of 500 cases provides a statistical snapshot of post-AEDPA habeas proceesing by one judge in one federal district. Compared to courts nationwide processing cases filed in 2003-2004, Judge Weinstein dismissed fewer cases as successive or time-barred and addressed more cases on the merits. He granted relief in 9 of the 494 cases terminated without transfer, a grant rate of 2.0%. This is nearly six times higher than the grant rate of 0.35% in our nationwide sample (7 of 1986 terminated, non-transferred cases). With one exception, the grants were conviction-related: three counsel claims, two jury instruction errors, and a smattering of other trial related claims under *Brady*, *Chambers*, and the Confrontation Clause. Of the 500 cases, 8.9% were "administratively closed" - stayed for exhaustion or unripe, a rate more than twice the rate of stays for exhaustion that we found in non-capital cases nationwide. In re Habeas Corpus Cases, 298 F.Supp.2d 303 (E.D.N.Y. 2003).

[110] *See, e.g.*, Shapiro, *supra* note 2, at 340-42 ("there are a substantial number of cases -- difficult to count because they are not often disclosed by the face of the record -- where habeas corpus proves a useful remedy even though the matter prayed for is not granted. For the most part, these are cases in which state processes have for one reason or another been derailed and federal assistance has been helpful in getting them back on the track . . . . "). We also found several examples in our cases where a state appeared to be prompted to act after the filing of a petition in federal court.

[111] This information was not available in either of the pre-AEDPA studies that we used as comparisons.

[112] *See* note 108, *supra.*

Fewer evidentiary hearings. It is not likely that greater processing time for non-capital cases after AEDPA is the result of an increase in the use of evidentiary hearings. The pre-AEDPA studies did not report the frequency of evidentiary hearings, but one federal report using the AO data noted that 1.1% of all habeas cases received an evidentiary hearing,[113] a rate that is higher, not lower, than the rate after AEDPA.

B. Comparison with pre-AEDPA studies, capital cases

Empirical information about capital cases prior to AEDPA is more limited than information about non-capital cases, but some comparisons are possible. Table 14 includes a summary of comparative information for capital cases.

Filing times. It takes on average 7.4 years after sentencing for the death row inmates in our study to file in federal court; an average of 6.5 years for them to file their the first petitions. No comparative information about filing periods is available from studies of capital cases prior to AEDPA.

Few cases are time-barred. The new filing deadline appears to have been the basis for few dismissals in capital cases. Only 4.1% of the filings in our sample were dismissed for this reason.

One in six cases is stayed. Stays were entered in 17% of the capital cases for the petitioner to exhaust claims in state court. This practice was prompted by AEDPA's bar against statute of limitations.

Fewer evidentiary hearings. After AEDPA, most capital habeas cases continue to be concluded without evidentiary hearings in district court, and the percentage of cases with evidentiary hearings appears to have dropped. One study of published capital cases concluded in the federal courts of appeals by 1995 reported that 19% received an evidentiary hearing in federal court. Among the cases in our sample, only 9.5% received an evidentiary hearing. It is likely that evidentiary hearings will be granted in at least some of the 85 cases in the sample that remained pending and that had not had an evidentiary hearing, but hearings would have to be ordered in 35 or 42% of those 85 cases to reach an overall rate for the sample near the 19% pre-AEDPA figure.

Longer processing time per case. Each capital habeas filing appears to be taking at least twice as long to finish, on average, than prior to AEDPA. The Federal Judicial Center study prior to AEDPA found that the average disposition time for a capital habeas case involving a first petition was 15 months, significantly shorter than the average disposition times that we found in this study. We found averages of 29 months for the disposition of terminated capital cases, 30.4 months for non-transferred first petitions, and 37.3 months so far for all cases including those still pending. It is not known whether AEDPA has had any effect on total processing time for all habeas challenges filed by a given death row inmate. No information about processing time per prisoner (as opposed to per filing) is presently is available for comparison before or after AEDPA.

Given how long capital habeas cases presently take to resolve, the statutory 450-day time limit for resolving capital habeas cases from states that may qualify for expedited review under AEDPA will pose a challenge for courts. In the districts that we examined, the *average* processing time for capital cases is well over two and a half times that long. Not one of the 13 districts in this study has completed its capital habeas cases in less than 500 days on average, even excluding stayed time.

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[113] Federal Courts Study Committee, Working Papers and Subcommittee Reports, June 1, 1990, at 482 (cited in Schriro v. Landrigan, 127 S. Ct. 1933, 1954 (2007) (Stevens, J., dissenting)). This figure should be considered with some skepticism if it is based on the "procedural progress" variable in the AO data for these cases, see note 36 *supra*.

Table 14. (C) Comparison of findings with findings of pre-AEDPA studies.

Feature compared		**Fagan, Liebman et al.**	**FJC – 1995**	**This study**
Sample	Sample from how many courts	all districts & circuits	all districts	13 districts
	Sample size – number of cases	598	500	368
	Sample strategy – how cases identified	Published terminations in both courts of appeals and district courts	AO terminations district court	AO + PACER filings in district
	Pending cases included?	no	no	yes
Data collected from		published decisions	PACER	PACER
Barred by statute of limitations	% of cases with time-barred claims			4.1%
Cases stayed for exhaustion	% of cases with unexhausted claims, stayed while petitioner returns to state court			17.0%
Evidentiary hearing	% of cases including evidentiary hearin in federal court	19%		9.5%
Disposition time	Av time in district ct, terminated, non-transferred cases		15 months	29 months
	Av time in district ct, terminated, non-transferred first petitions		17 months	30 months
Grant rate	% terminated, non-transferred first petitions receiving relief	40%		12.4%
Higher probability of relief if	federal evidentiary hearing held, lower number of claims raised	yes		yes

Fewer writs granted. The study suggests that fewer death row inmates are receiving relief in federal district court after AEDPA. About one in eight or 12.4% of 267 terminated capital cases that filed in 2000, 2001, and 2002 received relief. This is much lower than the 40% grant rate reported by Fagan et al. for the much older capital cases that had already made it through *both* the federal district and appellate courts by 1995.[114] Excluding the 14 cases dismissed as second petitions and looking only at first petitions, as Fagan et al. did, brings the grant rate in this study up to 13.0%. Given that cases ending in a grant of relief take longer to complete on average than cases in which relief is denied, we expect that the grant rate for the 95 cases still pending will be at least 13%. But the overall grant rate for the sample is not likely to approach the 40% reported by Fagan et al. It would be surprising if by the time all of the cases are completed at the court of appeals level, the existing 33 grants expand to 139 (40% of the non-transferred, non-successive petitions in our sample), even with 95 cases pending.

[114] Unlike this study, which included cases filed in district court, the study included only cases for which review had been completed in federal courts. *See* Fagan et al., *supra* note 42, at 30 ("For a federal habeas case to have "finally reviewed" a capital verdict within the study period, all of the following events must have occurred in the case within that period: (1) a United States District Court must have denied habeas corpus relief from the capital judgment, thereby approving the judgment, or [have] granted habeas relief from the capital judgment (either the conviction or sentence) on one or more grounds; (2) if an appeal was timely filed, a United States Court of Appeals must have approved or reversed . . . ; and (3) if certiorari review was timely filed, the United States Supreme Court must have either (a) denied review or (b) granted review and affirmed or reversed . . . "). 38% of the 568 death sentences imposed between 1973 and 1990 that had completed review in the federal courts were overturned. *Id. See also* Gelman et al., *supra* note 42 (reporting 40% figure for the same study).

C. *Comparison of non-capital cases with capital cases*

Capital habeas cases are quite different from non-capital habeas cases, although both types of cases are governed by the same statutory provisions. The single most important difference is that all but 7% of death row filers have counsel to assist them in seeking federal habeas relief, while all but 7% of non-capital prisoners proceed pro se. A summary of other comparative findings appears in Table 15.

Filing period. It takes on average one extra year for death row inmates to reach federal court compared to non-capital petitioners, that is, 7.4 years compared to 6.3 years if all cases are considered, 6.5 years compared to 5.6 years if time-barred cases are excluded.

Number and type of claims. Capital petitioners raised on average seven times as many claims as non-capital petitioners. Compared to petitions prepared by capital counsel, sometimes well over 100 pages long, non-capital petitioners generally filled in the habeas form used in the individual district. Many such forms have space for only three or four claims, so that to raise additional claims required the prisoner to append additional sheets.

More than eight of every 10 capital petitions included a claim of ineffective assistance of counsel, compared to only half of the non-capital petitions. Claims of innocence, insufficient evidence, and *Brady* violations were more frequent in capital cases than in non-capital petitions. Petitions challenging the sentence alone and not the conviction were more common in non-capital cases than in capital cases.

Non-capital petitions included a surprisingly large group of challenges to administrative decisions. Eighteen percent of non-capital petitioners challenged a state administrative decision that had occurred after state judgment (disciplinary proceeding, revocation, parole denial, etc.). Less than 2% of capital cases challenged only the execution method or competency for execution, and not the underlying judgment.

Statute of limitations. Five times as many non-capital cases were considered time-barred than capital cases. The greater frequency of time-barred cases for non-capital prisoners is expected given that unlike death row inmates in most states, non-capital habeas filers navigate the post-conviction process and its deadlines without counsel.[115] Although the statute of limitations issue may yet be unresolved in some of the still pending capital cases, the rate at which courts explicitly *rejected* the limitations defense was similar for both capital and non-capital cases. It is 1.5% of non-transferred non-capital cases compared to 1.9 % of non-transferred capital cases.

Exhaustion and procedural default. In over 10% of the non-capital cases, all claims were dismissed because of the failure to exhaust, compared to less than 4% of capital cases. Stays for exhaustion were nearly seven times more likely in capital cases than in non-capital cases. Capital cases were put on hold for about two years on average compared to the average one-year stay in non-capital cases. Procedural default is over four times more likely to be the basis for dismissing a claim in capital cases than in non-capital cases.

Teague. Dismissal due to non-retroactivity was also more prevalent in capital cases. A reference to *Teague* was almost entirely absent in judicial rulings in non-capital cases, although nearly one in four capital cases included a claim dismissed as *Teague*-barred. In Texas, this may be the result of the custom and

[115] *See, e.g.*, Lawrence v. Florida, 127 S. Ct. 1079 (2007) (Ginsburg, J., dissenting) ("An attorney, of course, is better equipped than a *pro se* petitioner to clear procedural hurdles, including shortened timelines."); Stevenson, *supra* note 24, at 350 (claiming reason for untimely filings is lack of counsel); Jessica Feierman, *"The Power of the Pen": Jailhouse Lawyers, Literacy, and Civic Engagement*, 41 HARV. C.R.-C.L. L. REV. 369, 379 (stating that the statute of limitations "has an especially adverse impact on prisoners with low literacy levels" who may not understand the time limit or "may have difficulty concluding their research and filing their petitions before it expires").

practice of the capital case lawyers in the office of the attorney general (but not those defending non-capital cases) to emphasize the *Teague* defense.

Litigation steps. Depositions, examinations, and evidentiary hearings were rare in non-capital cases. In about one of every 10 capital cases (including those still pending) the judge had ordered an evidentiary hearing, and an even larger proportion included an order of discovery. Amended petitions were three times as frequent in capital cases.

Disposition time. Capital cases in our sample have taken on average at least three and a half times longer to complete than non-capital cases, including pending cases (37.3 months on average in federal court compared to 10.6 months for non-capital cases). This difference is likely to be even greater once all of the still pending cases are completed.

Merits review. Overall, about 28% of the capital cases were dismissed without reaching the merits of any claim compared to 42% of non-capital cases. This study did not track how many cases applied each of what are arguably four different approaches to harmless error review in habeas proceedings,[116] but did track when a court explicitly found that an error was *not* harmless. Only four non-capital cases and four capital cases found an error not harmless, all ending in a grant. Most of the 33 granted capital cases involved claims not subject to harmless error analysis, such as the Eighth Amendment ban on executing those who are mentally retarded or who committed their offenses before turning 18, ineffective assistance of counsel, or the failure to disclose exculpatory evidence.

Grants. The rate at which petitions are granted in capital cases is *35 times* higher than the rate in non-capital cases, a difference that is likely to increase as pending capital cases in our study are resolved.

[116] Jeffrey S. Jacobi, Note, *Mostly Harmless: An Analysis of Post-AEDPA Federal Habeas Corpus Review of State Harmless Error Determinations*, 105 MICH. L. REV. 805 (2007). Shortly before this writing, the Supreme Court settled in part a dispute in the lower federal courts about how and when to apply the concept of harmless error in federal habeas review of state decisions. Fry v. Pliler, 127 S. Ct. 2321 (2007) (holding that regardless of whether the state court recognized an error and reviewed it for harmlessness, a federal court evaluating a habeas claim must assess the impact of any error using the "substantial and injurious effect" standard of Brecht v. Abrahamson, 507 U.S. 619 (1993)).

Table 15. Summary of findings, capital and non-capital cases compared.

Sample	***Capital cases***	***Non-capital cases***
Total cases in sample	368	2384
Sample cases started in which years	2000, 2001, 2002	2003, 2004
Districts included in sample	13	87 (nationwide)
% of cases in time period represented	100%	6.5%
Filing period		
Average /median time state conviction to fed filing	7.4/6.5	6.3/ 5.7[117]
Petitioners and representation		
% cases filed by male/white	98.9/40.9	96.2/unavailable
% cases petitioner without counsel	7.1	92.3
% cases filed by petitioners with multiple convictions	42.0	51.1
% cases filed by petitioners who pleaded guilty or nolo	2.7	32.2
Petitions, claims raised		
% cases with no petitions filed	4.6	3.0
Average/median number claims per case	28/18	4/3*
% raising claim of ineffective assistance of counsel	81.0	50.4*
% raising a claim of innocence of conviction	10.8	3.9*
% raising claim of false, lost, or undisclosed evidence	43.1	13.0*
% challenging prison or revocation decision/execution	1.4	17.8[118]
% challenging sentence/sentencing proceeding only	5.1%	12.9*
% challenging sufficiency of evidence of guilt	25.5	18.9*
Litigation		
% cases with amended petitions	35.2	11.8
% answer or motion to dismiss filed by state	82.9	58.2
% cases including a stay for exhaustion	17.0	2.6
Average/median length of stay for exhaustion (in months)	23	13.1
% cases with discovery ordered	12.5	0.3
% cases with evidentiary hearing held	9.5	0.4
Average/median # of docket entries	55/44	18/15
Disposition type and reason		
% cases transferred to another district	1.6	8.4
% cases with all claims voluntarily dismissed**	11.6	3.2
% cases dismissed as time-barred**	4.1	21.7
% cases dismissed as successive**	5.6	6.8
% cases all claims dismissed as unexhausted**	3.4	10.9
% cases including at least one procedurally defaulted claim**	53.3	13.3
% cases including at least one *Teague*-barred claim**	23.9	0.4
% cases dismissed or denied, w/o reaching merits	27.7 (64/234)	42.0 (631/1311)[119]
% terminated cases dismissed w/o reaching merits **	24.0 (64/267)	31.8 (631/1986)
% granted relief on any claim**	12.4 (33/267)	0.35 (7/1986)
% of grants on sentence only	69.7	0.0
Disposition time (in months)		
% still pending in federal court	25.7 (95/368)	8.3 (198/2384)
Average/median time to resolve non-transferred terminated cases	28.8/28/.7	9.5/7.1
Average/median time in fed ct non-transferred (includes pending)	37.3/36.4	10.6/7.3

***** Of non-capital cases with claims information available – 1521 (63.8%)

****** Of non-transferred terminated cases (267 capital cases; 1986 non-capital cases)

[117] Of 1299 cases with information on state dates (54.4% of all cases).

[118] Of 1837 (77%) cases with information on type of proceeding challenged.

[119] 1311 of the 1979 non-transferred, terminated non-capital cases ending other than in grant had claims information.

PART IV. EXPLANATORY ANALYSES

A. Capital cases, time from state judgment to federal filing

1. Analysis design

Given the variation between states in appellate review times for capital cases,[120] variation in the time before the federal filing was expected. See Table 2. To examine whether some of this variation could be explained by factors other than state-specific law or practice, we used regression analysis.

The features expected to be associated with longer filing times included: conviction by trial not plea (presumably it would take state courts longer to review a trial-based conviction and sentence than it would take to review a plea-based case); dismissal of the federal petition as successive (presumably second petitions generally come later than first petitions); a greater number of claims in the federal petition (suggesting that the state courts had more claims to deal with as well); the presence of various specified claims likely to take longer in state court (competency proceedings, for example); dismissal of federal claims as filed too late; filing of the state record in federal court (suggesting the state proceedings were complete); and the presence of an order staying execution of the death sentence (as opposed to cases where the state has not set an execution date, which may be due to ongoing state proceedings). A finding by the federal court that the petitioner had failed to properly raise, develop, or exhaust a claim in state court may indicate a more abbreviated state review process, so we expected default, exhaustion, hearings, and stays could be associated with shorter filing times.

2. Results

The analysis accounted for about 31% of the variation in filing time. The results are summarized in Table 16. Of the variables considered, the identity of the individual state was the most influential (using Oklahoma, with the shortest average filing period, as a comparison).[121] Five other points deserve notice.

First: As expected, petitioners convicted by trial reached federal court *later,* 60.8% more days later, on average, than those convicted by plea. This is possibly related to the additional challenges that can be raised after a trial-based conviction.

Second: Filing intervals generally did not vary by the number of claims raised in federal court, the closest measure available for the number of claims raised in state court, nor by type of claim, with one exception. Petitioners who alleged unconstitutional delay before trial or appeal, or a violation of their own or the public's right to be present at trial, filed sooner than petitioners who did not include such a claim.

Third: Cases eventually dismissed as successive were indeed filed later than first petitions, but cases dismissed as time-barred were *not* filed any later than cases that were not time-barred.[122] This suggests that AEDPA's statute of limitations is not barring review in cases that take the longest time to reach federal court.

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[120] Latzer & Cauthen, *supra* note 43.

[121] The addition of other variables may have improved the explanatory power of our models, but were unavailable to us in this study, which was primarily limited to information from the federal district court case. The number of claims raised in state court, the presence and type of post-conviction counsel for the petitioner, and the presence or absence of rigid filing deadlines for state post-conviction proceedings would all be useful additions to future examinations of filing time in capital habeas cases.

[122] The 11 capital cases barred by the statute of limitations are all detailed in Appendix B.

Rather the cases with the longest time periods before filing include intervals for which the limitations period is being tolled.[123]

Fourth: Whether the case was later stayed for exhaustion[124] was not significantly related to the amount of time it took to get to federal court either. This suggests that cases in which the federal court ultimately decides that the petitioner should be allowed to return to state court to exhaust claims are reaching federal court no sooner than cases in which a stay is *not* ordered. Cases in which the federal court found any claim defaulted were filed 13.2% additional days *later, not earlier,* than cases with no defaulted claims. The presence of a stay of execution was not related to the length of time before filing.

Fifth: The identity of the individual state remained the one factor that accounted for the most variation, even after controlling for case-level factors. Among the nine states examined in our study, petitioners in Oklahoma and Texas reached federal court the fastest, with no significant difference between filing times in the two states once other factors were taken into account. Petitions from Florida were filed on average 164% days later than the petitions from Oklahoma. Alabama's filing periods averaged 147% longer;[125] Pennsylvania's 150% longer. California and Nevada petitioners began their federal cases after a time lag that was 112% longer than those from Oklahoma inmates, on average. Arizona capital petitioners reached federal court about 64% later, and Ohio petitioners filed their federal cases after a period that was 49% longer than the filing period for Oklahoma petitioners.

Notably, Latzer and Cauthen examined the time to complete state *direct appeals* in capital cases, in the four states, Florida, Arizona, Texas, and Ohio, and found that the relative times for state appeals were in almost the *opposite* order from the order we found for relative periods from state judgment to federal filing. They found that Florida took the *least* time on direct appeal; we found that Florida cases were the slowest to reach federal court. Their study indicated that Texas was the *slowest* of the four states for completing direct appeals in capital cases; we found that Texas cases reach federal court more quickly than cases from all but one of the other states in the sample. This inverse relationship between state appeal time and total filing time for cases from these four states suggests that the second stage of state court review of capital cases following direct appeal prior to federal habeas litigation, that is, namely, state post-conviction review, can have a dramatic impact on the time period that elapses between the time a prisoner is sentenced to death and the time that prisoner seeks review of his judgment in federal court.[126]

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[123] *See* Steiker & Steiker, *supra* note 34, at 1925 (arguing that the one-year statute of limitations will not curb delay in the review of capital cases because it is tolled for the state review process, which accounts for most of the delay).

[124] In another model, we substituted for this variable the variable indicating cases in which every claim had been dismissed for exhaustion. After controlling for other factors, neither the presence of a stay nor the later decision of the federal court to dismiss to allow exhaustion appeared to be related to the length time period that elapsed prior to filing.

[125] Alabama, unlike the other states, does not provide counsel to indigent death row prisoners for their state post-conviction proceedings. *See, e.g.*, Leonard Post, *On Their Own*, NAT'L L. J., December 1, 2003, at 1.

[126] *See also* Steiker & Steiker, *supra* note 34, at 1888 (reporting that in Texas "postconviction proceedings start expeditiously," and "frequently [do] not involve any extensive factual investigation or discovery" as compared to cases from California).

Table 16. (C) Regression of interval in days between state judgment and federal filing (logged).[127]

Feature investigated	*% difference ^*	*coeff*	*(r.s.e.)*
Federal court held evidentiary hearing		-0.063	(0.076)
Federal court ordered discovery		0.005	(0.081)
Federal court stayed death sentence		0.005	(0.099)
Federal claims stayed for exhaustion		-0.100	(0.083)
Number of claims raised in federal petition		0.001	(0.001)
Petitioner convicted by trial (not plea)	60.8	0.475*	(0.236)
At least one claim alleging denial of public trial, right to presence, or delayed trial or appeal	-21.7	-0.245*	(0.105)
At least one claim dismissed by federal court as time-barred		0.107	(0.120)
At least one claim dismissed by federal court as procedurally defaulted	13.2	0.124+	(0.071)
Federal court dismisses petition as successive	95.2	0.669***	(0.142)
State of Pennsylvania	150.4	0.918***	(0.156)
State of Alabama	147.2	0.905***	(0.120)
State of Florida	164.1	0.971***	(0.138)
State of Texas		0.121	(0.110)
State of Ohio	49.0	0.399*	(0.141)
State of Arizona	63.6	0.492*	(0.175)
State of California	112.5	0.754**	(0.318)
State of Nevada	111.9	0.751***	(0.165)
Constant (Oklahoma)		6.831**	(0.331)
Observations (cases ending in transfer excluded)		362	
R-squared		0.31	
Robust standard errors in parentheses			
+ significant at 10%; * significant at 5%; ** significant at 1%; *** significant at .10%			

^For example, a case that is ultimately dismissed as successive by the federal court takes about twice as long to reach federal court (a 95.2% increase) than a case that is not dismissed as successive, controlling for all other factors. Calculated for significant associations only.

[127] Variables not shown that had no significant association with variance in time before beginning of federal case are: petitioner race; state record filed in federal court; jury instruction claim; improper admission or exclusion of evidence claim; jury selection misconduct or bias claim; counsel related-claim other than ineffective assistance of counsel; double jeopardy claim; plea-related claim; ineffective assistance of counsel claim; claim of innocence of guilt; claim of insufficient evidence of guilt; competency (in state court) claim; denial or delay of appeal or transcript claim; insufficient evidence of sentencing factor claim; *Roper*, *Atkins*, or *Ring* claim.

B. Non-capital case processing time

1. Analysis design

Federal habeas cases filed by state prisoners who are not on death row may be resolved on the same day they are filed or many years later.

Figure 21. (NC) Probability of not reaching termination over time, in days.

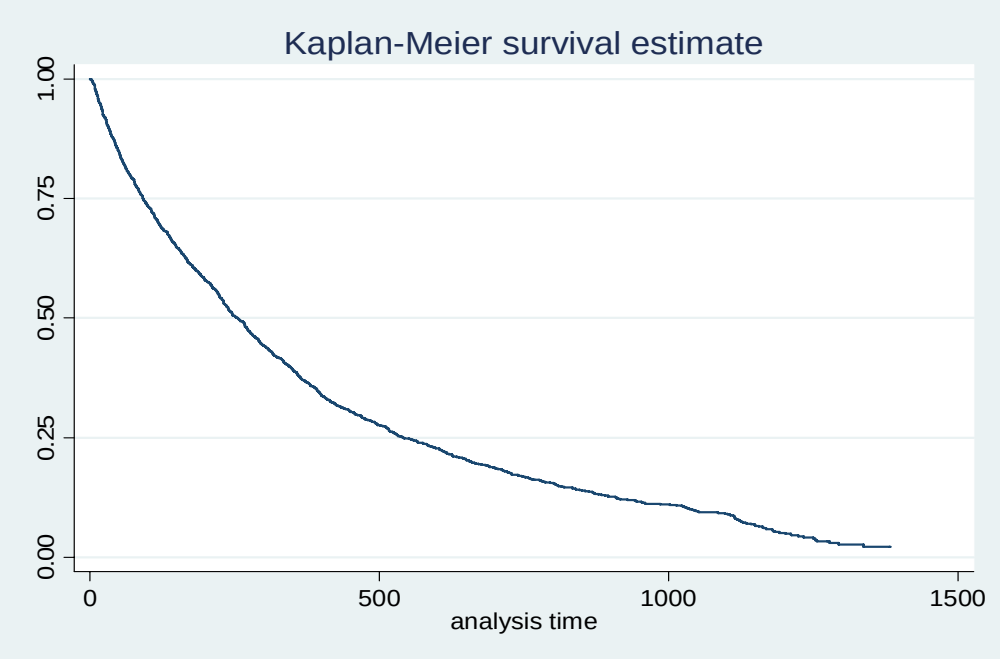

Figure 16 (Part II), and Figure 21, above, show that about 25% of the cases are terminated after about 90 days, 50% after 200 days and 75% after about 530 days. It appears that all of the cases should be terminated after about 1500 days. To examine possible explanations for this variation in the time for the disposition of these cases, we used two separate analyses. For terminated cases, we used multivariate regression to estimate the association of specific features of habeas litigation with variations in processing time. The dependent variable for this analysis was the log transformation of the number of days that elapsed from the beginning of the case to its first termination in district court. Second, we used Cox regression analysis to investigate the effect over time of individual features of habeas litigation on the likelihood of terminating.[128]

The features expected to be associated with longer processing time included: a petitioner's attorney, presence of amended petition, presence of answer or dispositive motion by the state, whether the state record was filed, use of a magistrate judge for a report and recommendation on the resolution of any claim, record notation of a prior petition that had been dismissed without prejudice, number of claims in the petition, whether the case challenged conviction and not the sentence alone, presence of various specified claims, type of proceeding challenged (criminal judgment v. administrative proceeding such as disciplinary hearing or

[128] We excluded cases ending in transfer from both sets of non-capital case analyses, and eliminated from the set of cases evaluated five cases that diagnostic tests revealed were outliers and that upon inspection were discovered to have ben miscoded. For the district regressions, we omitted cases from districts with fewer than 9 observations.

parole revocation), merits review of any claim, application of a standard other than the deferential standard in Section 2254(d), notice of appeal, and whether a certificate of appealability was granted.

Features expected to be associated with shorter processing times included whether the case involved a non-merits dismissal, the application of procedural default to bar any claim, application of statute of limitations to bar any claim, application of successive petition bar, and whether every claim was dismissed voluntarily or as unexhausted. To examine whether the novelty of a female petitioner prompted speedier disposition than in cases with male petitioners, we included petitioner gender in the analysis.[129]

Finally, we explored the impact of district, circuit, and state to see if the differences in average processing times between locations remained after controlling for other features.[130] District specific caseload[131] and staffing levels were also examined as alternative specifications.

For each different specification (controlling separately for districts, circuit, state, clerk staffing, and caseload) we ran the regression analysis of termination time in two ways. The first model included all cases but no claims-related variables (for which many cases were missing information). The second model included claims-related variables, but compared only cases for which claims information was available. Tables 17, 18, and 19 summarize the results of the 10 different models for terminated cases. Non-significant variables are excluded from the tables, but appear in the margin.[132]

The Cox regression analyses included basically the same features as those included in the regression analyses of terminated cases, but examined the effect of those features on the likelihood of termination rather than on disposition time. The Cox regression analyses omitted variables that would be present only in terminated cases, such as merits review of any claim, application of the successive petition bar, application of a standard of review other than that specified in Section 2254, or the presence of a notice of appeal. Tables showing the results for the analyses of non-capital cases appear in Appendix A.

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[129] Race information was missing in too many cases to include in the analyses. There were three additional features we had expected to be related to processing time, but could not include because of their rarity: whether the case included discovery, whether the case included an evidentiary hearing, and whether the case included a grant of relief.

[130] In initial regression models examining termination times for non-capital cases, we included as a variable the number of docket entries for each case and found it was highly associated with variations in processing time. We omitted this variable from our final models because we were interested in what might account for that variance in docket entries. In other words, the number of docket entries functioned as an alternative dependent variable to processing time.

[131] Caseload was derived from the AO Tables posted on the AO's website. The value for each district is the average of, for each year 2003, 2004, and 2005, the annual state prisoner habeas filings per district (Table C-3A) divided by the the number of authorized judgeships listed for each district (Table X-IA).

[132] Not significantly associated with any difference in processing time when compared to the control locations in any model were the following: the states of OK, AR, TN, MD, WA (compared to IN); First Circuit (compared to the Seventh); and the districts of MD, NC-M; VA-W, AL-M, AL-S, MS-N, FL-S, GA-S, AR-E, MN, TN-E, TN-M, WA-W, OK-W (compared to IN-S).

Also not significantly associated with either delayed or expedited disposition times were any of the following claim types: claims raising constitutional errors in revocation proceedings; prosecutorial misconduct claims; claims of lost, destroyed, undisclosed, or false evidence; jury instruction claims, appeal related claims, claims of insufficient evidence of guilt or sentencing factors, counsel claims other than ineffective assistance, claims of judicial bias, illegal confession claims, *Apprendi* claims, ineffective assistance claims, innocence claims, or plea-related claims.

Disposition time was also not related to the following factors after other factors were controlled: the year the case began, petitioner gender, whether the case challenged sentence alone, whether the petition was voluntarily dismissed, whether the state record was filed in the federal court, the standard of review applied, whether a notice of appeal was filed by either party, or whether the district court rejected a certificate of appealability.

Table 17. (NC) Regression of disposition time in days (logged), for terminated cases, by clerk and caseload.

	Comparing by average number of pro se law clerks						*comparing by averaged non-cap habeas caseload per judge*					
Model:	*NO CLAIMS VARIABLES All terminated cases included*			*CLAIMS VARIABLES INCLUDED Only cases w/ claims info*			*NO CLAIMS VARIABLES All terminated cases included*			*CLAIMS VARIABLES INCLUDED Only cases w/ claims info*		
Observ's	1827			1076^			1827			1076^		
Prob > F	0.000			0.000			0.000			0.000		
R-squared	0.538			0.578			0.545			0.585		
	[%diff] coef		*r.s.e.*	*[%diff] coef*		*r.s.e.*	*[%diff] coef*		*r.s.e.*	*[%diff] coef*		*r.s.e.*
Constant	3.928	***	0.113	3.944	***	0.161	3.759	***	0.115	3.789	***	0.160
amended petition	**[45.1]** 0.372	***	0.057	**[29.6]** 0.259	***	0.069	**[40.4]** 0.339	***	0.056	**[25.6]** 0.228	***	0.068
answer, mo to dism	**[393.3]** 1.596	***	0.050	**[420.7]** 1.650	***	0.079	**[405.8]**1.621	***	0.050	**[430.7]** 1.669	***	0.079
magistrate j. R&R	**[34.0]** 0.293	***	0.041	**[34.4]** 0.296	***	0.051	**[28.5]** 0.251	***	0.041	**[29.7]** 0.260	***	0.051
no. of claims	**[15.6]** 0.145	***	0.023	**[9.6]** 0.092	*	0.045	**[16.9]** 0.155	***	0.023	**[9.7]** 0.093	*	0.045
petitioner had atty	**[49.0]** 0.399	***	0.076	**[22.6]** 0.204	*	0.088	**[47.8]** 0.391	***	0.076	**[23.6]** 0.212	*	0.086
competency claim				**[38.7]** 0.327	+	0.175				**[36.9]** 0.314	+	0.172
jury misconduct				**[-30.6]** -0.366	**	0.137				**[-32.1]** -0.387	**	0.085
speed, public, pres.				**[23.6]** 0.212	*	0.092				**[20.6]** 0.187	*	0.095
evidentiary claim				**[11.3]** 0.107	+	0.060				**[11.7]** 0.111	+	0.060
prison discipline				**[-26.7]** -0.310	*	0.137				**[-26.2]** -0.304	*	0.137
all claims unexhaus				**[-21.7]** -0.244	*	0.111				**[-20.3]** -0.227	*	0.111
time-barred				**[-11.5]** -0.122	+	0.066				-0.088		0.067
defaulted claim				0.092		0.062				**[12.3]** 0.116	+	0.060
successive pet				-0.203		0.140				-0.181		0.140
other dismissal				-0.146		0.121				-0.150		0.117
Clerk	-0.002		0.006	0.008		0.007						
Caseload							**[.00.4]** 0.004	***	0.001	**[0.4]** 0.004	***	0.001

+ significant at 10%; * significant at 5%; ** significant at 1%; *** significant at .10%

^ cases with information on claims only

Table 18. (NC) Regression of disposition time in days (logged), for terminated cases, by circuit and state.

	Circuit Comparisons								*State Comparisons*							
model:	*No claims variables*				*Claims variables*			^ cases with information on claims only.	*No claims variables*				*Claims variables*			^ cases with information on claims only.
Observ's	1827				1162^				1827				1128^			
Prob > F	0.000				0.000				0.000				0.000			
R-squared	0.562				0.599				0.579				0.617			
	% diff	*coef*		*r.s.e.*	*% diff*	*coef*		*r.s.e.*	*% diff*	*coef*		*r.s.e.*	*% diff*	*coef*		*r.s.e.*
am. petition	**[38.1]**	0.323	***	0.055	**[46.2]**	0.233	***	0.063	**[35.3]**	0.302	***	0.055	**[26.2]**	0.233	***	0.06
answer or motion	**[394.8]**	1.599	***	0.049	**[403.2]**	1.617	***	0.074	**[398.3]**	1.606	***	0.050	**[410.4]**	1.630	***	0.08
Mag. j. R & R	**[26.7]**	0.237	***	0.043	**[25.2]**	0.225	***	0.053	**[29.2]**	0.256	***	0.047	**[35.1]**	0.301	***	0.06
no. of claims	**[17.4]**	0.160	***	0.023	**[10.7]**	0.102	*	0.043	**[16.6]**	0.154	***	0.024	**[10.1]**	0.096	*	0.04
pet. Had atty.	**[39.1]**	0.330	***	0.076	**[22.9]**	0.206	*	0.083	**[34.2]**	0.294	***	0.082	**[17.6]**	0.162	+	0.088
competency claim					**[35.2]**	0.302	+	0.162						0.240		0.171
jury miscon. claim					**[-27.6]**	-0.323	*	0.130					**[-30.6]**	-0.366	**	0.131
speedy, public trial					**[21.2]**	0.192	*	0.082					**[22.8]**	0.205	*	0.082
evidence claim					**[10.4]**	0.099	+	0.057					**[11.4]**	0.108	+	0.056
prison discipline					**[-25.2]**	0.290	*	0.129						-0.161		0.130
all clms unexhaust					**[-22.2]**	-0.251	*	0.104					**[-21.6]**	-0.243	*	0.107
time-barred					**[-10.5]**	-0.111	+	0.063					**[-12.4]**	-0.132	*	0.062
defaulted claim					**[16.7]**	0.155	**	0.056					**[13.5]**	0.127	*	0.057
successive pet.					**[-23.5]**	-0.268	*	0.138					**[-21.7]**	-0.244	+	0.142
other dismissal					**[-20.9]**	-0.235	*	0.113					**[-19.6]**	-0.218	+	0.115
Circuit 2	**[160.4]**	0.957	***	0.106	**[138.5]**	0.869	***	0.127								
Circuit 3	**[65.5]**	0.504	***	0.120	**[10.1]**	0.531	***	0.135								
Circuit 4	**[36.5]**	0.311	**	0.099	**[27.8]**	0.245	+	0.128								
Circuit 5	**[41.6]**	0.389	***	0.096	**[49.9]**	0.405	***	0.117								
Circuit 6	**[65.0]**	0.501	***	0.105	**[62.1]**	0.483	***	0.122								
Circuit 9	**[11.4]**	0.573	***	0.097	**[64.2]**	0.496	***	0.125								
Circuit 10	**[15.4]**	0.562	***	0.144	**[68.4]**	0.521	*	0.216								
Circuit 11	**[39.7]**	0.334	***	0.098	**[38.7]**	0.327	**	0.122								
MA									**[14.5]**	0.557	*	0.271	**[104.6]**	0.716	*	0.310
NJ									**[205.9]**	1.118	***	0.211	**[286.9]**	1.353	***	0.214
PA									**[84.4]**	0.612	***	0.147	**[83.9]**	0.609	***	0.152
NC									**[.51.7]**	0.417	*	0.166	**[63.2]**	0.490	**	0.156
SC									**[66.4]**	0.509	***	0.154	**[46.7]**	0.383	*	0.176
VA									**[88.9]**	0.636	***	0.131	**[83.7]**	0.608	***	0.181
AL									**[89.8]**	0.641	***	0.159	**[70.6]**	0.534	**	0.184
FL									**[.65.7]**	0.505	***	0.127	**[15.6]**	0.563	***	0.141
LA									**[133.1]**	0.849	***	0.155	**[132.8]**	0.845	***	0.179
MS									**[81.5]**	0.596	***	0.167	**[143.5]**	0.890	***	0.212
TX									**[69.0]**	0.525	***	0.122	**[69.9]**	0.532	***	0.130
GA									**[60.0]**	0.470	**	0.149	**[11.1]**	0.537	**	0.170
MI									**[101.8]**	0.702	***	0.128	**[95.4]**	0.670	***	0.145
OH									**[121.4]**	0.795	***	0.155	**[105.2]**	0.719	***	0.179
IL									**[48.0]**	0.392	*	0.169	**[83.1]**	0.605	***	0.184
NY									**[216.5]**	1.152	***	0.127	**[203.1]**	1.109	***	0.140
MO									**[14.0]**	0.554	***	0.167	**[68.5]**	0.522	**	0.179
CA									**[109.2]**	0.738	***	0.122	**[102.0]**	0.703	***	0.142
OR									**[202.8]**	1.108	***	0.169	**[208.6]**	1.127	***	0.212
KS									**[182.1]**	1.037	***	0.302	**[214.0]**	1.319	***	0.385
constant -	circuit 7				circuit 7				Indiana				Indiana			

^ includes cases with information on claims only.

+ significant at 10%; * significant at 5%; ** significant at 1%; *** significant at .10%

Table 19. (NC) Regression of disposition time in days (logged), for terminated cases, by district.

model:	**No claims variables**				**Claims variables**			
Observ's				1813				1076^
Prob > F				0.000				0.000
R-squared				0.605				0.642
	% difference	*coeff.*		*r.s.e.*	*% difference*	*coeff*		*.r.s.e.*
amended petition	**[35.4]**	0.303	***	0.054	**[24.5]**	0.219	***	0.068
answer or mo. to dismiss	**[397.3]**	1.604	***	0.053	**[423.3]**	1.655	***	0.078
magistrate judge R&R	**[42.5]**	0.354	***	0.061	**[51.6]**	0.416	***	0.081
number of claims in petition	**[19.2]**	0.176	***	0.024	**[11.4]**	0.108	*	0.044
petitioner had attorney	**[26.1]**	0.232	**	0.082	**[10.7]**	0.102		0.093
jury misconduct claim					**[-31.5]**	-0.378	**	0.134
presence, speedy, public trial					**[22.6]**	0.204	*	0.088
evidence ruling claim					**[13.5]**	0.127	*	0.057
all claims unexhausted					**[-20.1]**	- 0.225	*	0.106
time-barred					**[-11.5]**	- 0.122	*	0.063
defaulted claim					**[13.8]**	0.129	*	0.059
Successive					**[-13.9]**	- 0.150		0.140
other dismissal					**[-14.3]**	- 0.154		0.117
NJ	**[18.2]**	1.023	***	0.211	**[276.2]**	1.325	***	0.230
MA	**[58.4]**	0.460	+	0.280	**[108.5]**	0.735	*	0.334
PA- E	**[34.5]**	0.297	+	0.172	**[53.1]**	0.426	*	0.184
PA- M	**[121.6]**	0.769	***	0.240	**[87.8]**	0.630	*	0.266
LA- W	**[216.4]**	1.152	***	0.225	**[234.0]**	1.206	***	0.292
TX- N	**[41.3]**	0.346	**	0.157	**[67.4]**	0.515	**	0.188
FL- M	**[68.0]**	0.519	***	0.150	**[106.1]**	0.723	***	0.182
AL-N	**[102.1]**	0.704	***	0.185	**[85.5]**	0.618	**	0.232
GA- N	**[55.4]**	0.441	**	0.162	**[75.4]**	0.562	**	0.196
LA-E	**[52.0]**	0.419	**	0.159	**[68.5]**	0.522	**	0.199
TX- E	**[48.2]**	0.394	*	0.163	**[61.1]**	0.477	*	0.195
TX-S	**[48.5]**	0.396	**	0.143	**[63.4]**	0.491	**	0.172
TX- W	**[70.5]**	0.534	**	0.168	**[69.5]**	0.528	**	0.202
MI- E	**[14.5]**	0.713	***	0.135	**[133.7]**	0.849	***	0.160
MI- W	**[19.2]**	0.416	**	0.176	**[45.1]**	0.372	+	0.222
OH- N	**[17.2]**	0.524	***	0.159	**[60.7]**	0.474	*	0.196
IL- N	**[18.7]**	0.312	+	0.172	**[85.3]**	0.620	**	0.200
MO- E	**[22.4]**	1.029	***	0.202	**[191.8]**	1.071	***	0.237
NY- E	**[15.4]**	0.886	***	0.143	**[173.7]**	1.007	***	0.174
CA- N	**[18.9]**	1.098	***	0.173	**[252.9]**	1.261	***	0.379
CA- E	**[16.5]**	0.985	***	0.153	**[184.3]**	1.047	***	0.191
CA- C	**[36.5]**	0.311	*	0.130	**[53.0]**	0.425	*	0.169
CA- S	**[68.2]**	0.520	**	0.193	**[59.8]**	0.469	*	0.223
OR	**[191.5]**	1.070	***	0.175	**[233.3**	1.204	***	0.231
NY- S	**[214.9]**	1.147	***	0.162	**[227.7]**	1.187	***	0.205
KS	**[158.1]**	0.948	**	0.306	**[281.5]**	1.339	***	0.391
_constant (IN-S)		3.397	***	0.158		3.225	***	0.227

^ includes cases with information on claims only.
+ significant at 10%; * significant at 5%; ** significant at 1%; *** significant at .10%

2. Results

State pleadings and amended petitions. When the state files an answer, return, or motion to dismiss, disposition time for terminated cases jumps by about 400%, compared to the cases lacking these pleadings. This is expected. Cases in which the federal court dismisses the case before the state files an answer, return, or motion to dismiss should not take as long. The filing of an amended petition also adds to the length of a case, increasing processing time between 26% and 45%.

The Tables in Appendix A reporting Cox regression results examining both pending and terminated cases show that when comparing cases early on, the presence of a state pleading decreased the likelihood of termination by about 99%. Among older cases, however, the filing of such a state pleading increases the probability of termination. The filing of an amended petition decreases the probability of termination between 24% and 87%. The effect of this feature only varied by time over the life of the case when no claims variables were included.

Magistrate judge. The presence of a report and recommendation regarding disposition from a magistrate judge appears to be associated with significantly longer processing times, accounting for an approximate 10% to 49% increase in the number of days for disposition for terminated cases.[133] Reference to magistrate judges was suspected as a cause of delay in at least one earlier study.[134] This could add to processing time by interposing additional steps in the litigation sequence (the report and recommendation, the objections, and any response to the objections) that would otherwise be absent. On the other hand, the analysis only tells us that among all cases, controlling for other factors, those with dispositive orders by magistrate judges are longer than those without. It does not indicate whether the use of magistrate judges in a given district helps the district judges to dispose of these cases more quickly than they would be able to without delegating the initial decisions to magistrate judges. It is also possible that the causal relationship is reversed for this variable, that is, that district judges in the districts that were already taking the longest time to process these cases are most likely to refer non-capital habeas cases to magistrate judges.

The presence of a report and recommendation for disposition reduced the probability of termination early on in the case, but over time, for the cases that lasted longer, a report and recommendation made termination more likely. So for cases that have lasted the longest, those in which a report and recommendation has been filed are more likely to have been completed than the longer cases in which a report and recommendation may have yet to be filed.

Representation. As expected, the presence of a petitioner's attorney was associated with more lengthy proceedings, adding between 11% and 49% more time than in cases without attorneys. The Tables in Appendix A show that the presence of an attorney functions in the same way as a magistrate judge's report and recommendation. It decreases the probability of termination at first, but for longer cases, counseled petitions were more likely to reach disposition than uncounseled petitions.

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[133] The study tracked whether a report and recommendation ("R&R") for disposition was filed, and who presided over any evidentiary hearing held. Cases referred to a magistrate judge which had not yet resulted in either a hearing or an R&R *for disposition* would not have been captured by these measures. *See* Asifa Quraishi, Resource Guide for Managing Capital Cases, Vol. II: Habeas Corpus Review of Capital Convictions FJC 2004, http://www.fjc.gov/library/fjc_catalog.nsf, at 8 ("Many magistrate judges handle the counsel appointment and scheduling orders . . . others continue . . . responding to procedural motions and managing the case by monitoring budgets and holding status conferences.").

[134] Shapiro, *supra* note 2, at 333.

Claims. A larger number of claims in the petition meant longer processing time. Each additional claim increased the number of days in federal court by 10 to 19 percentage points. Generally, each additional claim decreased the likelihood of termination between 3% and 7%.

As for types of claims, only a few appeared to be significantly related to the time it took these courts to complete the case. The exceptions were: claims of violations of the right to be present at trial or receive a public trial, or to receive a speedy trial or appeal, were associated with lengthening the number of days to disposition by about 20 to 23 percentage points; a claim of improper exclusion or admission of evidence added between 10% and 13% more time; and a claim regarding competency at trial added between 35% and 39%. Each of these three claims was also associated with a decrease in the probability of termination in the claims-specified Cox analyses. The presence of each of these three claims decreased the probability of termination between 15% and 23%. A similar decrease in probability of termination was associated with *Brady*-type claims and jury instruction claims.

Also related to processing time but operating in the other direction to reduce disposition time were the presence of a claim of jury misconduct, reducing processing days by about 21% to 31%, and a claim challenging a prison disciplinary proceeding, *reducing* disposition days by about 26%. These two claims were also associated with greater likelihood of termination. A misconduct claim increased the probability of termination by about 53% to 75%. The presence of a disciplinary claim increased the probability of termination by more than 300 times when controlling for caseload or clerk. Once district or state was specified, however, the relationship between a claim challenging an administrative disciplinary ruling and probability of termination was either not significant or was associated with a more modest drop in the probability of termination. This confirms that these claims are concentrated in certain districts and states.[135]

Defenses and reasons for dismissal. Speedier dispositions were indicated for cases in which all claims were dismissed as unexhausted, as time-barred, or as filed in a successive petition. Cases dismissed for "other reasons," such as failure to pay the filing fee, or to provide adequate information on the petition form, also took less time. The disposition time for dismissal of cases including any claim that was procedurally defaulted was *longer* on average than the disposition time for those cases in which no claims were dismissed for this reason.

Regarding the probability of termination, the presence of at least one claim dismissed as defaulted functioned like the presence of a magistrate's report and recommendation, which was the other disposition-related (but not disposition-contingent) variable that we tested in the Cox analyses. Its main effect was to decrease the probability of termination, but it varied by time. The longer cases were more likely to be terminated if they included at least one claim dismissed for this reason.

Caseload and clerk staffing levels. Districts with the heaviest habeas caseloads[136] generally took more time with these cases, on average, than did districts with lighter caseloads. With the addition of each additional non-capital habeas case per judge, disposition time increased by 0.4%. As Table 28 in Appendix A illustrates, every additional case per judge in any given district also made it 0.85% less likely that a case in that district would be completed, controlling for other factors.

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[135] Two variables had a significant relationship to termination times in only one of the two models: the presence of a search and seizure claim was associated with decreased disposition time, which is expected given that the Supreme Court held that these claims should be dismissed as non-cognizable, and a reference in the record to a prior petition dismissed without prejudice increased disposition time. This is also expected, because that usually means that the petitioner was back in federal court after exhausting his claims.

[136] *See* note 129 *supra* for the derivation of the continuous caseload variable.

Using a continuous variable that indicated the number of pro se law clerks or attorneys per district averaged over the two years 2003 and 2004, we also investigated the relationship between extra staffing and disposition time. Because clerks were allocated depending upon pro se caseload, for each additional clerk, we expected longer disposition time, just as greater caseload increased disposition time. The analysis found that staffing level was *not* related to processing time for *terminated* non-capital cases, but that as expected, cases were less likely to terminate in districts where additional staff was in place. Every additional law clerk was associated with a 1.5% *decrease* in the likelihood of termination for a non-capital case. See Table 27, Appendix A. Districts that had been assigned more pro se law clerks take even longer than courts assigned fewer, but each individual district may have taken even longer still with fewer clerks. An analysis of individual districts over time as clerk staffing levels change may be a useful investigation.

Informal discussions with court staff suggest that efficiencies may be created by allowing court staff to specialize in particular types of cases (prison discipline habeas cases, parole habeas cases, regular habeas), and to serve as support to all of the judges in the district on that specific type of case. This promotes expertise, unlike judge-specific assignments requiring all clerks to master all case types.

Location of court. Even after controlling for other factors, one of the most powerful influences on processing time was the identity of the district in which the case was filed. In the model using dummy variables for districts, cases from districts with less than nine observations were excluded.[137] Using as the comparison the Southern District of Indiana, which is the district with the lowest average disposition time, the analyses found that many districts were associated with average disposition times that are much longer than the average for the Southern District of Indiana. For example, disposition times in the Southern District of New York were 215% to 228% longer; those in the Eastern District of Pennsylvania were 35% to 53% longer.

Splitting up the cases by circuit instead of by district,[138] using the Seventh Circuit as the comparison circuit, disposition time continued to vary greatly by location even after controlling for other factors. Cases in districts located in the Second Circuit took 139% to 160% longer for disposition than cases in the Seventh Circuit.[139] This suggests that something about the circuit other than the features already examined is affecting processing time.

Cox regressions reported in Appendix A confirmed the influence of location on processing time. When districts were specified, many were associated with significantly slower progress towards termination than the Southern District of Indiana, ranging from 42% less likely to terminate (TX-S) to 94% less likely (NY-N).[140] When circuits were specified, again the Seventh Circuit appeared to be associated with a much higher probability of termination than all but the Fourth Circuit. Cases filed in the Second Circuit were over 75% less likely to be completed than those in the Seventh Circuit, after controlling for other factors. This general pattern remained whether or not claims were specified.

Because practices adopted by the attorneys representing different states may have an impact on processing time in otherwise comparable cases, we also checked for the influence of the individual state. Some of this variation we attempted to capture with other specific variables, namely whether or not the state

[137] The smaller districts were not aggregated into a single variable because of the variation among them in processing time.
[138] Using the Seventh Circuit as the comparison and dummy variables for the remaining ten circuits.
[139] Several locations were significant in only one of the two models that tested their association with disposition time. When significant, each was associated with *increased* disposition time: the Eighth Circuit (compared to the control location, the Seventh Circuit); the districts of FL-N, PA-W, NC-E, AZ, NV, CO, NY-W, NY-N, SC, VA-E, MS-S, KY-W, OH-S, IN-N, WI-E (compared to the control district, IN-S); and the states of KY, WI, MN, AZ, NV, CO (compared to the control state, IN).
[140] The effect on probability of termination varied over time for five districts.

attorney general filed an answer, return, or motion to dismiss, as well as the state's use of affirmative defenses such as procedural default. Yet the state in which the case is litigated was expected to influence processing time, both because our coding did not capture other potentially state-specific practices (such as the use of continuances, the relative time for procuring state records, or the frequency with which state counsel is substituted), and also because we coded only the federal court's ultimate resolution of each claim and defense, and not the arguments raised by the state's attorney.[141] Examining variance in disposition time using the fastest state, Indiana, as the comparison, 20 states were associated with significantly longer processing times. After controlling for other factors, filings in New York and New Jersey, for example, were associated with more than 200% more days for disposition than filings in Indiana.

Cases in the state of Indiana were also more likely to terminate than cases in the most other states examined using the Cox regression analysis.[142] Georgia cases, for example, were about 30% to 35% less likely to terminate, while cases from New York were more than 85% less likely to terminate.

Not every state examined showed significantly slower disposition times or lower probability for termination. For example, disposition times for cases in Minnesota and Washington were not significantly different than the time for cases from Indiana. Overall, the most striking differences found with the state-specific analyses were between the shortest most probable terminations in Indiana cases and the longer less probable dispositions in cases from New York and New Jersey.

As a final test of the independent influence of location on processing time, two dummy variables were added to the district-specified regression models for terminated cases (both the "claims" and the "no claims" models) in order to control for the effect of caseload size. One variable was set equal to one if the case was from a district with a caseload between 18 and 50 habeas cases per judge (medium caseload). The other variable was set equal to one if the caseload for the district was greater than or equal to 50 habeas cases per judge, which corresponded to the upper quartile of caseload size. The comparison was any case from a district with a caseload level of less than 18, roughly the lower quartile of caseload size.

The results of these additional analyses suggest that variations in processing time between districts are not entirely a function of state habeas caseload.[143] When compared to the analyses that did not take caseload into account, a district's relative influence on termination time was generally diminished in districts with the highest and lowest caseloads with the addition of caseload to the analysis. Indeed, in a few districts with high habeas caseloads such as MI-W and TX-N, caseload appeared to explain much of the relative variation in disposition time. After caseload was added to the analysis, these particular districts were no longer associated with longer disposition times. The analysis suggests that had these districts not had such high caseloads, they would have processed cases more quickly than IN-S. Most of the districts that showed a significant

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[141] Processing time may also vary between states for cases stayed for exhaustion, if review by state courts may take longer in some states than in others. Only a small percentage of non-capital cases in our sample were stayed, however, and the presence of a stay was independently assessed in one of the models and was not significant. The presence of a stay was not included in the survival analyses of all cases because of collinearity with the presence of an amended petition.

[142] Oklahoma, Tennessee, and Massachusetts cases did appear more likely to terminate than cases in Indiana in one of the two state-specified models.

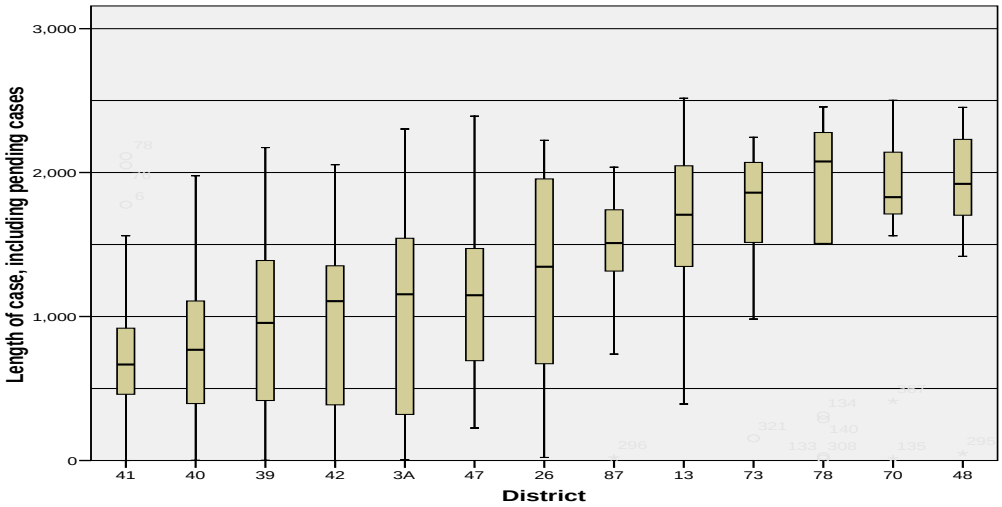
[143] In the district-specified model with claims information, cases filed in the highest caseload districts were not associated with processing times that were significantly longer than those filed in the lowest caseload districts. *See* Table 37, Appendix A. But in the model without claims information, cases from districts with the highest caseloads took almost 50% longer than those from districts with the lowest caseloads. *See* Table 38, Appendix A. Suprisingly, cases from districts with medium-sized caseloads ended *sooner* that the cases from districts with the lowest caseloads in both models, 23% to 27% sooner. It is possible that the presence of a moderately heavy habeas caseload prompts districts to develop efficiencies not developed in districts with relatively few habeas cases, and not achievable in the districts burdened by the highest habeas caseloads.

association with additional disposition time in the analyses without caseload continued, however, to show a significant association with additional disposition time once caseload was taken into account. The addition of the caseload variable to the analysis actually *increased* the influence of location on longer processing time for some districts. See Tables 35 and 36, Appendix A.

C. Capital case processing time

1. Analysis design. Termination times varied widely and varied by district. See Figures 15 and 18, above, and 22, below. More than one in every four of the *capital* cases was still pending and unresolved at the end of November 2006.

Figure 22. Length of case in days, by district, box chart.



See Appendix D or footnote 59 for a list of which districts correspond to the district numbers

One policy issue in particular is brought into sharp relief by these findings. There is a looming conflict between present practice and the statutory time limits for processing capital habeas cases that may bind federal courts in the near future. Given the length of time that capital habeas cases presently take to resolve, the statutory 450-day time limit for resolving capital habeas cases from states that may qualify for expedited review under AEDPA will pose a challenge for courts.[144] In the districts that we examined, the *average* processing time for capital cases is well over two and a half times that long. See Figures 18 and 22. Not one of the 13 districts in this study has completed its capital habeas cases in less than 500 days on average, even excluding stayed time. In some of these districts the average processing time after subtracting stayed time was more than *three and a half times as long* as 450 days. Examining only terminated cases and excluding those ended by transfer, only about 26% had been resolved in 450 days or less. Indeed, Arizona may be the first state to qualify for the expedited review requirements,[145] but the District of Arizona is among the slowest of the 13 districts in the study in terms of processing these cases, having completed less than a quarter of the cases filed between 2000 and 2002 by the end of 2006.

To examine possible explanations for the variation in case processing time which would help to inform debates about appropriate disposition periods for these cases, we used the same two analyses that were

[144] *See* 28 U.S.C. § 2266(b)(1)(A), effective March 9, 2006.
[145] *See* Spears v. Stewart, 283 F.3d 992 (9th Cir. 2002) (finding that state scheme for providing counsel satifies the statutory "opt-in" provisions, but was not followed for this petitioner).

employed for non-capital cases.[146] For terminated cases, we used multivariate regression, with the log transformation of the number of days that elapsed from beginning of a case to termination as the dependent variable. The features expected to be associated with longer processing time among terminated cases were the substitution of one petitioner's attorney for another attorney, the presence of amended petition, the length of the time period between beginning of case and the filing of a counseled petition, the presence of an evidentiary hearing, the presence of an order authorizing a deposition or examination, the use of a magistrate judge for a report and recommendation on the resolution of any claim, a greater number of claims in the petition, the length of the time period during which the case was stayed for exhaustion, and the presence of 11 specified claim types (listed in Table 20A and footnote 148). The application of procedural default to bar any claim was expected to be associated with shorter processing times. Petitioner race[147] was included but not expected to be associated with variance in processing time.

We examined termination times for capital cases using two basic models with two different sets of additional variables. In the "merit model" we examined whether longer processing times were associated with denial of any claim on the merits, or with the grant of relief on any claim. In the "reason model" we substituted variables with more specific measures of the reason for disposition in order to evaluate which, if any, of these reasons for dismissal were associated with shorter disposition times. Included were the application of *Teague* to bar review of any claim; application of statute of limitations to bar any claim; application of successive petition bar; and whether all claims were dismissed as unexhausted. For both the "reason" and the "merits" models, we explored alternative location specifications: 1) districts (using as the comparison FL-M, the district with the fastest average dispositions), 2) capital habeas case load per district,[148] and 3) death penalty law clerk staffing levels.[149]

In a separate effort to identify what may distinguish the longest cases from the shorter cases, we also used Cox's proportional hazard models to examine whether individual features were associated with a change in the hazard rate for termination, that is, the likelihood that the case would reach termination by late November 2006, when we completed our collection of data for these capital cases. For many features, the assumption of proportional effects over time was not appropriate. In other words, the difference in likelihood of termination associated with that feature *changed* the longer a case remained pending. For those variables that tests indicated had time-varying effects, we estimated the standard Cox model with the addition of an interaction effect.[150]

The features examined for their association with likelihood of termination in the Cox models were the same as those used in the terminated-case analyses, with the omission of termination-contingent variables. Omitted were variables assessing whether any claim was granted; application of statute of limitations to bar any claim; application of successive petition bar; whether all claims were dismissed as unexhausted; dismissal

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[146] Measure of time was the number of days to termination, or, for pending cases, the log of the number of days from the beginning of the case until the last week in November 2006, when all pending cases were rechecked to see if they had been resolved.

[147] Too few of the capital cases in our sample were filed by female petitioners to include gender of petitioner in the analyses. As with the non-capital cases, the number of docket entries was associated with processing time, but we ran the analyses without this variable. *See* note 130 *supra*.

[148] This continuous variable was the number of capital habeas cases filed per year in the district, see Judicial Business, *supra* note 16, divided by the number of authorized judges per district (provided by the Federal Judicial Center), averaged for the six years 2000 through 2005. This value ranged from 5.95 to .86 cases per judge. The districts, in order from heaviest to lightest average caseload, were: OH-S; AZ; NV; OK-W; CA-C; TX-N; TX-E; TX-W; AL-N; TX-S; FL-M; PA-E.

[149] This continuous variable was the number of death penalty law clerks assigned to each district, provided by the Federal Judicial Center, averaged over the six years 2001 through 2005, ranging from no clerks in PA-E to 5.5 in CA-C.

[150] *See* Jane M. Box-Steffensmeier & Christopher J.W. Zorn, *Duration Models and Proportional Hazards in Political Science*, 45 AM. J. POL. SCI. 972 (2001).

of any claim as defaulted; and the use of *Teague* to bar review of any claim. We explored the alternative specifications of the district (using as a comparison the district with the greatest proportion of pending cases, that is AZ); circuit (using as a comparison the Fifth Circuit, the circuit with the fewest cases pending); clerk staffing; and caseload. Case length was not evenly distributed but instead showed that about 10% percent of the capital cases ended very quickly (most of these were dismissals not on the merits, which we did not control for in our analysis of pending as well as terminated cases). Therefore we ran the second analysis both with and without the shortest 10% of cases.

2. Results

Terminated case regressions. The results of the regressions for terminated cases are summarized in Table 20. The analyses were able to explain over half of the variation in processing time for the capital cases that had reached termination.

As with the non-capital case regression tables, the value in brackets indicates the percentage difference in length associated with the presence of the feature, as compared to a case without that feature, all other features held constant. A negative value means that the feature was associated with *shorter* cases; a positive value means that the feature was associated with *longer* cases.

For the continuous variables, that is, days stayed and days to counseled petition, the value inside the brackets is the percentage difference in processing time for every additional day, all other features held constant. For caseload and clerk staffing, also continuous variables, the value indicates the difference in processing time associated with the addition of one more capital habeas case per judge or one more death penalty clerk or death penalty staff attorney per district.

Cox models with time interactions for non-proportionality, terminated and pending cases. Table 21 presents significant associations between a change in the likelihood of termination and various features.

Changes in the likelihood of termination are indicated by the change in the hazard rate, the first number by which asterisks appear indicating the degree of significance. If the change in the hazard rate *exceeds* one, the feature is associated with *shorter* processing time, that is, a greater likelihood of termination. If the change in the hazard rate is *less* than one, the feature is associated with *longer* processing time, that is, a lower likelihood of terminating.

For those features whose effect on the likelihood of termination changed over time, the table also includes the results for the "tvc" or time varying effect, indicating the change in the likelihood of termination associated with the feature in question later in the life of the longest lasting cases.

Table 20. (C) Regression of days for disposition (logged), terminated cases. (cont. next p.)

variable	*comparing by circuit*		*comparing by district*		*by no. of death penalty law clerks per district*		*by capital habeas caseload per judge*	
	reason model	*merit model*	*reason model*	*merit model*	*reason model*	*merit model*	*reason model*	*merit model*
am. petition	0.276**	0.322*	0.263*	0.323*	0.194+	0.251*	0.248*	0.297*
	(0.106)	(0.128)	(0.111)	(0.136)	(0.102)	(0.126)	(0.102)	(0.124)
	[0.**318**]	[0.**380**]	[0.**301**]	[0.**381**]	[0.**214**]	[0.**285**]	[0.**281**]	[0.**346**]
magistrate R&R	0.746**	0.557**	0.636***	0.415*	0.619***	0.444*	0.630**	0.462*
	(0.190)	(0.191)	(0.190)	(0.193)	(0.181)	(0.172)	(0.183)	(0.189)
	[**1.109**]	[0.**745**]	[0.**889**]	[0.**514**]	[0.**857**]	[0.**559**]	[0.**878**]	[0.**587**]
# claims raised	-0.005	-0.000	-0.008+	-0.002	-0.004	-0.000	-0.005	-0.000
	(0.004)	(0.005)	(0.005)	(0.006)	(0.004)	(0.004)	(0.004)	(0.004)
			[-0.008]					
days stayed	-0.000	0.001	0.000	0.001	0.000	0.001*	0.000	0.001*
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
						[0.001]		[0.001]
days to counseled petition	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
	(0.000)	(0.001)	(0.000)	(0.001)	(0.000)	(0.001)	(0.000)	(0.001)
	[0.001]	[0.001]	[0.001]	[0.001]	[0.001]	[0.001]	[0.001]	[0.001]
all claims unexhausted	-0.792		-0.960+		-0.849		-0.736	
	(0.583)		(0.514)		(0.517)		(0.596)	
			[-0.617]					
any time-barred claim	0.618*		0.749**		0.382+		0.478*	
	(0.267)		(0.271)		(0.228)		(0.227)	
	[0.855]		[1.115]		[0.465]		[0.613]	
any defaulted claim	0.345**	0.183	0.451***	0.239	0.271*	0.141	0.305*	0.158
	(0.127)	(0.176)	(0.133)	(0.173)	(0.120)	(0.171)	(0.118)	(0.167)
	[0.412]	[0.201]	[0.570]		[0.311]		[0.357]	
successive petition	-3.150**		-3.336***		-3.158***		-3.228***	
	(0.635)		(0.563)		(0.642)		(0.621)	
	[-0.957]		**[-0.964]**		**[-0.957]**		**[-0.960]**	
any IAC claim	0.628*	0.970**	0.592*	0.998**	0.674**	1.016**	0.636**	0.959**
	(0.252)	(0.320)	(0.255)	(0.331)	(0.251)	(0.320)	(0.245)	(0.316)
	[0.874]	[1.638]	[0.808]	[1.713]	[0.962]	[1.762]	[0.889]	[1.609]
any competency claim	0.389*	0.326+	0.445**	0.357+	0.399*	0.361+	0.327*	0.286
	(0.155)	(0.186)	(0.162)	(0.187)	(0.165)	(0.194)	(0.158)	(0.177)
	[0.476]	[0.385]	[0.560]	[0.429]	[0.490]	[0.437]	[0.387]	
pros. misconduct or *Brady*	0.413*	0.239	0.482**	0.274	0.494**	0.343+	0.469**	0.291
	(0.178)	(0.190)	(0.180)	(0.193)	(0.178)	(0.191)	(0.174)	(0.183)
	[0.511]		[0.619]		[0.639]	[0.409]	[0.598]	
jury selec, miscond. Bias	0.148	0.226+	0.175	0.243+	0.211+	0.298*	0.158	0.242+
	(0.109)	(0.130)	(0.112)	(0.130)	(0.110)	(0.132)	(0.107)	(0.127)
				[0.275]	[0.235]	[0.347]		[0.273]
Roper, *Atkins*, or *Ring* claim	0.414**	0.494*	0.506***	0.545*	0.378**	0.475*	0.370**	0.476*
	(0.145)	(0.201)	(0.147)	(0.211)	(0.141)	(0.195)	(0.140)	(0.194)
	[0.513]		[0.659]	[0.725]	[0.459]	[0.608]	[0.448]	[0.610]
was at least one claim granted?		0.432*		0.515**		0.554**		0.490**
		(0.183)		(0.185)		(0.175)		(0.164)
		[0.540]		[0.674]		[0.740]		[0.632]
at least one claim denied on merits?		0.806**		0.792**		0.762**		0.775**
		(0.282)		(0.289)		(0.284)		(0.279)
		[1.240]		[1.208]		[1.143]		[1.171]

+ significant at 10%; * significant at 5%; ** significant at 1%; *** significant at .10%

Robust standard errors in parentheses; percentage difference in length associated with specified variable in brackets

Table 20. (C) Regression of days for disposition (logged), terminated cases, (cont.)

	comparing by circuit		*by no. of death penalty law clerks per district*		*by capital habeas caseload per judge*		*comparing by district*	
	reason model	*merit model*	*merit model*	*reason model*	*reason model*	*merit model*	*reason model*	*merit model*
PA-E			0.384 (0.460)	0.901+ (0.520) [1.462]				
AL-N			0.194 (0.462)	0.389 (0.542)				
TX-N			0.171 (0.444)	0.289 (0.491)				
TX-E			0.245 (0.456)	0.901+ (0.528) [1.462]				
TX-S			-0.016 (0.426)	0.076 (0.454)				
TX-W			-0.102 (0.453)	0.103 (0.491)				
OH-N			0.169 (0.440)	0.588 (0.474)				
OH-S			0.795 (0.523)	1.212* (0.503) [2.360]				
CA- C			2.002* (0.899) [6.404]	1.972* (0.804) [6.185]				
OK-W			0.836+ (0.454) [1.307]	1.078* (0.535) [1.939]				
AZ			-0.126 (0.717)	0.047 (0.864)				
NV			-0.063 (0.595)	-0.077 (0.534)				
Av # death pen. clerks per district					0.175 (0.123)	0.249+ (0.132) [0.283]		
Average cap. habeas cases per judge							0.165* (0.073) [0.179]	0.127 (0.077)
3 Circuit (PA-E only)	0.615* (0.260) [0.850]	0.411 (0.253)						
6 Circuit (OH- S & N only)	0.375 (0.230)	0.235 (0.227)						
9 Circuit (AZ; CA-C; NV only)	0.264 (0.463)	0.499 (0.499)						
10 Circuit (OK-W only)	0.818* (0.336) [1.266]	0.804** (0.270) [1.234]						
11th Circuit (FL-M & AL-N only)	-0.029 (0.327)	0.076 (0.272)						
Constant Fl-M; 5C			3.698** (0.458)	4.421** (0.538)	4.476** (0.433)	3.462** (0.390)	4.425** (0.382)	3.644** (0.397)
Observations	267	267	267	267	267	267	267	267
R-squared	0.63	0.51	0.53	0.67	0.63	0.51	0.63	0.50

+ significant at 10%; * significant at 5%; ** significant at 1%; *** significant at .10%

Robust standard errors in parentheses; percentage difference in length associated with specified variable in brackets.

Table 21. (C) Cox regression models, change in probability of termination over time.

Model	**caseload all cases**	**caseload no short**	**district all cases**	**district no short**	**circuit all cases**	**circuit no short**	**clerk all cases**	**clerk no short**
LR chi2	(23)316.09	(22)241.28	(35)428.66	(33)339.77	(28)400.16	(27)293.23	(22)284.29	(22)203.12
Prob > chi2	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000
Observations	353	330	353	330	353	330	353	330
Am. petition	0.701*	0.726*	0.686*	0.001***	0.008**	0.007*	0.752+	
	(0.111)	(0.117)	(0.116)	(0.002)	(0.014)	(0.014)	(0.117)	
(tvc)				2.674**	1.943**	2.094**		
				(0.760)	(0.489)	(0.562)		
atty sub'd	0.696+				0.618*	0.665+	0.598*	0.613*
	(0.150)				(0.141)	(0.154)	(0.129)	(0.134)
mag.j. R&R					0.709+	0.711+		
					(0.136)	(0.144)		
claim no.	0.978***	0.978***	0.979***	0.985**	0.986**	0.985**	0.978***	0.977***
	(0.005)	(0.005)	(0.006)	(0.005)	(0.005)	(0.005)	(0.005)	(0.005)
stayed time	0.997***	0.997***	0.997***	0.997***	0.997***	0.997***	0.997***	0.997***
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.010)	(0.000)***
rep.pet. time	0.977***	0.981***	0.975***	0.976***	0.976***	0.978***	0.978***	0.983***
	(0.003)	(0.004)	(0.004)	(0.004)	(0.004)	(0.004)	(0.003)	(0.004)
(tvc)	1.003***	1.003***	1.003***	1.003***	1.003***	1.003***	1.003***	1.002***
	(0.000)	(0.001)	(0.001)	(0.001)	(0.001)	(0.001)	(0.000)	(0.001)
ineff. asst.			0.001***		0.004***		0.622*	
			(0.001)		(0.005)		(0.122)	
(tvc)			2.962***		2.344***			
			(0.638)		(0.490)			
caseload	0.687***	0.675***						
(continuous)	(0.043)	(0.044)						
clerk staff							0.795**	0.866+
							(0.059)	(0.068)
Circuit 3					0.152***	0.137***		
					(0.065)	(0.059)		
Circuit 6					0.479*	0.404**		
					(0.138)	(0.118)		
Circuit 9					0.097***	0.081***		
					(0.034)	(0.031)		
Circuit 10					0.368**	0.348**		
					(0.108)	(0.107)		
Circuit 11					0.537*	0.409**		
					(0.149)	(0.127)		
AL-N			5.635**	6.389**				
			(3.471)	(4.487)				
FL-M			6.487**	9.035**				
			(4.334)	(6.887)				
TX_N			6.325**	11.379***				
			(3.682)	(7.637)				
TX-E			10.192***	22.688***				
			(5.964)	(15.389)				
TX-S			16.649***	36.313***				
			(9.510)	(24.193)				
TX-W			7.466**	11.611***				
			(4.426)	(7.916)				
OH-N			8.518***	11.754***				
			(5.137)	(7.978)				
CA-C				4.086+				
				(3.392)				
OK-W				6.611**				
				(4.684)				
Constant			AZ	AZ	5th Circuit	5th Circuit		

+ significant at 10%; * significant at 5%; ** significant at 1%, *** significant at 0.1%
Robust standard errors in parentheses

Based on both sets of analyses, several features appeared to be significantly associated with the variance in disposition time and length of case for capital cases in our sample. [151]

Amended petitions. An amended petition lengthened the time for termination of capital cases, adding between 21% and 38% more days to disposition, controlling for other factors. See Table 20. Table 21, reporting the results for the Cox analysis of all cases, including those that had not yet been terminated in the several districts where most of the cases were still pending (AZ, NV, CA-C, OH-S, and PA-E), showed that later on as cases aged, those with amended petitions were about twice as likely to have reached conclusion compared to those that lacked an amended petition. This would be consistent with a pattern in which within a given circuit or district, a case was more likely to terminate once an amended petition was filed, but that in some of the oldest cases no amended petition had yet been filed. This is the situation in Nevada, for example, where several cases were still stayed for exhaustion in state court, and where amended petitions are typically filed following the lifting of the stay for exhaustion.

Magistrate judge reports. Longer disposition times among terminated cases were also associated with the use of magistrate judges for a report and recommendation on the disposition of claims. The extra steps required when a district judge refers the case for an initial opinion from a magistrate judge can include the report and recommendation itself, objections to the report, a reply to the objections, and even, as in the Southern District of Ohio, a supplemental report and recommendation with another round of objections. These extra steps led to between 56% and 89% more days before disposition on average for cases in which a report and recommendation was filed. This relationship between the use of magistrate judges for dispositive rulings and the length of the case was less evident once all cases (whether terminated or not) were compared. This is expected because fewer of the longest cases had reached the stage where a magistrate's report and recommendation regarding disposition of claims would have been filed.

Substitution of counsel. The substitution of a petitioner's attorney was unrelated to disposition time. It slowed a case's progression toward termination only when the district was left unspecified. In other words, within any given district, the likelihood that a case would terminate does not change if the petitioner secures new counsel. This is consistent with findings that the districts with fewer terminated cases also had more counsel substitutions. Indeed, 48% of cases in OH-S and 30% cases in AZ (both districts in which over 60% of cases had not yet reached conclusion) included a substitution.

Discovery, evidentiary hearings. Analyses of cases that had reached termination showed that disposition time was not significantly lengthened by a judge's decision to authorize a discovery deposition or a mental or physical examination, nor by the decision to hold an evidentiary hearing, once other factors were taken into account.[152] Neither did discovery or an evidentiary hearing have any significant effect on the likelihood of termination when evaluating terminated and non-terminated cases, controlling for other factors.

Stays for exhaustion. Among terminated cases, the length of a stay for exhaustion had no significant effect on termination time, once location was specified. In other words, comparing only cases that had been completed in any given district, the presence or absence of a stay for exhaustion did not make a significant

[151] The following factors were not significant in the models of terminated cases: petitioner race, substitution of one petitioner's attorney for another, any claim *Teague*-barred, any claim of innocence of guilt, any claim of delayed trial or appeal or right to be present at trial or right to a public trial, any jury instruction or judicial comment claim, any claim of insufficient evidence of guilt (reason model had this barely significant when controlling for circuits only, suggesting that cases including this claim took 28% more days than those without this claim), whether the petitioner challenged sentencing phase only, any claim of improper admission or exclusion of evidence, whether the court ordered discovery, and whether the court ordered an evidentiary hearing.

[152] Because of small numbers or interactions with other variables, we did not include these features in the analysis of non-capital disposition time.

difference. But stays had a strong effect on the likelihood that a case would be terminated. For every additional 100 days that a case was stayed, termination was 30% less likely. This is consistent with two findings: 1) that of the seven districts with the fewest cases resolved, five were also among the six districts with the longest average stayed periods; 2) only 17% of the cases with stays had reached termination compared to 71% of those cases without stays.

Time period for preparation of counseled petition. Longer periods of time before a counseled petition extended disposition times. Among terminated cases, each 10 additional days increased the time for termination by 1%. Also, in the first few months in any given district and controlling for other factors, a case was 20% less likely to terminate for every 10 additional days that elapse prior to the filing of a counseled petition.[153]

Number of claims. The greater the number of claims raised in a petition, the less likely the case was to reach termination. Controlling for other factors, including location, termination was 20% less likely for every 10 additional claims. This was consistent with our finding that of the 7 districts with the fewest cases resolved, six of those districts were also among the seven districts with the most claims per petition. For terminated cases, the number of claims was significant in only one of the six models, and only at the 10% significance level. This suggests that even though the number of claims does have an effect in delaying termination generally, for cases that had already been resolved by the end of November 2006, the number of claims did not make much of a difference in the time for disposition.

Claim type. Among all of the claim types investigated, ineffective assistance of counsel was the only one associated with both reducing the likelihood of termination[154] and lengthening disposition time. It added from 81% to 176% more days to complete than in terminated cases without an ineffective assistance claim. Among terminated cases, some additional claims were associated with longer disposition times: 1) a claim challenging the petitioner's competency at trial; 2) a claim of prosecutorial misconduct (improper argument, *Brady* violations, presentation of false evidence, destruction of evidence, intimidation of witnesses, etc.), and 3) a claim of error in jury selection, misconduct, or bias. *Roper*, *Atkins*, and *Ring* claims (regarding eligibility for execution) also added 46% to 73% more days to disposition for terminated cases. Other claims, including claims of new evidence of innocence, were not significantly related to the variance in disposition time.

Defenses and reasons for dismissal. In our analysis of terminated cases, in any given district and controlling for other factors, a successive petition took about half the time (96% *fewer* days) to complete as a case that was not dismissed as successive. Another potentially speedy disposition, namely dismissal because of the statute of limitations, was not faster at all.[155] Instead, among the capital cases that had already terminated, a ruling that a claim was time-barred added 47% to 112% *more* days to disposition compared to cases without such a ruling, on average and after controlling for other factors. Procedural default rulings appear to slow down processing time of terminated cases as well. Cases including at least one claim rejected

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[153] The relationship between likelihood of termination and the change in the period before a counseled petition was not constant over the life of these cases. For the cases that last the longest, each additiona1 10 days before the counseled petition was filed raised the likelihood of termination by about 3%.

[154] A case with an IAC claim was initially much less likely to terminate than one that lacked such a claim, a relationship that did not show up in any of the models once the shortest cases were removed. This suggests that several of the shortest cases lacked IAC claims. This makes sense, given the findings noted earlier in the report that 29% of the Texas cases lacked a single IAC claim compared to only 8% of the cases from districts outside of Texas, and that of the 70 cases without an IAC claim, 47 were dismissed without reaching the merits.

[155] "*AEDPA was supposed to speed things up*. Significant new provisions like the time bar, if honestly applied, should have *reduced* disposition times, *especially* for non-capital cases." Ronald Eisenberg, Testimony before the Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, House of Representatives, November 16, 2005, at 8 (emphasis in original).

as defaulted took 30% to 57% longer than cases without such a ruling, holding other factors constant.[156] (These termination-contingent covariates were not included in the analyses investigating the likelihood of termination.)

Merits review. Terminated cases in which the court *granted* the writ on any claim took 54% to 74% more days to complete, a finding consistent with other studies of capital cases which concluded that it takes a reviewing court longer to disturb than to affirm a state capital conviction or sentence.[157] Controlling for other factors, any case with at least one claim denied on the merits took more than twice as long on average as other cases, that is, from 114% to 121% longer. (These termination-contingent covariates were not included in the analyses investigating the likelihood of termination.)

Caseload. Controlling for caseload, a greater number of capital habeas petitions per judge was associated with slower and fewer dispositions. Each additional capital habeas case per judge added about 18% more days to disposition time for terminated cases, controlling for factors other than location. Each additional capital habeas case per judge *reduced* the likelihood that a case would be terminated by about 32%, controlling for other factors.

Specialized staff, death penalty law clerks. Because death penalty clerk positions are allocated by caseload and caseload is associated with longer and fewer dispositions, it was no surprise that an increase in the number of death penalty law clerks was associated with *longer* not shorter disposition times, and with a lower likelihood of termination, after controlling for other factors. Each additional clerk was associated with a decrease of between 16% and 19% in the likelihood of termination. Again, this does not indicate whether the disposition times in a district with a relatively high numbers of specialized staff would be longer or shorter without the extra staff. It only suggests that holding everything but location constant, districts with more death penalty law clerks are slower in processing capital habeas cases than districts with fewer clerks. An analysis of individual districts over time as clerk staffing levels change may be a useful investigation.

Location. To various degrees, the identity of the federal court in which the case was filed was correlated with disposition time and the likelihood of termination, even after controlling for case-specific features.

Comparing *terminated* cases only, OK-W was consistently associated with longer average disposition times, whether comparing districts or circuits, in all four models. Table 20. PA-E was significantly longer as well, but only in the two models controlling for the reason for disposition. These differences were observed after controlling for stayed periods, number of claims, dismissal of defaulted claims, use of amended petitions, and other factors. The small number of cases that had reached termination in the Ninth Circuit were not significantly longer than the terminated cases in the Fifth Circuit, after controlling for other factors.

Evaluating both terminated and non-terminated cases for likelihood of termination, however, produced different results. By this measure, OK-W was not the slowest of the thirteen districts. The results of five different models examining the effect of location on the likelihood of termination are included in Table 21. Examining location alone without also controlling for caseload showed that AZ, OH-S, NV, and PA-E were all associated with less progress towards termination than other districts. A capital habeas case started in any of the thirteen districts other than OH-S, NV, and PA-E was significantly more likely to reach termination

[156] In one model, cases in which all claims were dismissed as unexhausted were speedier as well. These cases took 62% *fewer* days to complete than other cases, controlling for other factors including district.
[157] Fagan et al., *supra* note 42; Latzer & Cauthen, *supra* note 43.

than a case filed in the District of Arizona, which had the lowest percentage of terminated capital cases in the sample.[158]

Comparing the likelihood of termination by circuit produced similar results. Controlling for other factors, cases filed outside of Texas were significantly less likely to be completed than those filed in the four Texas districts within the Fifth Circuit. For example, a case filed in the one district in our sample from the Third Circuit (PA-E) was 85% less likely to be completed than a case filed in the Fifth Circuit. Cases from the three districts in the Ninth Circuit (AZ, NV, and CA-C) were 90% less likely to be concluded than cases from the four Texas districts in the Fifth Circuit.

To examine whether the influence of location remained after controlling for capital habeas caseload, we added to the Cox regression model that specified districts two dummy variables for caseload (medium caseload, between 1.5 and three capital cases per judge, and high caseload, that is, more than three cases per judge). See Table 37. The results suggest that differences in likelihood of terminating in some districts are somewhat but not completely a function of a higher capital caseload. The presence of a high capital habeas caseload was independently associated with slowed progress toward termination. Four districts that had been significantly associated with a higher likelihood of termination than AZ when caseload was not included were no longer significantly associated with a difference in termination likelihood once caseload was added. The relative increase in the likelihood of termination associated with two of the Texas districts was diminished, but remained significant. The increased likelihood of termination in one district, OK-W, was unchanged. One district that showed no significant association of with a difference in the likelihood of termination in the district model, PA-E, became significantly associated with a *decrease* in the likelihood of termination as compared to AZ once caseload was controlled.

These analyses confirm that the location where the case is filed has a significant impact on how soon it will be terminated, even after controlling for features associated with disposition time, including number of claims, stay length, time before the counseled petition is filed, the use of a magistrate judge, petitioner race, claim type, use of discovery or evidentiary hearing, substitution of counsel, and capital caseload.

D. Factors associated with likelihood of relief in capital cases

Of the 267 terminated (not transferred) capital cases in our sample, 33 received relief. The grant rate varied by district, from a high of 75% (six of eight cases) in PA-E to 0% in three districts – FL-M (zero of 10 cases), CA-C (zero of five cases), and NV (zero of six cases). See Table 11, Part II. Some claims may be associated with relief. See Table 12, Part II. AEDPA contains several provisions that could contribute to a lower grant rate, including: greater restrictions on evidentiary hearings (if indeed evidentiary hearings are associated with a higher likelihood of relief); limitations barring merits review of claims that could be meritorious (successive petitions, statute of limitations); and a more deferential standard of review for state decisions of fact and law. We tested whether the presence of various features was associated with a lower or higher probability of relief using an analysis assessing likelihood of grant.

[158] Cases from CA-C and OK-W showed an increase in likelihood of termination only when omitting the 10% shortest cases.

Table 22. (C) Results of probit analysis of likelihood of grant (cont. next page).[159]

model controls for >	CIRC'S IACANY	DIST'S IACANY	STATES IACANY	CIRCUITS IACSENT	DIST' S IACSENT	STATES IACSENT
variable ∨						
evidentiary hearing held probit coeff	1.051**	1.318***	1.063**	1.095**	1.466***	1.083**
(r.s.e.)	(0.374)	(0.387)	(0.379)	(0.377)	(0.402)	(0.387)
Dprobit coeff	[0.**211**]	[0.**291**]	[0.**241**]	[0.**210**]	[0.**315**]	[0.**231**]
deposition or exam ordered	0.810*	0.768*	0.731*	0.792*	0.669+	0.685+
	(0.351)	(0.335)	(0.349)	(0.378)	(0.365)	(0.366)
	[0.142]	**[0.128]**	**[0.141]**	**[0.127]**	**[0.093]**	**[0.119]**
at least one claim barred as defaulted	-0.394	-0.354	-0.376	-0.429	-0.371	-0.446+
	(0.260)	(0.282)	(0.258)	(0.263)	(0.292)	(0.265)
	[-0.044]	[-0.039]	[-0.050]	[-0.044]	[-0.035]	**[-0.054]**
default defense rejected on any claim	0.720*	0.777*	0.828**	0.750*	0.790*	0.860***
	(0.303)	(0.327)	(0.295)	(0.301)	(0.328)	(0.294)
	[0.**111**]	[0.**120**]	[0.**154**]	[0.**108**]	[0.**108**]	[0.**149**]
claim of innocence of capital murder included in case	0.667+	0.694+	0.592	0.760*	0.811*	0.678+
	(0.370)	(0.382)	(0.380)	(0.367)	(0.387)	(0.375)
	[**0.109]**	[**0.113]**	[**0.108]**	**[0.121]**	**[0.125]**	**[0.119]**
any claim of ineffective assistance included in case	0.410	0.379	0.375			
	(0.374)	0.391	(0.395)			
	[0.037]	[0.034]	[0.042]			
claim of ineffective assistance for sentencing included in case				0.808**	0.933**	0.842***
				(0.290)	(0.303)	(0.297)
				[0.072]	**[0.076]**	[**0.089**]
presence, public or delay claim included in case	0.387	0.525	0.241	0.619+	0.874*	0.466
	(0.365)	(0.395)	(0.427)	(0.375)	(0.406)	(0.447)
	[0.054]	[0.079]	[0.036]	[0.**092]**	[0.**145]**	[0.074]
insufficient evidence of sentencing factor claim included in case	-0.487	-0.511	-0.609+	-0.512	-0.551	-0.601+
	(0.334)	(0.358)	(0.359)	(0.328)	(0.353)	(0.346)
	[-0.044]	[-0.044]	**[-0.063]**	[-0.041]	[-0.040]	**[-0.056]**
Roper, *Atkins*, or *Ring* claim included in case	0.720*	0.605+	0.479	0.804**	0.701*	0.539+
	(0.298)	(0.332)	(0.321)	(0.299)	(0.335)	(0.327)
	[**0.116**]	[**0.090**]	[0.079]	[**0.125]**	[**0.096**]	[**0.084**]
number of claims raised	-0.026**	-0.032**	-0.015	-0.029**	-0.036***	-0.017
	(0.010)	(0.011)	(0.010)	(0.010)	(0.011)	(0.011)
	[-0.003]	**[-0.003]**	[-0.002]	**[-0.003]**	**[-0.003]**	[-0.002]

Robust standard errors in parenthesis; dprobit coefficients in brackets
+ Significant at 10%; * significant at 5%; ** significant at 1%; *** significant at .10%

[159] To interpret, the number in brackets is the difference in probability of relief associated with the variable: E.g.:
for the model that controls for districts and ineffective assistance at sentencing claims ("DISTRICTS IACSENT"),
1) a case in which an evidentiary hearing was held was 32 percentage points more likely to result in a grant than a case in which an evidentiary hearing was not held, controlling for other factors.
2) a case in the Northern District of Texas was nine percentage points less likely to result in a grant than a case from the Eastern District of Pennsylvania, controlling for other factors.
3) Each additional claim raised in a petition was associated with a reduction in the likelihood of relief of 0.3%.

Table 22. (C) Results of probit analysis of likelihood of grant (cont.).

model controls for > variable ∨	CIRCUITS IACANY	DISTRICTS IACANY	STATES IACANY	CIRCUITS IACSENT	DISTRICTS IACSENT	STATES IACSENT
Circuit 5 (4 districts in TX only)	-2.602*** (0.646) **[-0.517]**			-2.459*** (0.645) **[-0.457]**		
Circuit 6 (OH-N & OH-S only)	-1.857** (0.637) **[-0.078]**			-1.769** (0.648) **[-0.068]**		
Circuit 9 (AZ, CA-C, & NV only)	-2.261** (0.719) **[-0.072]**			-2.109** (0.728) **[-0.062]**		
Circuit 10 (OK-W only)	-3.056*** (0.820) **[-0.073]**			-2.951*** (0.822) **[-0.064]**		
Circuit 11 (FL-M & AL-N only)	-1.969** (0.689) **[-0.077]**			-1.902** (0.701) **[-0.068]**		
Alabama Northern District		-1.545* (0.758) **[-0.062]**			-1.509+ (0.780) **[-0.051]**	
Texas Northern District		-2.643*** (0.738) **[-0.113]**			-2.502*** (0.750) **[-0.092]**	
Texas Eastern District		-2.884*** (0.739) **[-0.090]**			-2.534*** (0.747) **[-0.071]**	
Texas Southern District		-2.983*** (0.704) **[-0.251]**			-2.950*** (0.707) **[-0.220]**	
Texas Western District		-2.369** (0.764) **[-0.087]**			-2.202** (0.765) **[-0.070]**	
Ohio Northern District		-1.531* (0.664) **[-0.066]**			-1.333* (0.671) **[-0.053]**	
Ohio Southern District		-2.651** (0.919) **[-0.060]**			-2.641** (0.904) **[-0.050]**	
Arizona District		-1.772* (0.897) **[-0.056]**			-1.471 (0.929) **[-0.045]**	
Oklahoma Western District		-3.194*** (0.866) **[-0.074]**			-3.135** (0.881) **[-0.061]**	
State of Texas (all)			-1.134** (0.402) **[-0.207]**			-0.997* (0.404) **[-0.161]**
Constants: 3 Cir., PA-E, PA	0.389 (0.709)	0.554 (0.758)	-1.116* (0.468)	0.128 (0.720)	0.151 (0.771)	-1.422** (0.475)
Observations	266	245^	245^	266	245^	245^
Prob > chi2	0.0000	0.0000	0.0001	0.0000	0.0000	0.0002

+ Significant at 10%; * significant at 5%; ** significant at 1%; *** significant at .10%.

^ FL, CA, and NV cases had no grants. States of OH, AL, and PA were not significant in states comparisons.

Table 22 presents significant associations [160] for six models testing the relationship between specified features and the odds of ending in a grant. The first three models control for whether the case included any claim of ineffective assistance expected to be associated with a higher likelihood of relief compared to those cases that lacked ineffective assistance claims. The second three substitute for this variable whether the case included a claim of ineffective assistance for the sentencing stage. This subset of ineffective assistance claims appeared to be the primary basis for grants of relief in cases from PA-E. Within each model, we examined the effect of circuit, district, and state. For descriptive information about each feature, including distribution among districts, see Part I.

Evidentiary hearings and discovery. Turning first to the features that remained significant regardless of other specifications, one stands out in particular, that is, whether or not the federal court held an evidentiary hearing. An evidentiary hearing has a more powerful relationship with the probability of relief than any variable other than location. It increases the likelihood of relief by 21 to 32 percentage points, after controlling for other factors. Also increasing the likelihood of relief (by nine to 12 percentage points) was an order of discovery and (by about 11 to 15 percentage points) the rejection of the defense of procedural default on any claim. Combining this finding with the analyses of disposition time, these results suggest that neither a judge's decision to order a hearing nor an order of discovery is linked to greater delay in resolution of the capital cases in our sample. Both are associated with an increased likelihood that the federal court will grant the writ. It is unclear whether evidentiary hearings and discovery are granted because the judge first determines that a claim is potentially meritorious, or whether the causal relationship operates in the other direction, with discovery and hearings revealing proof of merit that would otherwise be unavailable.

Claim type. The presence of three types of constitutional claims in the petition also was associated with a greater likelihood of relief. A *Roper*, *Atkins*, or *Ring* claim raised the likelihood that a case would receive relief by about 10 percentage points. Nine of the 33 cases involving a grant received relief on this basis. Another subset of cases included sentences overturned because of ineffective assistance of counsel at the sentencing stage. After controlling for other factors, the presence of this claim raised the likelihood that the case would be granted by about 8 percentage points. (Note that an unspecified claim of ineffective assistance of counsel had no significant association with relief; only when claims alleging failings related to sentencing were specified did the significant relationship appear.) Finally, a claim raising new evidence of innocence of guilt was related to a higher likelihood of a grant, raising it by about 11 percentage points. Actually, in none of the 33 cases receiving relief did the federal court grant relief *because* it concluded that the defendant had advanced convincing proof of factual innocence that was not presented in the state trial court. Instead, it appeared that the presence of an innocence claim operated somehow to make a grant of relief on a *different* claim more likely. Six other claim types were examined and none were significant in relation to whether or not the federal court granted a writ. [161]

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[160] Not significantly associated with a change in the probability of relief were petitioner race (expected to have no association with likelihood of relief); whether an amended petition was filed (expected to increase likelihood of relief); the substitution of petitioner's attorney (expected to decrease probability of relief); the presence of a magistrate judge report and recommendation (expected to decrease the likelihood of relief); a claim challenging the admission or exclusion of evidence, including search and seizure and confession violations ; a jury selection misconduct or bias claim; a competency claim; a jury instruction claim; a claim of delay of appeal or transcript; insufficient evidence of guilt claim; greater number days before filing of counseled petition standard of review (expected to increase likelihood of relief). We also ran all of these with the additional control of the continuous variable ST2FED, the time interval in days between state judgment and federal filing, expecting that the longer the period before the federal filing the higher the probability of relief. It was barely significant at the 10% level for the two state-specified models only, indicating that for each additional day before filing, a grant became just slightly more likely.

[161] A review of the docket sheets of the 95 pending cases as of May 2007 found that since coding closed in November 2006, only three additional cases had been resolved. Of these, two were granted relief. An *Atkins* claim was the basis for relief from sentence in a case from AL-N and a *Brady* claim persuaded the district judge to order relief from both conviction and sentence for a petitioner in OH-N. The third case, from OH-N, included a claim of actual innocence.

Standard of review. A simple comparison of cases that applied the deferential standard of review with those that did not suggested that AEDPA's deferential standard would reduce the likelihood of a grant. Once other factors were taken into account in this more detailed analysis, however, the application of a standard of review other than that specified by 28 U.S.C. § 2254(d) had no significant relationship to the likelihood of relief. This suggests that once other factors are taken into account, AEDPA's new standard of review for state court decisions is not suppressing relief, at least for this set of already terminated capital cases.

Number of claims and preparation time. Consistent with pre-AEDPA research, we found that relief is more likely for petitions raising fewer claims. Specifically, for every additional claim raised, the likelihood of relief declines about 0.3 percentage points. Combining this finding with the analysis of timing, it appears that additional claims increase the processing time for these cases but do not raise the odds of relief. A somewhat related finding was that the time that elapses before the filing of a counseled petition had no relationship to the likelihood of a grant. This suggests that lengthier periods for preparation of the petition do not independently raise a petitioner's chances either.

Location. In controlling for district, circuit, and state in this analysis of probability of relief, we used as our comparison PA-E in the Third Circuit where 6 of 8 terminated cases ended with the court granting the writ. This grant rate of 75% far exceeded the rate in any other jurisdiction in our sample. See Table 22. Under all specifications, after all other features were taken into account (including the types of claims raised, the number of claims whether there was a hearing or discovery, and whether the default defense was rejected on any claim), location remained significant. Texas cases were associated with likelihood of relief that was about 7 to 22 percentage points *lower* than PA-E when comparing districts, 16 to 21 percentage points lower when comparing states, and 46 to 52 percentage points lower comparing circuits.[162]

CONCLUSION

Two general points should be emphasized in closing. First, this new information about habeas litigation addresses only one level of federal habeas review – the district court. Although litigation in non-capital cases is largely a district court phenomenon,[163] a large portion of capital cases are regularly appealed to the upper levels of the federal court system. Further research is needed into the appellate review of habeas cases under AEDPA. Examination of the appellate review of the specific cases in this study would be a logical next step, but must await the disposition of the significant portion of those cases still unfinished in the district courts.

Second, any recommendations for policy change are beyond the scope of this particular study. The research provides a rich source of empirical information with which policy options can be explored.

[162] In addition, AL-N and Ohio capital cases were 5 to 8 percentage points less likely than cases in PA-E to end in relief, whether comparing districts or circuits, but were not significantly different when comparing states.

[163] Only a tiny portion of non-capital habeas petitioners are granted a certificate of appealability by the district court, and the number of such certificates granted by the appellate courts is probably also quite small.

Appendix A: Statistical Analyses Tables

Table 23: (NC) Cox regression probability of termination over time, by district.

	District Comparisons							
Model	**No Claims**				**Claims**			
Observ's	1954				1246			
Log likelihood	-10892.511				-6312.006			
LR chi2(18)	2088.900				1390.930			
Prob > chi2	0.000				0.000			
Covariate	**Coef.**	**Std. Err.**	**P>z**	**%Change in Hazard Rate**	**Coef.**	**Std. Err.**	**P>z**	**% Change in Hazard Rate**
amended petition	-1.821	0.441	0	-83.81%	-0.280	0.102	0.006	-24.40%
answer, mo to dism	-8.718	0.544	0	-99.98%	-8.916	0.765	0	-99.99%
magistrate judge R&R	-2.328	0.273	0	-90.25%	-2.530	0.363	0	-92.03%
notice of appeal filed	-1.618	0.304	0	-80.17%	-1.655	0.400	0	-80.90%
no. of claims	-0.071	0.009	0	-6.89%	-0.044	0.012	0	-4.34%
prior petition dismissed w-o prej	-0.414	0.180	0.021	-33.91%	-0.392	0.221	0.076	-32.44%
petitioner had atty	-2.545	0.796	0.001	-92.15%	-0.338	0.128	0.009	-28.67%
defaulted claim					-4.705	0.791	0	-99.09%
jury misconduct					0.560	0.218	0.01	75.07%
judicial bias					0.305	0.210	0.146	35.69%
speed, public, pres.					-0.260	0.152	0.087	-22.88%
petitioner incompetence					-0.261	0.259	0.313	-22.98%
evidentiary claim					-0.261	0.093	0.005	-22.98%
improper comment by prosecutor					-0.004	0.120	0.971	-0.43%
false, lost, or undisclosed evidence					-0.168	0.102	0.099	-15.46%
jury instructions, trial or sentencing, or judicial comment					-0.241	0.099	0.015	-21.41%
denial or delay of appeal or transcript					0.331	0.143	0.02	39.17%
MA	-1.177	0.350	0.001	-69.18%	-1.326	0.404	0.001	-73.45%
NJ	-1.524	0.270	0	-78.23%	-1.442	0.326	0	-76.34%
PA-E	-0.821	0.196	0	-56.00%				
PA-M	-1.061	0.262	0	-65.38%	-0.820	0.327	0.012	-55.96%
PA-W	-1.176	0.255	0	-69.16%	-0.562	0.368	0.126	-43.02%
NC-E	-0.716	0.329	0.03	-51.15%	District not included in Claims Regression			
NH	-1.477	0.403	0	-77.16%	District not included in Claims Regression			
SC	-0.522	0.223	0.019	-40.69%	-0.201	0.288	0.487	-18.18%
VA-E	-0.665	0.192	0.001	-48.56%	District not included in Claims Regression			
AL-N	-1.297	0.272	0	-72.67%	-1.624	0.346	0	-80.29%
AL-M	2.328	1.064	0.029	925.65%	2.585	1.185	0.029	1226.58%
AL-S	-1.189	0.349	0.001	-69.54%	-1.422	0.413	0.001	-75.88%
FL-N	-0.949	0.260	0	-61.27%	-1.058	0.309	0.001	-65.28%
LA-W	-1.435	0.273	0	-76.19%	-1.428	0.318	0	-76.02%
MS-N	-0.605	0.286	0.034	-45.40%	District not included in Claims Regression			
MS-S	-1.046	0.227	0	-64.86%	-1.616	0.455	0	-80.12%
TX-N	-0.735	0.175	0	-52.07%	-0.808	0.211	0	-55.41%
FL-M					-1.310	0.228	0	-73.02%
FL-S	-0.388	0.211	0.065	-32.18%	-0.469	0.267	0.078	-37.46%
GA-S	-0.521	0.211	0.014	-40.61%	-0.459	0.283	0.105	-36.82%
LA-E	-0.798	0.229	0	-54.97%	-0.880	0.267	0.001	-58.51%
TX-E	-0.496	0.203	0.015	-39.09%	0.490	0.728	0.501	63.18%
TX-S	-0.630	0.168	0	-46.75%	-0.537	0.202	0.008	-41.58%
TX-W	-0.855	0.215	0	-57.47%	-0.727	0.247	0.003	-51.65%
MI-E	-1.001	0.190	0	-63.26%	-1.069	0.241	0	-65.66%
MI-W	-0.903	0.224	0	-59.48%	-0.043	0.693	0.951	-4.21%
OH-N	-1.087	0.274	0	-66.27%	-1.216	0.324	0	-70.36%
OH-S	-1.480	0.336	0	-77.23%	-1.789	0.377	0	-83.29%
CT	-1.750	0.402	0	-82.62%	District not included in Claims Regression			
TN-M	1.925	1.155	0.096	585.35%	District not included in Claims Regression			
IL-N	-0.469	0.211	0.027	-37.44%	-0.605	0.279	0.03	-45.38%
IN-N	-0.473	0.226	0.036	-37.67%	-0.431	0.307	0.16	-35.00%
WI-E	-1.090	0.273	0	-66.37%	District not included in Claims Regression			
NY-N	-2.304	0.303	0	-90.02%	-2.765	0.430	0	-93.70%

Table 23: (NC) Cox regression probability of termination over time, by district, cont.

Model	**No Claims**				**Claims**			
Covariate	**Coef.**	**Std. Err.**	**P>z**	**%Change in Hazard Rate**	**Coef.**	**Std. Err.**	**P>z**	**% Change in Hazard Rate**
MN	-0.527	0.307	0.086	-40.97%	0.095	0.396	0.809	10.01%
MO-E	-1.879	0.270	0	-84.73%	-2.140	0.310	0	-88.23%
MO-W	0.249	0.240	0.3	28.32%	0.524	0.294	0.075	68.89%
NY-E	-1.542	0.204	0	-78.61%	-1.645	0.256	0	-80.71%
AZ	-1.460	0.301	0	-76.78%	District not included in Claims Regression			
CA-N	-1.763	0.189	0	-82.85%	-1.707	0.340	0	-81.85%
CA-S	-0.922	0.274	0.001	-60.22%	-0.966	0.336	0.004	-61.95%
NV	-1.955	0.347	0	-85.85%	-2.101	0.458	0	-87.77%
OR	-1.285	0.294	0	-72.34%	-1.533	0.387	0	-78.40%
NY-S	-2.195	0.219	0	-88.87%	-2.527	0.350	0	-92.01%
CO	-1.223	0.253	0	-70.56%	District not included in Claims Regression			
KS	-1.405	0.293	0	-75.46%	-1.629	0.388	0	-80.38%
OK-N	-2.084	0.405	0	-87.56%	-2.784	0.471	0	-93.82%
NY-W	-2.274	0.336	0	-89.71%	-1.974	0.430	0	-86.12%
Time Varying Covariates								
amended petition	0.283	0.078	0	32.77%				
answer, mo to dism	1.387	0.106	0	300.35%	1.443	0.152	0	323.37%
magistrate judge R&R	0.428	0.050	0	53.41%	0.465	0.065	0	59.16%
notice of appeal filed	0.374	0.055	0	45.42%	0.377	0.071	0	45.79%
petitioner had atty	0.354	0.134	0.008	42.53%				
defaulted claim					0.846	0.133	0	132.95%
AL-M	-0.603	0.190	0.001	-45.27%	-0.693	0.206	0.001	-49.98%
FL-M	-0.295	0.075	0	-25.54%				
TX-E					-0.232	0.135	0.084	-20.73%
TN-M	-0.515	0.209	0.014	-40.23%	District not included in Claims Regression			
CA-E	-0.406	0.119	0.001	-33.36%	-0.378	0.154	0.014	-31.48%
CA-C	-0.246	0.062	0	-21.82%	-0.180	0.089	0.043	-16.44%

Table 24: (NC) Cox regression probability of termination over time, by circuit and state.

Model	*State comparisons* No Claims				Claims			
Observ's	1954				1246			
Log likelihood	-11006.961				-6377.741			
LR chi2(18)	1860.000				1259.460			
Prob > chi2	0.000				0.000			
Covariate	**Coef.**	**Std. Err.**	**P>z**	**% Change in Hazard Rate**	**Coef.**	**Std. Err.**	**P>z**	**% Change in Hazard Rate**
amended petition	-0.339	0.078	0	-28.76%	-0.336	0.100	0.001	-28.50%
answer, mo to dism	-8.631	0.542	0	-99.98%	-9.122	0.764	0	-99.99%
magistrate j R&R					-2.425	0.342	0	-91.15%
notice of appeal filed	-1.651	0.301	0	-80.82%	-1.630	0.391	0	-80.41%
no. of claims	-0.057	0.008	0	-5.52%	-0.034	0.012	0.004	-3.34%
petition filed?					-0.364	0.218	0.095	-30.48%
petitioner had atty	-2.845	0.797	0	-94.19%	-0.320	0.126	0.011	-27.39%
defaulted claim					-4.468	0.778	0	-98.85%
guilty plea challenged?					-0.165	0.099	0.094	-15.21%
jury misconduct					0.459	0.212	0.03	58.28%
evidentiary claim					-0.227	0.091	0.013	-20.29%
false, lost, or undisclosed evidence					-0.241	0.101	0.017	-21.41%
jury instructions, trial or sentencing, or judicial comment								
disciplinary hrg. Challenge					-0.257	0.150	0.087	-22.68%
only sentence challenged					0.240	0.137	0.08	27.12%
circuit1	-0.81385	0.257	0.002	-55.69%	-0.93642	0.384501	0.015	-60.80%
circuit2	-1.42131	0.132	0	-75.86%	-1.61942	0.187978	0	-80.20%
circuit3	-0.62974	0.132	0	-46.73%	-0.7048	0.178933	0	-50.58%
circuit5	-0.37931	0.108	0	-31.57%	-0.48503	0.139241	0	-38.43%
circuit6	-0.60029	0.128	0	-45.13%	-0.80451	0.165102	0	-55.27%
circuit8	-0.44171	0.153	0.004	-35.71%	0.942884	0.54489	0.084	156.74%
circuit9	-0.96106	0.108	0	-61.75%	-0.33007	0.437196	0.45	-28.11%
circuit10	-0.79671	0.159	0	-54.92%	-1.15783	0.234461	0	-68.58%
circuit11	-0.41716	0.113	0	-34.11%	-0.68861	0.154834	0	-49.77%
MA	-1.116	0.345	0.001	-67.23%	0.912	1.270	0.473	148.93%
NJ	-1.403	0.263	0	-75.40%	-1.481	0.313	0	-77.26%
PA	-0.881	0.161	0	-58.58%	-0.913	0.214	0	-59.89%
NC	-0.485	0.231	0.036	-38.46%	-0.534	0.353	0.13	-41.40%
NH	-1.365	0.399	0.001	-74.45%	State not included in Claims Regression			
SC	-0.457	0.215	0.033	-36.71%	-0.161	0.269	0.551	-14.83%
VA	-0.460	0.170	0.007	-36.90%	State not included in Claims Regression			
AL	-1.130	0.195	0	-67.69%	1.683	0.901	0.062	438.17%
LA	-1.033	0.190	0	-64.41%	-0.998	0.220	0	-63.13%
MS	-0.796	0.190	0	-54.87%	-1.556	0.446	0	-78.90%
TX	-0.586	0.136	0	-44.37%	-0.591	0.160	0	-44.64%
GA	-0.369	0.180	0.041	-30.86%	-0.436	0.264	0.099	-35.34%
MI	-0.890	0.161	0	-58.91%	-0.999	0.198	0	-63.17%
OH	-1.178	0.225	0	-69.21%	-1.356	0.262	0	-74.22%
TN	2.147	1.158	0.064	755.87%	State not included in Claims Regression			
CT	-1.555	0.397	0	-78.87%	State not included in Claims Regression			
IL	-0.356	0.204	0.081	-29.94%	-0.603	0.264	0.022	-45.30%
WI	-0.933	0.266	0	-60.66%	State not included in Claims Regression			
NY	-1.857	0.158	0	-84.39%	-1.978	0.209	0	-86.16%
MO					-1.271	0.234	0	-71.96%
AZ	-1.335	0.295	0	-73.67%	State not included in Claims Regression			
NV	-1.765	0.342	0	-82.88%	-1.898	0.447	0	-85.02%
OR	-1.163	0.288	0	-68.75%	-1.444	0.377	0	-76.41%
CO	-1.099	0.246	0	-66.69%	State not included in Claims Regression			
KS	-1.264	0.287	0	-71.76%	-1.595	0.377	0	-79.72%
OK	-1.073	0.249	0	-65.78%	1.759	0.989	0.075	480.52%

Table 24: (NC) Cox regression probability of termination over time, by circuit and state, cont.

Model				*State comparisons*				
	No Claims				Claims			
Covariate	**Coef.**	**Std. Err.**	**P>z**	**% Change in Hazard Rate**	**Coef.**	**Std. Err.**	**P>z**	**% Change in Hazard Rate**
Time Varying Covariates								
amended petition	0.214	0.078	0.006	23.85%				
answer, mo to dism	1.294	0.108	0	264.80%	1.491	0.151	0	344.06%
magistrate judge R&R	0.363	0.048	0	43.73%	0.444	0.062	0	55.88%
notice of appeal filed	0.353	0.057	0	42.31%	0.392	0.069	0	47.97%
petitioner had atty	0.313	0.142	0.027	36.72%				
defaulted claim					0.809	0.131	0	124.48%
disciplinary hrg. Challenge								
circuit8	-0.28498	0.099371	0.004	-24.80%				
circuit9	-0.12416	0.075325	0.099	-11.68%				
AL	-0.427	0.123	0.001	-34.74%	-0.522	0.154	0.001	-40.66%
FL	-0.464	0.068	0	-37.11%	-0.260	0.084	0.002	-22.89%
TN	-0.766	0.214	0	-53.52%				
MO	-0.977	0.104	0	-62.37%				
CA	-1.028	0.053	0	-64.22%	-0.244	0.077	0.002	-21.63%
OK	-1.218	0.174	0	-70.41%	-0.561	0.177	0.001	-42.91%

Table 25: (NC) Cox regression probability of termination over time, by clerk.

Model	No Claims				Claims			
Observ's	1954				1246			
Log likelihood	-11122.610				-6472.648			
LR chi2(18)	1628.700				1069.650			
Prob > chi2	0.000				0.000			
Covariate	**Coef.**	**Std. Err.**	**P>z**	**% Change in Hazard Rate**	**Coef.**	**Std. Err.**	**P>z**	**% Change in Hazard Rate**
amended petition	-1.796	0.424	0	-83.41%	-0.447	0.097	0	-36.03%
answer, mo to dism	-8.316	0.539	0	-99.98%	-9.057	0.762	0	-99.99%
magistrate judge R&R	-2.028	0.243	0	-86.83%	-2.414	0.315	0	-91.05%
notice of appeal filed	-1.572	0.293	0	-79.24%	-1.522	0.385	0	-78.17%
no. of claims	-0.278	0.058	0	-24.31%	-0.027	0.011	0.017	-2.67%
petitioner had atty	-3.398	0.805	0	-96.66%	-2.833	0.962	0.003	-94.11%
defaulted claim					-4.350	0.757	0	-98.71%
jury misconduct					0.430	0.208	0.039	53.72%
evidentiary claim					-0.148	0.089	0.097	-13.77%
false, lost, or undisclosed evidence					-0.196	0.097	0.044	-17.79%
Jury instructions, trial or sentencing, or judicial comment					-0.244	0.094	0.01	-21.64%
denial or delay of appeal or transcript					0.244	0.138	0.077	27.67%
disciplinary claim					1.499	0.532	0.005	347.79%
only sentence challenged								
average number of clerks	-0.015	0.007	0.033	-1.50%				
Time Varying Covariates								
amended petition	0.240	0.075	0.001	27.11%				
answer, mo to dism	1.346	0.105	0	284.07%	1.482	0.151	0	340.37%
magistrate j. R&R	0.397	0.045	0	48.76%	0.458	0.057	0	58.06%
notice of appeal filed	0.370	0.053	0	44.76%	0.363	0.068	0	43.80%
no. of claims	0.040	0.010	0	4.09%				
petitioner had atty	0.492	0.135	0	63.50%	0.411	0.160	0.01	50.86%
defaulted claim					0.798	0.127	0	122.19%
disciplinary hrg. only sentence challenged					-0.286	0.097	0.003	-24.85%
					0.205	0.089	0.021	22.73%

Table 26. (NC) Cox regression probability of termination over time, by caseload.

Model	**No Claims**				**Claims**			
Observ's	1954				1246			
Log likelihood	-11080.024				-6432.198			
LR chi2(18)	1713.880				1150.550			
Prob > chi2	0.000				0.000			
Covariate	*Coef.*	*Std. Err.*	*P>z*	*% Change in Hazard Rate*	*Coef.*	*Std. Err.*	*P>z*	*% Change in Hazard Rate*
amended petition	-2.017	0.438	0	-86.70%	-1.447	0.587	0.014	-76.48%
answer, mo to dism	-8.777	0.537	0	-99.98%	-9.117	0.761	0	-99.99%
magistrate j R&R	-2.012	0.242	0	-86.62%	-2.262	0.315	0	-89.58%
notice of appeal filed	-1.585	0.294	0	-79.51%	-1.515	0.388	0	-78.01%
no. of claims	-0.054	0.008	0	-5.21%	-0.029	0.011	0.009	-2.90%
petitioner had atty	-2.959	0.791	0	-94.81%	-2.493	0.967	0.01	-91.73%
defaulted claim					-4.297	0.750	0	-98.64%
jury misconduct					0.556	0.209	0.008	74.36%
Evidentiary claim					-0.163	0.089	0.068	-15.03%
false, lost, or undisclosed evidence					-0.201	0.098	0.04	-18.19%
jury instructions, trial or sentencing, or judicial comment					-0.208	0.093	0.026	-18.77%
denial or delay of appeal or transcript					0.227	0.138	0.101	25.44%
Disciplinary hrg. Challenge					1.514	0.530	0.004	354.41%
only sentence challenged					-1.084	0.497	0.029	-66.17%
caseload per judge	-0.008	0.001	0	-0.85%	-0.010	0.001	0	-0.95%
Time Varying Covariates								
amended petition	0.304	0.077	0	35.57%	0.208	0.101	0.04	23.11%
answer, mo to dism	1.426	0.105	0	316.08%	1.496	0.150	0	346.44%
magistrate j R&R	0.401	0.045	0	49.40%	0.445	0.057	0	56.02%
notice of appeal filed	0.369	0.053	0	44.64%	0.362	0.068	0	43.59%
no. of claims								
petitioner had atty	0.415	0.132	0.002	51.46%	0.355	0.161	0.027	42.64%
defaulted claim					0.777	0.126	0	117.47%
disciplinary hrg. challenge					-0.277	0.097	0.004	-24.19%
only sentence challenged					0.262	0.089	0.003	29.99%

Table 27. (NC) Regression results: terminated cases by circuit, no claims model.

LNBEG2TERM	*Coef.*	*Robust Std. Err.*	*t*	*P>t*	*Beta*
PETSEX	0.0857096	0.101556	0.84	0.399	0.0130731
AMENDPET	0.2331176	0.062985	3.7	0	0.0624958
STPLEAD	1.617229	0.074222	21.79	0	0.6002351
RECORD	0.0044925	0.004693	0.96	0.339	0.0189038
RR4DISP	0.2249254	0.053186	4.23	0	0.0936664
NOTAPP	-0.0862639	0.049238	-1.75	0.08	-0.0352673
lnclaimcount	0.1021543	0.042626	2.4	0.017	0.0710252
IACANY	-0.0316745	0.061428	-0.52	0.606	-0.0132482
INNANY	-0.0068114	0.120723	-0.06	0.955	-0.0010995
PLEAANY	0.0436707	0.069429	0.63	0.529	0.012912
SXSANY	-0.0943017	0.072224	-1.31	0.192	-0.0220256
CONFANY	-0.0791629	0.098253	-0.81	0.421	-0.0149974
JURSELANY	0.0390426	0.082741	0.47	0.637	0.0079761
APPRENANY	-0.0360187	0.140144	-0.26	0.797	-0.0047007
JURMISANY	-0.3233891	0.130311	-2.48	0.013	-0.0422049
JUDBIASANY	-0.1116282	0.100894	-1.11	0.269	-0.0145684
ATRTSANY	0.1921404	0.08227	2.34	0.02	0.0361272
INCOMPANY	0.3022985	0.162055	1.87	0.062	0.0328933
EVGANY	0.0988846	0.056588	1.75	0.081	0.0326346
PMISCANY	0.0296941	0.065238	0.46	0.649	0.0073607
BRADYANY	0.0014284	0.072202	0.02	0.984	0.0003996
JRYINSANY	0.0459689	0.05684	0.81	0.419	0.0136575
APPEALANY	-0.0615665	0.101258	-0.61	0.543	-0.0116637
INSUFGANY	-0.0042953	0.057252	-0.08	0.94	-0.00142
INSUFSANY	-0.0676791	0.134148	-0.5	0.614	-0.0106888
CNSLANY	-0.1416818	0.11592	-1.22	0.222	-0.0226248
DISCANY	-0.2898041	0.128645	-2.25	0.024	-0.0846287
REVOCANY	-0.1226392	0.122826	-1	0.318	-0.0290339
UNEXH	-0.2505789	0.103936	-2.41	0.016	-0.0613723
SOLANY	-0.1108252	0.063119	-1.76	0.079	-0.0383739
PDANY	0.1551538	0.05578	2.78	0.006	0.0512049
SPANY	-0.2676652	0.13792	-1.94	0.053	-0.0510866
NOPETFLD	-0.0536216	0.122496	-0.44	0.662	-0.0077729
VOLDISM	-0.1847394	0.148942	-1.24	0.215	-0.0232843
othdisms	-0.2347372	0.113499	-2.07	0.039	-0.0441365
REVSTD	-0.0842682	0.079443	-1.06	0.289	-0.0193166
PPDISNOP	0.2436374	0.19532	1.25	0.213	0.0295745
REPADDR	0.2064404	0.082874	2.49	0.013	0.0466342
COADRULR	0.1696671	0.156711	1.08	0.279	0.018002
SENTONLR	0.0464805	0.11589	0.4	0.688	0.0162943
Grant	0.277225	0.403817	0.69	0.493	0.0151813
YEARSTRT	0.0691127	0.046965	1.47	0.141	0.0287235
circuit1	0.4547692	0.294944	1.54	0.123	0.0333542
circuit2	0.868604	0.126624	6.86	0	0.1608096
circuit3	0.531101	0.134983	3.93	0	0.1105252
circuit4	0.2451378	0.127835	1.92	0.055	0.0420123
circuit5	0.4050607	0.11657	3.47	0.001	0.1471593
circuit6	0.4831853	0.122437	3.95	0	0.1158963
circuit8	0.149645	0.14734	1.02	0.31	0.0272637
circuit9	0.4955391	0.125069	3.96	0	0.1577247
circuit10	0.5206957	0.215679	2.41	0.016	0.0679551
circuit11	0.3274696	0.122329	2.68	0.008	0.1008912
_cons	3.644159	0.183742	19.83	0	.

Number of obs	=	1827
F(21, 1805)	=	95.22
Prob > F	=	0
R-squared	=	0.5619
Root MSE	=	0.83838

Table 28. (NC) Regression results terminated cases by circuit, claims model.

LNBEG2TERM	*Coef.*	*Robust Std. Err.*	*t*	*P>t*	*Beta*
PETSEX	0.0857096	0.101556	0.84	0.399	0.0130731
AMENDPET	0.2331176	0.062985	3.7	0	0.0624958
STPLEAD	1.617229	0.074222	21.79	0	0.6002351
RECORD	0.0044925	0.004693	0.96	0.339	0.0189038
RR4DISP	0.2249254	0.053186	4.23	0	0.0936664
NOTAPP	-0.0862639	0.049238	-1.75	0.08	-0.0352673
lnclaimcount	0.1021543	0.042626	2.4	0.017	0.0710252
IACANY	-0.0316745	0.061428	-0.52	0.606	-0.0132482
INNANY	-0.0068114	0.120723	-0.06	0.955	-0.0010995
PLEAANY	0.0436707	0.069429	0.63	0.529	0.012912
SXSANY	-0.0943017	0.072224	-1.31	0.192	-0.0220256
CONFANY	-0.0791629	0.098253	-0.81	0.421	-0.0149974
JURSELANY	0.0390426	0.082741	0.47	0.637	0.0079761
APPRENANY	-0.0360187	0.140144	-0.26	0.797	-0.0047007
JURMISANY	-0.3233891	0.130311	-2.48	0.013	-0.0422049
JUDBIASANY	-0.1116282	0.100894	-1.11	0.269	-0.0145684
ATRTSANY	0.1921404	0.08227	2.34	0.02	0.0361272
INCOMPANY	0.3022985	0.162055	1.87	0.062	0.0328933
EVGANY	0.0988846	0.056588	1.75	0.081	0.0326346
PMISCANY	0.0296941	0.065238	0.46	0.649	0.0073607
BRADYANY	0.0014284	0.072202	0.02	0.984	0.0003996
JRYINSANY	0.0459689	0.05684	0.81	0.419	0.0136575
APPEALANY	-0.0615665	0.101258	-0.61	0.543	-0.0116637
INSUFGANY	-0.0042953	0.057252	-0.08	0.94	-0.00142
INSUFSANY	-0.0676791	0.134148	-0.5	0.614	-0.0106888
CNSLANY	-0.1416818	0.11592	-1.22	0.222	-0.0226248
DISCANY	-0.2898041	0.128645	-2.25	0.024	-0.0846287
REVOCANY	-0.1226392	0.122826	-1	0.318	-0.0290339
UNEXH	-0.2505789	0.103936	-2.41	0.016	-0.0613723
SOLANY	-0.1108252	0.063119	-1.76	0.079	-0.0383739
PDANY	0.1551538	0.05578	2.78	0.006	0.0512049
SPANY	-0.2676652	0.13792	-1.94	0.053	-0.0510866
NOPETFLD	-0.0536216	0.122496	-0.44	0.662	-0.0077729
VOLDISM	-0.1847394	0.148942	-1.24	0.215	-0.0232843
othdisms	-0.2347372	0.113499	-2.07	0.039	-0.0441365
REVSTD	-0.0842682	0.079443	-1.06	0.289	-0.0193166
PPDISNOP	0.2436374	0.19532	1.25	0.213	0.0295745
REPADDR	0.2064404	0.082874	2.49	0.013	0.0466342
COADRULR	0.1696671	0.156711	1.08	0.279	0.018002
SENTONLR	0.0464805	0.11589	0.4	0.688	0.0162943
Grant	0.277225	0.403817	0.69	0.493	0.0151813
YEARSTRT	0.0691127	0.046965	1.47	0.141	0.0287235
circuit1	0.4547692	0.294944	1.54	0.123	0.0333542
circuit2	0.868604	0.126624	6.86	0	0.1608096
circuit3	0.531101	0.134983	3.93	0	0.1105252
circuit4	0.2451378	0.127835	1.92	0.055	0.0420123
circuit5	0.4050607	0.11657	3.47	0.001	0.1471593
circuit6	0.4831853	0.122437	3.95	0	0.1158963
circuit8	0.149645	0.14734	1.02	0.31	0.0272637
circuit9	0.4955391	0.125069	3.96	0	0.1577247
circuit10	0.5206957	0.215679	2.41	0.016	0.0679551
circuit11	0.3274696	0.122329	2.68	0.008	0.1008912
_cons	3.644159	0.183742	19.83	0	.

Number of obs	=	1162
F(52, 1109)	=	24.11
Prob > F	=	0
R-squared	=	0.599
Root MSE	=	0.77483

Table 29. (NC) Regression Results, terminated cases, by states, no claims model.

LNBEG2TERM	*Coef.*	*Robust Std. Err.*	*t*	*P>t*	*Beta*
PETSEX	-0.1199486	0.1122	-1.07	0.285	-0.0176474
AMENDPET	0.301995	0.0548	5.51	0	0.075382
STPLEAD	1.606476	0.0503	31.94	0	0.6217925
RECORD	0.0028122	0.0035	0.79	0.427	0.010352
RR4DISP	0.2556185	0.0473	5.4	0	0.1013336
NOTAPP	0.0161474	0.0404	0.4	0.69	0.0061251
lnclaimcount	0.1535254	0.0238	6.46	0	0.1012284
NOPETFLD	-0.159907	0.1061	-1.51	0.132	-0.0224523
PPDISNOP	0.1498743	0.1568	0.96	0.339	0.0158534
REPADDR	0.2939347	0.0825	3.56	0	0.0571569
YEARSTRT	0.0676763	0.0389	1.74	0.082	0.0268286
MA	0.5572983	0.2706	2.06	0.04	0.0342428
NJ	1.11763	0.2109	5.3	0	0.0900536
PA	0.6120354	0.1466	4.18	0	0.1100508
MD	0.035604	0.2214	0.16	0.872	0.0027151
NC	0.4167865	0.1663	2.51	0.012	0.0399447
SC	0.5086384	0.1541	3.3	0.001	0.0545966
VA	0.6359756	0.1308	4.86	0	0.0976245
AL	0.6409117	0.1588	4.04	0	0.0805906
FL	0.5054078	0.127	3.98	0	0.110866
LA	0.848863	0.1549	5.48	0	0.1141868
MS	0.5962846	0.1673	3.56	0	0.074979
TX	0.525095	0.1222	4.3	0	0.1524056
GA	0.4700992	0.1489	3.16	0.002	0.0632365
KY	1.376576	0.2992	4.6	0	0.0765501
MI	0.7023725	0.1281	5.48	0	0.1219939
OH	0.7950381	0.1555	5.11	0	0.0840975
TN	0.1315714	0.3045	0.43	0.666	0.0103215
IL	0.3920327	0.1689	2.32	0.02	0.0444372
WI	0.6398827	0.2262	2.83	0.005	0.0554341
NY	1.151994	0.1266	9.1	0	0.2120004
AR	0.1629451	0.2324	0.7	0.483	0.0108782
MN	0.6136782	0.2	3.07	0.002	0.0425041
MO	0.5538763	0.1667	3.32	0.001	0.0703637
AZ	1.067955	0.2173	4.91	0	0.0739679
CA	0.7380147	0.1222	6.04	0	0.2228044
NV	1.077292	0.4061	2.65	0.008	0.0631303
OR	1.107976	0.1687	6.57	0	0.0869186
WA	0.3817885	0.2356	1.62	0.105	0.0264431
CO	0.9635194	0.127	7.58	0	0.0834714
KS	1.037138	0.3016	3.44	0.001	0.0743341
OK	0.1601835	0.2511	0.64	0.524	0.0114807
_cons	3.339117	0.1589	21.01	0	.

Number of obs	=	1827
F(42, 1784)	=	53.42
Prob > F	=	0
R-squared	=	0.5791
Root MSE	=	0.82664

Table 30. (NC) Regression results, terminated cases, by states, claims model.

LNBEG2TERM	*Coef.*	*Std. Err.*	*t*	*P>t*	*Beta*
PETSEX	0.0558293	0.097816	0.57	0.568	0.0085052
AMENDPET	0.2328576	0.064384	3.62	0	0.0615843
STPLEAD	1.629848	0.075995	21.45	0	0.6054855
RECORD	0.0050365	0.004811	1.05	0.295	0.0214355
RR4DISP	0.3010578	0.058909	5.11	0	0.1247565
NOTAPP	-0.08834	0.04934	-1.79	0.074	-0.0360014
lnclaimcount	0.0955119	0.043413	2.2	0.028	0.0660303
IACANY	-0.049511	0.062408	-0.79	0.428	-0.0206414
INNANY	0.0115366	0.127249	0.09	0.928	0.0018625
PLEAANY	0.0502477	0.070928	0.71	0.479	0.0146939
SXSANY	-0.071792	0.074723	-0.96	0.337	-0.016861
CONFANY	-0.121677	0.101781	-1.2	0.232	-0.0224072
JURSELANY	0.0282389	0.086041	0.33	0.743	0.0057931
APPRENANY	-0.065389	0.127132	-0.51	0.607	-0.0086293
JURMISANY	-0.365919	0.131203	-2.79	0.005	-0.0466374
JUDBIASANY	-0.091225	0.105703	-0.86	0.388	-0.0118349
ATRTSANY	0.2054117	0.081809	2.51	0.012	0.0387388
INCOMPANY	0.2401485	0.171316	1.4	0.161	0.024397
EVGANY	0.1075813	0.056425	1.91	0.057	0.035359
PMISCANY	0.0450068	0.06499	0.69	0.489	0.0111783
BRADYANY	0.0092947	0.074509	0.12	0.901	0.0025787
JRYINSANY	0.0328426	0.056674	0.58	0.562	0.0097738
APPEALANY	-0.055943	0.104188	-0.54	0.591	-0.0106315
INSUFGANY	0.0147497	0.057464	0.26	0.797	0.0048563
INSUFSANY	-0.058537	0.128848	-0.45	0.65	-0.0092415
CNSLANY	-0.137844	0.114952	-1.2	0.231	-0.0220096
DISCANY	-0.160647	0.130375	-1.23	0.218	-0.047337
REVOCANY	-0.094575	0.125602	-0.75	0.452	-0.022314
UNEXH	-0.242805	0.106967	-2.27	0.023	-0.0593249
SOLANY	-0.131797	0.062162	-2.12	0.034	-0.0456452
PDANY	0.1265654	0.057057	2.22	0.027	0.0412292
SPANY	-0.244424	0.142375	-1.72	0.086	-0.0464507
NOPETFLD	-0.041381	0.124796	-0.33	0.74	-0.0060651
VOLDISM	-0.185075	0.165619	-1.12	0.264	-0.0222696
othdisms	-0.21844	0.115342	-1.89	0.059	-0.040876
REVSTD	-0.076926	0.080768	-0.95	0.341	-0.0176424
PPDISNOP	0.2908349	0.192193	1.51	0.131	0.0357009
REPADDR	0.161595	0.088435	1.83	0.068	0.035759
COADRULR	0.1185278	0.14972	0.79	0.429	0.0127185
SENTONLR	0.0419897	0.115677	0.36	0.717	0.0147456
Grant	0.4455086	0.341045	1.31	0.192	0.0246777
YEARSTRT	0.0655106	0.047186	1.39	0.165	0.0271472
MA	0.7159515	0.310261	2.31	0.021	0.0531122
NJ	1.35301	0.213896	6.33	0	0.1292315
PA	0.6091405	0.152286	4	0	0.1157621
NC	0.4902126	0.15643	3.13	0.002	0.0526019
SC	0.3833141	0.176221	2.18	0.03	0.0461232
VA	0.6077041	0.18079	3.36	0.001	0.0397941
AL	0.5341969	0.184136	2.9	0.004	0.0803676
FL	0.5629672	0.140845	4	0	0.1436677
LA	0.8446293	0.179239	4.71	0	0.1407351
MS	0.8897264	0.212229	4.19	0	0.0729044
TX	0.5319763	0.129721	4.1	0	0.1801467
GA	0.5370226	0.170412	3.15	0.002	0.0743442
MI	0.6696701	0.144687	4.63	0	0.1338159
OH	0.7186381	0.179037	4.01	0	0.088215
IL	0.6054039	0.18363	3.3	0.001	0.0728467
NY	1.109245	0.13988	7.93	0	0.2075694
MN	0.2994255	0.189204	1.58	0.114	0.0222126
MO	0.5222709	0.179209	2.91	0.004	0.0785734
AZ	(dropped)				
CA	0.7033531	0.142214	4.95	0	0.212825

Table 30. (NC) Regression results, terminated cases, by states, claims model, cont.

LNBEG2TERM	*Coef.*	*Std. Err.*	*t*	*P>t*	*Beta*
OR	1.126901	0.212424	5.3	0	0.0880808
WA	0.0004847	0.233673	0	0.998	0.000036
KS	1.318727	0.384684	3.43	0.001	0.0978285
OK	0.1589591	0.283807	0.56	0.576	0.0141471
_cons	3.369873	0.202753	16.62	0.	

Number of obs	=	1128
F(65, 1062)	=	21.81
Prob > F	=	0
R-squared	=	0.617
Root MSE	=	0.76486

Table 31. (NC) Regression results, terminated cases, by clerk, no claims model.

LNBEG2TERM	*Coef.*	*Robust Std. Err.*	*t*	*P>t*	*Beta*
PETSEX	-0.097653	0.108425	-0.9	0.368	-0.0143672
AMENDPET	0.3717411	0.057426	6.47	0	0.0927916
STPLEAD	1.595757	0.050403	31.66	0	0.6176433
RECORD	0.0036965	0.003693	1	0.317	0.0136073
RR4DISP	0.2932186	0.040619	7.22	0	0.1162393
NOTAPP	0.0337478	0.042206	0.8	0.424	0.0128013
LNclaimcount	0.145007	0.023199	6.25	0	0.0956117
NOPETFLD	-0.1430992	0.099489	-1.44	0.151	-0.0200924
PPDISNOP	0.0900567	0.154812	0.58	0.561	0.009526
REPADDR	0.3990412	0.076342	5.23	0	0.0775954
YEARSTRT	0.0763421	0.040329	1.89	0.059	0.0302639
CLERK	-0.0019551	0.005818	-0.34	0.737	-0.0053361
_cons	3.928384	0.113161	34.71	0.	

Number of obs	=	1827
F(12, 1814)	=	147.68
Prob > F	=	0
R-squared	=	0.538
Root MSE	=	0.8588

Table 32. (NC) Regression results, terminated cases, by clerk, claims model.

LNBEG2TERM	*Coef.*	*Rob.Std. Err.*	*t*	*P>t*	*Beta*
PETSEX	0.0304954	0.111555	0.27	0.785	0.0045511
AMENDPET	0.2590784	0.069316	3.74	0	0.067926
STPLEAD	1.650142	0.078697	20.97	0	0.6140778
RECORD	0.0064673	0.004379	1.48	0.14	0.0280431
RR4DISP	0.2963784	0.051126	5.8	0	0.1221883
NOTAPP	-0.0395104	0.052763	-0.75	0.454	-0.0159747
lnclaimcount	0.0920809	0.045281	2.03	0.042	0.0637207
IACANY	-0.0551076	0.063593	-0.87	0.386	-0.0228642
INNANY	0.015531	0.133281	0.12	0.907	0.0024963
PLEAANY	0.0252935	0.072214	0.35	0.726	0.0073708
SXSANY	-0.0913629	0.075619	-1.21	0.227	-0.0210969
CONFANY	-0.1419614	0.101073	-1.4	0.16	-0.0257219
JURSELANY	0.0533458	0.085889	0.62	0.535	0.0109906
APPRENANY	-0.0339829	0.145125	-0.23	0.815	-0.0044898
JURMISANY	-0.365707	0.136817	-2.67	0.008	-0.0466042
JUDBIASANY	-0.1206068	0.112181	-1.08	0.283	-0.0159346
ATRTSANY	0.2124719	0.092462	2.3	0.022	0.0391657
INCOMPANY	0.3271825	0.175029	1.87	0.062	0.0328635
EVGANY	0.1067444	0.060162	1.77	0.076	0.0352355
PMISCANY	0.0418663	0.069659	0.6	0.548	0.0103105
BRADYANY	0.0292575	0.076481	0.38	0.702	0.0080683
JRYINSANY	0.079071	0.059999	1.32	0.188	0.0234073
APPEALANY	-0.086673	0.107334	-0.81	0.42	-0.0161109
INSUFGANY	-0.0277918	0.06136	-0.45	0.651	-0.0090576
INSUFSANY	-0.0753819	0.139066	-0.54	0.588	-0.0118355
CNSLANY	-0.0935749	0.121507	-0.77	0.441	-0.0150402
DISCANY	-0.310204	0.137305	-2.26	0.024	-0.0920637
REVOCANY	-0.0646603	0.132095	-0.49	0.625	-0.0150051
UNEXH	-0.2436349	0.111024	-2.19	0.028	-0.0597447
SOLANY	-0.1223287	0.065705	-1.86	0.063	-0.0420721
PDANY	0.0917131	0.061575	1.49	0.137	0.0293773
SPANY	-0.2027662	0.140067	-1.45	0.148	-0.0386126
NOPETFLD	-0.0319627	0.120412	-0.27	0.791	-0.0045735
VOLDISM	-0.114027	0.181279	-0.63	0.529	-0.0133921
othdisms	-0.1457136	0.121016	-1.2	0.229	-0.0270854
REVSTD	-0.0928219	0.085354	-1.09	0.277	-0.0212185
PPDISNOP	0.2989885	0.189179	1.58	0.114	0.0366419
REPADDR	0.2035015	0.087828	2.32	0.021	0.0450601
COADRULR	0.2652622	0.167362	1.58	0.113	0.0282335
SENTONLR	-0.0262888	0.125336	-0.21	0.834	-0.0092394
Grant	0.3994602	0.409363	0.98	0.329	0.0225457
CLERK	0.0077019	0.007306	1.05	0.292	0.021924
_cons	3.944282	0.161489	24.42	0.	

Number of obs	=	1076
F(42, 1033)	=	24.11
Prob > F	=	0
R-squared	=	0.5784
Root MSE	=	0.79855
Prob > F	=	0

Table 33. (NC) Regression results, terminated cases, by caseload, no claims model.

LNBEG2TERM	*Coef.*	*Rob.Std. Err.*	*t*	*P>t*	*Beta*
PETSEX	-0.083	0.106653	-0.78	0.437	-0.012187
AMENDPET	0.339	0.056113	6.04	0	0.0846212
STPLEAD	1.621	0.05028	32.24	0	0.627515
RECORD	0.003	0.003536	0.93	0.352	0.0121163
RR4DISP	0.251	0.040731	6.16	0	0.0995249
NOTAPP	0.034	0.041561	0.82	0.412	0.0129308
LNclaimcount	0.155	0.022906	6.75	0	0.1019108
NOPETFLD	-0.115	0.104066	-1.1	0.269	-0.0161458
PPDISNOP	0.099	0.150601	0.66	0.512	0.0104515
REPADDR	0.391	0.075827	5.16	0	0.076066
YEARSTRT	0.064	0.039948	1.61	0.107	0.0255114
CASELOAD	0.004	0.00065	5.97	0	0.086594
_cons	3.759	0.115164	32.64	0.	

Number of obs	=	1827
F(12, 1814)	=	149.9
Prob > F	=	0
R-squared	=	0.5451
Root MSE	=	0.85223

Table 34. (NC) Regression results, terminated cases, by caseload, claims model.

LNBEG2TERM	*Coef.*	*Rob.Std. Err.*	*t*	*P>t*	*Beta*
PETSEX	0.0418	0.106876	0.39	0.696	0.0062354
AMENDPET	0.2277	0.068403	3.33	0.001	0.0597019
STPLEAD	1.6685	0.078674	21.21	0	0.6209159
RECORD	0.0061	0.004334	1.4	0.161	0.0263925
RR4DISP	0.2596	0.051232	5.07	0	0.1070425
NOTAPP	-0.0392	0.052418	-0.75	0.455	-0.0158459
lnclaimcount	0.0933	0.044985	2.07	0.038	0.0645356
IACANY	-0.0365	0.063609	-0.57	0.566	-0.0151518
INNANY	0.0226	0.130881	0.17	0.863	0.0036291
PLEAANY	0.0219	0.071293	0.31	0.758	0.0063924
SXSANY	-0.086	0.074269	-1.16	0.247	-0.0198581
CONFANY	-0.1438	0.100997	-1.42	0.155	-0.0260582
JURSELANY	0.0719	0.08462	0.85	0.396	0.0148065
APPRENANY	-0.0374	0.14404	-0.26	0.795	-0.0049388
JURMISANY	-0.3871	0.130719	-2.96	0.003	-0.04933
JUDBIASANY	-0.0996	0.110785	-0.9	0.369	-0.0131559
ATRTSANY	0.1867	0.095349	1.96	0.05	0.0344223
INCOMPANY	0.3137	0.17169	1.83	0.068	0.0315134
EVGANY	0.1114	0.059738	1.86	0.062	0.0367753
PMISCANY	0.0441	0.06968	0.63	0.527	0.0108528
BRADYANY	0.038	0.07615	0.5	0.618	0.0104872
JRYINSANY	0.0635	0.059907	1.06	0.289	0.018796
APPEALANY	-0.0736	0.107574	-0.68	0.494	-0.0136767
INSUFGANY	-0.0227	0.061416	-0.37	0.712	-0.0073919
INSUFSANY	-0.0693	0.137431	-0.5	0.614	-0.0108837
CNSLANY	-0.1156	0.119162	-0.97	0.332	-0.0185801
DISCANY	-0.3044	0.137144	-2.22	0.027	-0.0903324
REVOCANY	-0.0523	0.131233	-0.4	0.69	-0.0121429
UNEXH	-0.2273	0.110647	-2.05	0.04	-0.0557358
SOLANY	-0.0882	0.06664	-1.32	0.186	-0.0303252
PDANY	0.1162	0.059736	1.95	0.052	0.0372313
SPANY	-0.1805	0.139698	-1.29	0.197	-0.034378
NOPETFLD	0.0262	0.124412	0.21	0.833	0.0037522
VOLDISM	-0.1416	0.173558	-0.82	0.415	-0.0166254
othdisms	-0.1496	0.116731	-1.28	0.2	-0.0278094
REVSTD	-0.0675	0.083907	-0.8	0.422	-0.0154194
PPDISNOP	0.3015	0.184585	1.63	0.103	0.036952
REPADDR	0.2118	0.086172	2.46	0.014	0.0468921
COADRULR	0.1475	0.15129	0.98	0.33	0.0157027
SENTONLR	-0.0367	0.125068	-0.29	0.769	-0.0129002
Grant	0.3341	0.419918	0.8	0.426	0.0188564
CASELOAD	0.0038	0.000833	4.6	0	0.0893684
_cons	3.7888	0.160035	23.67	0	.

Number of obs	=	1076
F(42, 1033)	=	24.53
Prob > F	=	0
R-squared	=	0.5846
Root MSE	=	0.79262

Table 35. (NC) Regression results, terminated cases, by district, claims model, with and without caseload.

Variable	*Caseload not included*					*Caseload included*					
LNBEG2TERM	*Coef.*	*Robust Std. Err.*	*t*	*P>t*	*Beta*	*Coef.*	*Robust Std. Err.*	*t*	*P>t*	*Beta*	*Lo, Med, or Hi Habeas Caseload*
PETSEX	0.132	0.104	1.270	0.204	0.020	0.136	0.104	1.320	0.188	0.020	
AMENDPET	0.219	0.068	3.210	0.001	0.057	0.217	0.068	3.200	0.001	0.057	
STPLEAD	1.655	0.078	21.220	0.000	0.616	1.647	0.078	21.170	0.000	0.613	
RECORD	0.004	0.003	1.350	0.179	0.018	0.004	0.003	1.340	0.180	0.018	
RR4DISP	0.416	0.081	5.150	0.000	0.171	0.413	0.081	5.130	0.000	0.170	
NOTAPP	-0.030	0.051	-0.580	0.563	-0.012	-0.031	0.051	-0.600	0.547	-0.012	
lnclaimcount	0.108	0.044	2.490	0.013	0.075	0.104	0.043	2.390	0.017	0.072	
IACANY	-0.048	0.063	-0.760	0.450	-0.020	-0.050	0.063	-0.800	0.424	-0.021	
INNANY	0.051	0.129	0.390	0.695	0.008	0.054	0.129	0.420	0.676	0.009	
PLEAANY	0.037	0.069	0.530	0.594	0.011	0.034	0.069	0.500	0.618	0.010	
SXSANY	-0.147	0.075	-1.970	0.049	-0.034	-0.142	0.075	-1.900	0.057	-0.033	
CONFANY	-0.142	0.109	-1.300	0.194	-0.026	-0.136	0.109	-1.250	0.213	-0.025	
JURSELANY	0.058	0.088	0.660	0.509	0.012	0.052	0.088	0.600	0.551	0.011	
APPRENANY	-0.045	0.126	-0.360	0.719	-0.006	-0.038	0.126	-0.300	0.766	-0.005	
JURMISANY	-0.378	0.134	-2.820	0.005	-0.048	-0.396	0.135	-2.940	0.003	-0.050	
JUDBIASANY	-0.064	0.103	-0.620	0.535	-0.008	-0.081	0.101	-0.800	0.423	-0.011	
ATRTSANY	0.204	0.088	2.310	0.021	0.038	0.213	0.088	2.430	0.015	0.039	
INCOMPANY	0.174	0.177	0.980	0.325	0.018	0.182	0.178	1.030	0.305	0.018	
EVGANY	0.127	0.057	2.230	0.026	0.042	0.126	0.057	2.210	0.027	0.042	
PMISCANY	0.048	0.068	0.710	0.478	0.012	0.055	0.068	0.810	0.418	0.013	
BRADYANY	-0.002	0.076	-0.020	0.981	-0.001	-0.002	0.076	-0.030	0.979	-0.001	
JRYINSANY	0.066	0.057	1.150	0.249	0.020	0.066	0.057	1.160	0.248	0.020	
APPEALANY	-0.044	0.108	-0.410	0.684	-0.008	-0.036	0.108	-0.330	0.738	-0.007	
INSUFGANY	0.016	0.059	0.280	0.781	0.005	0.020	0.059	0.340	0.737	0.006	
INSUFSANY	-0.015	0.129	-0.120	0.906	-0.002	-0.011	0.129	-0.080	0.934	-0.002	
CNSLANY	-0.139	0.110	-1.270	0.206	-0.022	-0.154	0.109	-1.410	0.159	-0.025	
DISCANY	-0.207	0.132	-1.570	0.116	-0.062	-0.191	0.132	-1.450	0.149	-0.057	
REVOCANY	-0.068	0.124	-0.550	0.585	-0.016	-0.071	0.124	-0.580	0.563	-0.017	
UNEXH	-0.225	0.106	-2.110	0.035	-0.055	-0.230	0.106	-2.170	0.031	-0.056	
SOLANY	-0.122	0.063	-1.930	0.054	-0.042	-0.132	0.063	-2.090	0.037	-0.045	
PDANY	0.129	0.059	2.200	0.028	0.041	0.127	0.059	2.170	0.030	0.041	
SPANY	-0.150	0.140	-1.070	0.285	-0.029	-0.156	0.140	-1.110	0.268	-0.030	
NOPETFLD	0.028	0.139	0.200	0.841	0.004	0.047	0.142	0.330	0.740	0.007	
VOLDISM	-0.159	0.157	-1.010	0.314	-0.019	-0.159	0.157	-1.010	0.311	-0.019	
othdisms	-0.154	0.117	-1.310	0.190	-0.029	-0.157	0.117	-1.340	0.180	-0.029	
REVSTD	-0.126	0.086	-1.470	0.143	-0.029	-0.118	0.086	-1.360	0.174	-0.027	
PPDISNOP	0.392	0.192	2.050	0.041	0.048	0.360	0.187	1.930	0.054	0.044	
REPADDR	0.102	0.093	1.100	0.273	0.023	0.106	0.094	1.130	0.260	0.023	
COADRULR	-0.065	0.152	-0.430	0.669	-0.007	-0.064	0.152	-0.420	0.676	-0.007	
SENTONLR	0.061	0.115	0.530	0.594	0.021	0.056	0.115	0.490	0.626	0.020	
Grant	0.457	0.390	1.170	0.241	0.026	0.446	0.389	1.150	0.252	0.025	
YEARSTRT	0.053	0.048	1.110	0.268	0.022	0.055	0.048	1.150	0.250	0.023	
medcaseload						-0.767 **[-0.272]**	0.211	-3.630	0.000	-0.317	
hicaseload						0.592 [0.215]	0.375	1.580	0.115	0.215	
MAD	0.735	0.334	2.200	0.028	0.056	0.071	0.336	0.210	0.832	0.005	L
NJD	1.325	0.230	5.760	0.000	0.129	0.666	0.233	2.850	0.004	0.065	L
PAeastD	0.426	0.184	2.310	0.021	0.069	-0.227	0.182	-1.250	0.213	-0.037	L
PAmidD	0.630	0.266	2.360	0.018	0.061	0.741	0.274	2.700	0.007	0.072	M
NCmidD	0.328	0.198	1.660	0.097	0.027	-0.333	0.202	-1.650	0.099	-0.028	L
SCD	0.271	0.202	1.350	0.179	0.033	0.380	0.213	1.780	0.075	0.047	M
VAwestD	(dropped)					(dropped)					M
ALnorthD	0.618	0.232	2.660	0.008	0.058	0.725	0.243	2.980	0.003	0.068	M
ALmidD	0.379	0.298	1.270	0.204	0.038	0.489	0.306	1.600	0.110	0.049	M
FLnorthD	0.423	0.203	2.080	0.037	0.046	0.534	0.216	2.470	0.014	0.058	M
LAwestD	1.206	0.292	4.130	0.000	0.121	1.310	0.299	4.380	0.000	0.132	M
TXnorthD	0.515	0.188	2.740	0.006	0.117	-0.742	0.378	-1.960	0.050	-0.169	H
FLmidD	0.723	0.182	3.980	0.000	0.141	0.829	0.194	4.260	0.000	0.161	M
FLsouthD	0.204	0.188	1.090	0.277	0.030	-0.452	0.190	-2.380	0.017	-0.068	L
GAnorthD	0.562	0.196	2.870	0.004	0.070	-0.095	0.193	-0.490	0.621	-0.012	L
LAD	0.522	0.199	2.630	0.009	0.072	-0.135	0.196	-0.690	0.490	-0.019	L

Table 35. (NC) Regression results, terminated cases, by district, claims model, with and without caseload, cont.

Variable	*Caseload not included*					*Caseload included*					
LNBEG2TERM	*Coef.*	*Robust Std. Err.*	*t*	*P>t*	*Beta*	*Coef.*	*Robust Std. Err.*	*t*	*P>t*	*Beta*	*Lo, Med, or Hi Habeas Caseload*
TXeastD	0.477	0.195	2.450	0.014	0.074	0.576	0.204	2.820	0.005	0.089	M
TXsouthD	0.491	0.172	2.860	0.004	0.104	0.593	0.184	3.220	0.001	0.125	M
TXwestD	0.528	0.202	2.610	0.009	0.076	-0.144	0.213	-0.680	0.499	-0.021	L
MIeastD	0.849	0.160	5.300	0.000	0.136	0.953	0.173	5.510	0.000	0.153	M
MIwestD	0.372	0.222	1.680	0.094	0.048	-0.883	0.377	-2.340	0.019	-0.115	H
OHnorthD	0.474	0.196	2.420	0.016	0.046	-0.186	0.197	-0.940	0.346	-0.018	L
OHsouthD	0.982	0.297	3.310	0.001	0.078	1.081	0.304	3.560	0.000	0.086	M
ILnorthD	0.620	0.200	3.090	0.002	0.076	-0.044	0.207	-0.210	0.832	-0.005	L
INnorthD	0.508	0.226	2.250	0.025	0.049	0.599	0.231	2.590	0.010	0.058	M
AReastD	-0.050	0.251	-0.200	0.842	-0.004	0.052	0.260	0.200	0.842	0.004	M
MND	0.247	0.209	1.180	0.239	0.019	-0.414	0.211	-1.960	0.050	-0.031	L
MOeastD	1.071	0.237	4.520	0.000	0.114	1.179	0.248	4.760	0.000	0.126	M
MOwestD	-0.005	0.179	-0.030	0.979	-0.001	-0.665	0.185	-3.600	0.000	-0.074	L
NYeastD	1.007	0.174	5.770	0.000	0.146	1.113	0.186	5.970	0.000	0.162	M
CAnorthD	1.261	0.379	3.320	0.001	0.119	(dropped)					H
CAeastD	1.047	0.191	5.480	0.000	0.158	-0.210	0.369	-0.570	0.568	-0.032	H
CAcenD	0.425	0.169	2.510	0.012	0.107	-0.828	0.351	-2.360	0.019	-0.209	H
CAsouthD	0.469	0.223	2.100	0.036	0.044	-0.192	0.223	-0.860	0.389	-0.018	L
ORD	1.204	0.231	5.220	0.000	0.096	1.306	0.241	5.420	0.000	0.104	M
NYsouthD	1.187	0.205	5.800	0.000	0.108	1.290	0.215	5.990	0.000	0.117	M
WAwestD	-0.066	0.258	-0.260	0.798	-0.005	-0.730	0.260	-2.810	0.005	-0.055	L
KSD	1.339	0.391	3.430	0.001	0.101	1.446	0.395	3.660	0.000	0.109	M
OKwestD	0.032	0.300	0.110	0.916	0.003	0.134	0.307	0.440	0.662	0.012	M
_cons	3.225	0.23	14.21	0		3.882	0.213	18.190	0.000	.	
	Number of obs=			1076		Number of obs =			1076		
	F(80, 995) =			19.84		F(81, 994) =			19.7		
	Prob > F =			0		Prob > F =			0		
	R-squared =			0.642		R-squared =			0.643		
	Root MSE =			0.750		Root MSE =			0.749		

Table 36. (NC) Regression of disposition time in days (logged), by district, no claims model, with and without caseload.

		Number of obs	=1813	
		F(66, 1746)	=39.23	
Showing		Prob > F	=0	
Change in Beta		R-squared	=0.608	
Only,		Root MSE	=0.804	
Significance indicated by shading				
Districts w/o caseload		*Caseload added*	*Habeas caseload level*	
LNBEG2TERM	*Beta*	*Beta*		
PETSEX	-0.012	-0.014		
AMENDPET	0.075	0.075		
STPLEAD	0.621	0.620		
RECORD	0.009	0.008		
RR4DISP	0.140	0.141		
NOTAPP	0.021	0.017		
Lnclaimcount	0.116	0.116		
NOPETFLD	-0.024	-0.022		
PPDISNOP	0.023	0.021		
REPADDR	0.045	0.046		
YEARSTRT	0.026	0.025		
Medcaseload		**[-23.2%]** -0.264		
Hicaseload		**[49.5%]** 0.402		
MAD	0.028	-0.001	L	
NJD	0.083	0.044	L	
PaeastD	0.041	-0.025	L	
PamidD	0.064	0.079	M	
PawestD	0.055	0.012	L	
MDD	-0.002	-0.039	L	
NceastD	0.039	0.009	L	
NcmidD	0.003	-0.032	L	
SCD	0.036	0.056	M	
VaeastD	0.075	0.100	M	
VawestD			M	
AlnorthD	0.057	0.072	M	
AlmidD	0.026	0.040	M	
AlsouthD	0.020	0.032	M	
FlnorthD	0.029	0.045	M	
LawestD	0.093	0.108	M	
MsnorthD	0.020	0.034	M	
MssouthD	0.063	0.082	M	
TxnorthD	0.062	-0.233	H	
FlmidD	0.087	0.118	M	
FlsouthD	0.018	-0.041	L	
GanorthD	0.053	-0.005	L	
GasouthD	-0.008	0.004	M	
LAD	0.046	-0.007	L	
TxeastD	0.053	0.078	M	
TxsouthD	0.071	0.103	M	
TxwestD	0.064	0.006	L	
KywestD	0.072	0.045	L	
MieastD	0.098	0.123	M	
MiwestD	0.046	-0.137	H	
OhnorthD	0.042	0.003	L	
OhsouthD			M	
TneastD	-0.010	-0.038	L	
TnmidD	0.019	-0.006	L	
IlnorthD	0.035	-0.019	L	
InnorthD	0.009	0.030	M	
WieastD	0.050	0.066	M	
NynorthD	0.060	-0.054	H	
AreastD	0.002	0.014	M	
MND	0.032	-0.002	L	
MoeastD	0.089	0.105	M	
MowestD	-0.005	-0.050	L	
NyeastD	0.108	0.131	M	
AZD	0.067	0.079	M	

Table 37. (C) Cox regression probability of termination over time, by district, with and without caseload.

	Districts without caseload			*Districts with caseload*						
No. of subjects	330.000			330						
No. of failures	236.000			236						
Time at risk	2298.041			2298.041						
LR chi2(33)	340.51			340.51						
	-			-						
Log likelihood	1058.377			1058.377						
Prob > chi2	=	0		0						
No of obs	=	330		330						
_t	Coef.	P>z	% Change in Hazard Rate	Coef.	Std. Err.	Z	P>z	[95% Conf.	Interval]	% Change in Hazard Rate	Case-load level
PETRACE	-0.010	0.414	-1.00%	-0.010	0.012	-0.820	0.414	-0.034	0.014	-1.00%	
AMENDPET	-6.855	0	-99.89%	-6.855	1.938	-3.540	0.000	-10.653	-3.057	-99.89%	
REPSUB	-0.264	0.259	-23.21%	-0.264	0.234	-1.130	0.259	-0.723	0.194	-23.21%	
RRREVD	-0.080	0.729	-7.70%	-0.080	0.231	-0.350	0.729	-0.534	0.374	-7.70%	
claimcount	-0.016	0.003	-1.58%	-0.016	0.005	-2.950	0.003	-0.026	-0.005	-1.58%	
STAYTIME	-0.003	0	-0.27%	-0.003	0.000	-5.360	0.000	-0.004	-0.002	-0.27%	
REPETLAG	-0.024	0	-2.40%	-0.024	0.005	-5.350	0.000	-0.033	-0.015	-2.40%	
INNANY	0.013	0.957	1.30%	0.013	0.240	0.050	0.957	-0.458	0.483	1.30%	
IACANY	0.281	0.213	32.41%	0.281	0.226	1.240	0.213	-0.161	0.723	32.41%	
ATRTSANY	0.181	0.5	19.83%	0.181	0.268	0.670	0.500	-0.345	0.707	19.83%	
INCOMPANY	0.003	0.988	0.34%	0.003	0.234	0.010	0.988	-0.455	0.462	0.34%	
JRYINSANY	-0.027	0.872	-2.64%	-0.027	0.166	-0.160	0.872	-0.353	0.299	-2.64%	
INSUFGANY	-0.284	0.108	-24.72%	-0.284	0.176	-1.610	0.108	-0.630	0.062	-24.72%	
SXSCONFVGL~Y	0.129	0.433	13.77%	0.129	0.165	0.780	0.433	-0.194	0.452	13.77%	
PMISCBRADY~Y	0.112	0.513	11.82%	0.112	0.171	0.650	0.513	-0.223	0.447	11.82%	
JURSELMISB~Y	0.070	0.672	7.28%	0.070	0.166	0.420	0.672	-0.255	0.396	7.28%	
DISCR	0.006	0.978	0.65%	0.006	0.238	0.030	0.978	-0.461	0.473	0.65%	
EVH	-0.366	0.13	-30.64%	-0.366	0.242	-1.510	0.130	-0.840	0.108	-30.64%	
ROPATRNG	-0.290	0.15	-25.15%	-0.290	0.201	-1.440	0.150	-0.684	0.105	-25.15%	
hicaseload				-2.189	0.761	-2.870	0.004	-3.681	-0.696	-88.79%	
medcaseload				-0.347	0.505	-0.690	0.492	-1.338	0.643	-29.35%	
DISTRICT:											
PaeastD	0.906	0.211	147.42%	-1.283	0.560	-2.290	0.022	-2.380	-0.186	-72.27%	L
AlnorthD	1.841	0.008	530.37%	^							M
FlmidD	2.189	0.004	792.30%	^							M
TXnorthD	2.392	0	993.51%	0.551	0.411	1.340	0.180	-0.255	1.356	73.47%	L
TXeastD	3.109	0	2140.56%	1.268	0.431	2.940	0.003	0.423	2.113	255.44%	M
TXsouthD	3.572	0	3459.25%	1.384	0.444	3.110	0.002	0.513	2.254	298.89%	L
TXwestD	2.438	0	1045.06%	0.597	0.410	1.450	0.146	-0.207	1.401	81.65%	M
OHnorthD	2.470	0	1082.50%	0.629	0.384	1.640	0.101	-0.123	1.381	87.59%	M
OHsouthD	0.859	0.251	136.18%	0.859	0.748	1.150	0.251	-0.608	2.326	136.18%	H
CAcenD	1.717	0.047	456.59%	-0.124	0.696	-0.180	0.858	-1.488	1.239	-11.70%	M
OKwestD	1.873	0.008	551.05%	1.873	0.708	2.650	0.008	0.485	3.261	551.05%	H
NVD	-0.171	0.843	-15.76%	-0.171	0.865	-0.200	0.843	-1.867	1.524	-15.76%	H
t										-1.00%	
AMENDPET	0.967	0.001	162.90%	0.967	0.284	3.410	0.001	0.410	1.523	-99.89%	
REPETLAG	0.003	0	0.32%	0.003	0.001	5.000	0.000	0.002	0.004	-23.21%	

^AL-N and FL- M dropped due to collinearity

Appendix B. Time-barred capital cases, summarized, by state.[164]

ALABAMA

Arthur v. Haley

Thomas D. Arthur was convicted of murder and sentenced to death. His conviction and sentence were affirmed by the Alabama Court of Criminal Appeals and the Alabama Supreme Court. The Alabama Supreme Court denied Arthur's application for rehearing on March 20, 1988. Arthur did not file a petition for review with the United State Supreme Court. Because a certificate of judgment was issued by the Alabama Court of Criminal Appeals on April 7, 1998, Arthur had until April 7, 2000, to file a state petition for post-conviction review. Arthur did not do so, and on September 8, 2000, the Attorney General of the State of Alabama filed a motion for the court to set a date for Arthur's execution. On January 25, 2001, Arthur's pro bono counsel filed a motion with the Circuit Court of Jefferson County seeking leave to file a state post-conviction petition, arguing that due to Arthur's indigence he was unable to obtain counsel to help him file the petition prior to the deadline. His motion was denied. On March 23, 2001 the Alabama Supreme Court ordered that Arthur be executed on April 27, 2001.

Arthur then moved the Alabama Supreme Court to stay the death warrant, and that motion was denied. On April 20, 2001 (20 months after the one-year AEDPA period ended), Arthur filed his first and only petition for a writ of habeas corpus in the **NDAL** raising 113 claims of error, including a claim of actual innocence. Arthur's attorney also filed a motion for stay of execution, which was granted. The state appealed the district court's grant of a stay of execution and the Eleventh Circuit refused to vacate the stay.

The district court then denied Arthur's petition as being time-barred, finding that there was not a sufficient showing of actual innocence to trigger equitable tolling. The court also rejected Arthur's arguments that the statute of limitations should be tolled because the state failed to provide him with state post-conviction counsel or legal assistance, prevented him from communicating with people who might have helped him, failed to notify him of the certificate of judgment that triggered the limitations period, and failed to provide an adequate law library. Arthur appealed the district court's decision and the Eleventh Circuit affirmed. 452 F.3d 1234. A petition for writ of certiorari was denied by the Supreme Court on April 16, 2007. Arthur is still on death row. http://www.doc.alabama.gov/deathrow.asp.

Siebert v. Haley

Daniel Siebert's conviction for capital murder became final when the U.S. Supreme Court denied his petition for writ of certiorari on November 5, 1990. Siebert filed a state petition for post-conviction relief on August 25, 1992, which the trial court found to be time-barred while also denying Siebert's claims on the merits. The Alabama Court of Criminal Appeals affirmed the denial on December 30, 1999, and the Alabama Supreme Court denied certiorari on September 15, 2000. Siebert filed his federal petition for a writ of habeas corpus in the **NDAL** on September 14, 2001. With representation in federal court by attorneys from the federal defender's office, Siebert raised 42 claims of error in his petition.

The district court found that the statute of limitations for filing Siebert's federal petition had expired on April 23, 1997, and that Siebert's state post-conviction petition did not toll the running of the time. The district court deferred to the state court's conclusion that as a matter of state law, the post-conviction petition was not filed in time. The district court also found that the state court's filing deadline was clear and well established and consistently applied. The district court denied equitable tolling and rejected Siebert's arguments that the

[164] Status reported as of March 2007 unless otherwise noted.

Alabama Court of Criminal Appeals had failed to notify him when it issued the certificate of judgment and that he was merely attempting to exhaust his state court remedies in order to satisfy AEDPA.

Siebert appealed the district court's decision and the Eleventh Circuit vacated and remanded, finding that Alabama's procedural rule was not firmly established nor was it regularly applied at the time it was applied in Siebert's case. The Eleventh Circuit held that Siebert's post-conviction petition was timely filed and tolled the time limit for filing a federal petition until September 15, 2000, thus making his September 14, 2001, federal petition timely filed. The Supreme Court then decided *Pace v. DiGuglielmo*, which held that a post-conviction petition rejected by the state courts as untimely filed under state law is not considered "properly filed" within the meaning of AEDPA's tolling provision.

On remand, the district court held that *Pace* overruled the Eleventh Circuit's decision and once again dismissed Siebert's federal petition as time-barred. That decision was appealed and the Eleventh Circuit reversed and remanded on March 7, 2007, finding that *Pace* did not address the same question at issue in this case. The case is still pending in district court. http://www.doc.alabama.gov/deathrow.asp.

Kuenzel v. Hopper

William Ernest Kuenzel was convicted of capital murder on September 23, 1998, and was sentenced to death. The conviction and sentence were affirmed on appeal and the U.S. Supreme Court denied Kuenzel's application for a writ of certiorari on October 7, 1991. Kuenzel filed a petition for post-conviction relief in state court which was dismissed as untimely on February 18, 1999. Kuenzel appealed that dismissal and the Alabama Court of Criminal Appeals affirmed the decision on January 28, 2000. While his post-conviction appeal was still pending in state court, Kuenzel filed a federal petition for a writ of habeas corpus in the **NDAL** on February 7, 2000, raising 52 claims of error. Kuenzel was represented in federal court by retained attorneys.

When Kuenzel filed his federal petition, he also filed a motion asking that AEDPA's statute of limitations be tolled until all his state court appeals were exhausted. The district court denied the motion as premature, and stayed the case until state court proceedings had finished. The Alabama Supreme Court denied certiorari on July 28, 2000, and the U.S. Supreme Court denied certiorari on January 16, 2001. On February 5, 2001, the district court lifted the stay and Kuenzel filed an amended petition.

The district court then dismissed Kuenzel's petition as time-barred, finding that the one-year filing deadline had ended no later than April 23, 1997, and that Kuenzel's state post-conviction petition was not "properly filed" and therefore did not toll the running of the time. The court deferred to the state court's finding that the post-conviction petition was untimely. Kuenzel argued that the AEDPA statute of limitations should be equitably tolled on several grounds. He argued that (1) he did not have counsel from October 1991 to September 1992, and was unaware of state filing deadlines, (2) the law library he had access to was inadequate, and (3) that he was merely trying to exhaust his state remedies before filing his habeas petition. The district court rejected these arguments and also rejected Kuenzel's assertion that the state court's ruling regarding his post-conviction petition was ambiguous and based on a rule not firmly established nor regularly followed.

Kuenzel appealed and the Eleventh Circuit vacated the district court's decision and remanded for further proceedings consistent with *Siebert* (discussed above). The district court on remand found that *Pace* was an intervening controlling authority that excused the district court from following the Eleventh Circuit's mandate. The district court held that because the state court had concluded that the post-conviction petition was untimely, the state proceedings did not toll the AEDPA statute of limitations and Kuenzel's federal habeas petition was time-barred. On June 13, 2007, the Eleventh Circuit again reversed and remanded. 488 F.3d 1341. http://www.doc.alabama.gov/deathrow.asp.

FLORIDA

Downs v. Crosby

Ernest Charles Downs was convicted of capital murder and conspiracy and was sentenced to death, after being granted a new sentencing hearing, on February 17, 1989. Because Downs was convicted prior to the enactment of AEDPA, the limitations period did not start running until April 24, 1996. Downs had post-conviction proceedings pending in state court until October 18, 1999, which tolled the limitations period. Downs then filed a state habeas petition in the Florida Supreme Court on October 18, 2000, one day too late to toll the federal limitations period which had expired on October 17, 2000. After the Florida Supreme Court concluded its review and denied rehearing on December 3, 2001, Downs filed his federal petition for a writ of habeas corpus in the **MDFL** (Jacksonville) on December 12, 2001. The petition raised 29 claims of error and was prepared by his retained attorneys. Downs subsequently asked the court to dismiss his counsel, which the court did, and Downs represented himself for the remainder of the case.

Downs argued that the limitations period should be equitably tolled because his counsel was ineffective and incompetent and because he is innocent of murder and merely guilty of conspiracy. The district court rejected Downs's arguments and found that Downs had failed to introduce any newly discovered evidence of innocence. After rejecting all of Downs's arguments in favor of equitable tolling, the district court dismissed his federal habeas petition as untimely. Downs appealed the district court's decision and was appointed counsel by the Eleventh Circuit. The appeal is still pending. Florida corrections webpage

OHIO

Keenan v. Bagley

Thomas M. Keenan's direct appeal of his conviction concluded on October 5, 1998. On March 26, 1999, he filed a post-conviction petition in Ohio state court, which was denied on the merits on December 10, 1999. Keenan appealed that decision and the Eighth District Court of Appeals of Ohio dismissed the post-conviction petition as untimely because it was filed outside the 180-day statutory filing limit. Keenan filed his petition for a writ of habeas corpus in the **NDOH** on November 21, 2001. Represented in federal court by appointed attorneys, Keenan raised 76 claims of error.

The district court found that Keenan's petition was time-barred. The court rejected his claim that his actual innocence warranted equitable tolling, deferred to the Ohio court's determination that Keenan's state post-conviction petition was not timely filed, and concluded that the deadline for filing a petition in the district court had expired October 5, 1999.

The Sixth Circuit vacated the decision and remanded the case to the district court for an evidentiary hearing, finding that, based on the record, it was unable to determine whether Keenan's petition should be equitably tolled. An evidentiary hearing was held and the district court decided to equitably toll the statute of limitations and reinstate Keenan's petition. The case is still pending in the district court. Ohio department of corrections webpage.

Raglin v. Mitchell

Walter Raglin was convicted of capital murder and sentenced to death. Raglin appealed his conviction and sentence, and the U.S. Supreme Court denied *certiorari* on March 1, 1999. Raglin's state post-conviction petition was denied in state court. This ruling was affirmed, and the Ohio Supreme Court dismissed Raglin's appeal on October 27, 1999. Raglin filed a petition for a writ of habeas corpus in the **SDOH** on September

13, 2000, raising 33 claims of error. Raglin later asked that the representation of his appointed attorneys be withdrawn, and the court granted his request.

An amended petition was filed in federal court on August 3, 2002, with the help of a new attorney, and the case was stayed pending exhaustion of state court remedies from August 4, 2003, until March 3, 2005. The amended petition voluntarily withdrew 12 of the original claims and added three new claims.

The district court found that Raglin's three new claims did not relate back to the filing of the original petition because they rely on different facts from those pleaded in support of his original claims. The court also rejected Raglin's argument that the evidence supporting his new claims was newly discovered and was not known at the time of his original petition. The court dismissed the new claims as time-barred. Each of Raglin's remaining claims were dismissed as unexhausted, procedurally defaulted, or without merit. The district court's orders have not yet been appealed. Raglin is still on death row. Ohio department of corrections webpage.

TEXAS

Nelson v. Dretke

Marlin Nelson's judgment for capital murder became final on October 4, 1993. The statute of limitations was tolled by agreement of the Texas attorney general's office until the appointment of state habeas counsel, on January 19, 1998. The statute was tolled again, 267 days later, when Nelson filed his state habeas petition. After the state court denied relief, he had 98 days remaining, until December 19, 2002, to file his federal petition. On September 17, 2002, Nelson moved in the **SDTX** for appointment of counsel. The district court appointed counsel on March 13, 2003, three months after the expiration of the limitations period. On April 30, 2003, Nelson sought an extension and equitable tolling until June 13, 2003. While that motion was pending, he filed his petition on August 22, 2003, 246 days after the limitations period had expired. The petition contained 8 claims, including insufficient evidence for conviction and various errors in the sentencing phase. The district court held that the petition was time-barred and denied equitable tolling for the period during which the motion to appoint counsel was pending, noting precedent "upholding the expectation that a death-row inmate, while entitled to counsel, should act independently to preserve his ability to seek redress in federal court" by filing a skeletal petition. The court also denied tolling for the period after counsel was appointed, noting that "if Nelson had not spent 258 days without actively seeking state relief, he would have enjoyed more time to prepare a federal petition." The Fifth Circuit in an unpublished opinion denied a certificate of appealability, finding that jurists of reason would not find the district court's ruling to be debatable. Nelson remains on death row.http://www.tdcj.state.tx.us/statistics/deathrow/drowlist/nelsonme.jpg

Prieto v. Dretke

Arnold Prieto was convicted of capital murder and sentenced to death. His conviction was affirmed on direct appeal on December 16, 1998. He filed a petition for post-conviction relief, which was denied by the Texas Court of Criminal Appeals on November 28, 2001. Prieto then filed a petition for a writ of habeas corpus in the **WDTX** on August 2, 2002. Represented by appointed counsel, he filed an amended petition on September 24, 2002, raising eight claims of error.

The district court found that Prieto's conviction became final no later than March 17, 1999, and was tolled while his state petition for post-conviction relief was pending, through November 28, 2001. Despite this tolling, Prieto's federal petition was filed 98 days after the AEDPA statute of limitations ended. The district court refused to equitably toll the limitations period, holding that attorney neglect ordinarily does not justify doing so. The court reasoned that there is no evidence that Prieto's state habeas attorney was incapacitated by her illness. Even more importantly, the alleged neglect of Prieto's state habeas counsel did not last for the

entire duration of the limitations period. The district court also found that Prieto did not make any effort to exercise diligence to pursue state or federal relief, could not show that he was misled by any misrepresentation by a state agency, state court, or federal court, and did not allege that he was not aware of the limitations period or otherwise precluded from filing a pro se petition on time.

Despite its finding that the petition was time-barred, the district court went on to address Prieto's claims and deny them all on the merits or for procedural reasons other than the statute of limitations. Prieto appealed and the Fifth Circuit reversed the district court's findings that the petition was untimely and that his jury misconduct claim was procedurally barred. On remand, the district court held that the claim was in fact procedurally barred and in the alternative was meritless and *Teague*-barred. The district court's decision was appealed and that appeal is still pending in the Fifth Circuit. Texas department of criminal justice webpage.

Rojas v. Cockrell

Leonard Uresti Rojas was convicted of capital murder and sentenced to death. His conviction became final on February 9, 1999. On April 5, 2000, Rojas filed a motion for appointment of counsel in the **NDTX**. On May 3, 2000, the court stayed his execution and on November 6, 2000, the court appointed him counsel. Appointed counsel filed Rojas's federal petition for a writ of habeas corpus on March 23, 2001, alleging as claims of error 1) a due process violation when the court failed to define a necessary element of the offense of capital murder in the jury charge, 2) insufficient evidence to sustain the "same criminal transaction" element of capital murder, 3) insufficient evidence of future dangerousness, and 4) that the application of AEDPA's limitations period violates the Suspension Clause.

Rojas raised no arguments for equitable or statutory tolling and the district court dismissed the petition as time-barred. Rojas appealed and the Fifth Circuit declined to issue a Certificate of Appealability. Rojas was executed on December 4, 2002. http://www.tdcj.state.tx.us/statistics/deathrow/drowlist/rojas.jpg

Shannon v. Dretke

Willie Marcel Shannon was convicted of capital murder and sentenced to death on November 8, 1993. The conviction and sentence were affirmed on December 11, 1996, and a motion for rehearing was denied on January 29, 1997. Shannon did not petition the U.S. Supreme Court for a writ of *certiorari*. Shannon filed a state post-conviction petition on April 13, 1998, which was denied on September 12, 2001. Shannon then filed his federal petition for writ of habeas corpus in the **SDTX** (Houston) on March 1, 2002. The petition was prepared by appointed counsel and raised 9 claims of error. The federal habeas proceedings were stayed from August 27, 2002, until March 8, 2005, pending the disposition of Shannon's motion for DNA testing in state court. That motion was denied by the Texas state courts.

The court found that Shannon's conviction became final on April 29, 1997, and was tolled from April 13, 1998, until September 12, 2001, while Shannon's state post-conviction petition was being litigated. When the state post-conviction petition was denied on September 12, 2001, Shannon had 17 more days to file a federal petition. Shannon, however, did not file his petition until 151 days after the limitations period had expired. Shannon argued that *Pyles*, which held that the statute of limitations for federal habeas petitions must be tolled from the date a death row inmate requests state habeas counsel or the state court enters the statutorily required findings for such appointment until the date counsel is actually appointed, should be applied in this case. The district court found that even if that rule does apply and Shannon's limitations period was tolled, his petition was still untimely.

Shannon also argued that he is entitled to equitable tolling because his state habeas counsel delayed in seeking appointment of federal habeas counsel and because time lapsed between his motion for appointment of counsel and the date federal habeas counsel was appointed. The court rejected this argument, finding that

Shannon still had 40 days to file a petition once his federal habeas counsel was appointed (assuming that *Pyles* applies). The district court dismissed Shannon's petition as time-barred and denied a Certificate of Appealability. The Fifth Circuit affirmed. Shannon was executed on November 8, 2006. http://www.tdcj.state.tx.us/statistics/deathrow/drowlist/shannon.jpg

Pippin v. Dretke

Roy Lee Pippin was convicted of capital murder and sentenced to death. His conviction and sentence were affirmed on direct appeal on May 21, 1997. On May 18, 1998, Pippin filed a state habeas corpus petition. He then filed a second petition and a supplemental memorandum of law, raising new claims, which were treated as successive petitions by the state court. On February 20, 2002, the Texas Court of Criminal Appeals denied Pippin's first habeas petition on the merits and dismissed the others as abuses of the writ. On October 7, 2002, the U.S. Supreme Court denied *certiorari*. On June 20, 2002, Pippin filed a pro se federal petition for habeas corpus in the **SDTX** (Houston). The next day, June 21, 2002, Pippin's appointed counsel filed a federal habeas petition on behalf of Pippin raising 18 claims of error.

On September 30, 2004, the district court held one of Pippin's *Brady* claims (and a related ineffective assistance of counsel claim) in abeyance pending further briefing, dismissed a prosecutorial misconduct claim (presentation of perjured testimony) and several ineffective assistance claims as time-barred, and denied the rest of the claims on the merits or found they were procedurally barred. The two claims that were dismissed as time-barred were both raised for the first time in Pippin's April 16, 2004, supplemental brief. The district court did not discuss the relation back doctrine but instead stated that these two claims were clearly outside the limitations period.

Pippin appealed the district court's order but the Fifth Circuit held that it lacked jurisdiction to hear the appeal because the district court's order was not a final judgment. After additional briefing, the district court denied Pippin's remaining two claims on the merits. Pippin appealed and the Fifth Circuit denied a Certificate of Appealability. The U.S. Supreme Court denied *certiorari* on October 16, 2006. Pippin was executed on March 29, 2007. http://www.tdcj.state.tx.us/statistics/deathrow/drowlist/pippin.jpg

APPENDIX C. WRITS GRANTED

NON-CAPITAL CASES WITH AT LEAST ONE CLAIM GRANTED

Vivar v. Senkowski. Wilson Vivar was convicted of criminal possession of a weapon in the second degree and assault in the second degree, then sentenced to concurrent sentences of 15 and five years. Vivar filed a pro se petition for writ of habeas corpus in the **EDNY** (Brooklyn) challenging the **sufficiency of the evidence** of both his convictions, as well as his 15-year sentence for the weapon possession. The court granted relief on the insufficiency claim for the weapons conviction, finding that the prosecution **failed to establish that the firearm was a shotgun**, which was a necessary element of the crime. The court also granted relief based on the trial court's **failure to instruct the jury on the definition of a firearm**, even though Vivar did not raise this separate claim but merely discussed it somewhere in his petition. The insufficiency of evidence claim related to the assault conviction was denied on the merits. The sentencing claim related to weapons conviction was held to be moot since the court granted relief from the weapons conviction. The state did not appeal the district court's judgment. There is no other post-judgment information available, other than the fact that Vivar was paroled on December 21, 2004. New York Department of Corrections Inmate Search.

Mack v. Folino et al. William Mack was convicted of third-degree murder, criminal conspiracy, and possession of an instrument of crime. He was sentenced to concurrent terms of 24 to 40 years for murder, ten to 20 years for conspiracy, and two years six months to five years for weapon possession. Through his retained attorneys, he filed his petition in the **EDPA** (Philadelphia). The petition challenged Mack's conviction and raised three claims of error. The court denied two of the claims on the merits and granted relief on the remaining claim, holding that there was a complete **denial of cross-examination at a post-trial hearing on Mack's motion for extraordinary relief** of a witness who claimed that someone other than Mack is responsible for the murder in question. The district court held this error was not harmless and that the only form of appropriate relief was a new hearing on the question of after-discovered evidence. The district court ordered that the state **grant Mack a new hearing**, including a meaningful opportunity to cross-examine witnesses and present testimony. The district court's decision was **affirmed** by the Third Circuit. There is no further information regarding whether the state held a new hearing. Pennsylvania Department of Corrections Inmate Search

Lockridge v. Adams. Bryan Lockridge was convicted of attempted murder of a police officer, possession of cocaine for sale, and possession of a firearm by a felon. He was sentenced to life imprisonment. On appeal, the California Court of Appeals affirmed his conviction but modified the sentence and stayed imposition of the firearm conviction. Lockridge filed a pro se petition for a writ of habeas corpus in the **CDCA** (Los Angeles) challenging his conviction on the ground that the trial court violated his Sixth Amendment right to trial by jury and his Fourteenth Amendment due process rights when it **refused his request to give a self-defense instruction**. The district judge agreed, and held that the trial court's failure to instruct the jury was not harmless. The state was ordered to provide Lockridge with a new trial or else release him. This decision was **affirmed** by the Ninth Circuit.

Musgrave v. Spalding. Shelton Musgrave was convicted of first-degree murder with a deadly weapon enhancement and was sentenced to 22 years imprisonment. On direct appeal the Washington State Court of Appeals held that the trial court had erred in excluding the defense investigator's testimony and photographs but that the error did not require reversal. Musgrave filed, with retained counsel, a petition for a writ of habeas corpus in the **WDWA** (Seattle) challenging his conviction. The petition raised three claims of error, two of which were denied on the merits. The court granted the third claim which was that the **exclusion of the testimony and photographs of the investigator denied Musgrave the ability to effectively challenge the credibility of the crucial witness** to the crime. The witness's testimony was the "lynchpin of both the State's case against the Petitioner and the Petitioner's defense" and Musgrave's inability to offer evidence related to the credibility of that witness had a prejudicial effect on the jury's verdict. The district court ordered that

Musgrave be released or retried. The district court's decision was appealed but the parties agreed to jointly dismiss the appeal.

Kang v. Green et al. Catherine C. Kang was charged with vehicular manslaughter. At her jury trial a defense witness testified that the decedent in this case had not been wearing a seatbelt, evidence which is not admissible under Ohio state law. The prosecution objected and the judge declared a mistrial. The case was re-assigned and a new trial date was set. The defense filed a motion to dismiss based on double jeopardy grounds, which was denied. A continuance was granted and the case was stayed pending the outcome of Kang's filing of a petition for a writ of habeas corpus in the **SDOH** (Eastern Division). Kang's petition, filed with the assistance of retained counsel, raised two claims: 1) that the trial judge abused his discretion in declaring a mistrial in violation of double jeopardy, and 2) the exclusion of the evidence violated Kang's constitutional rights. The court dismissed Kang's evidentiary challenge as not cognizable in habeas corpus because the claim raised a state law evidentiary issue. The district court then granted Kang's double jeopardy claim, finding there was **no manifest necessity for declaring a mistria**l. The court reasoned that the jury had already heard evidence from which they could have concluded that the decedent was not wearing a seatbelt, and a curative instruction could have solved the problem. Also at issue in this case was whether Kang was "in custody." The court held that Kang was in custody, even though she was released on her own recognizance, because she was required to appear at a future trial date and a failure to appear would result in her being held in contempt of court and in a warrant being issued for her arrest. The court ordered that respondent be barred from re-trying Kang on the vehicular manslaughter charge. The decision was not appealed.

Deltessandro v. Knowles. Steven Deltessandro was convicted of robbery, assault with force likely to produce great bodily injury, and aggravated mayhem. He was sentenced to five years' imprisonment for the robbery and life without parole for the aggravated mayhem. After his state appeal failed, Deltessandro filed a pro se petition for a writ of habeas corpus in the **NDCA** (San Francisco) raising seven claims of error. The district court granted Deltressandro's claim that his **confrontation clause rights were denied when the trial court excluded impeaching evidence of witness Easley's prior criminal activity**. The court found that the error was harmless with regard to the assault and robbery convictions but not with regard to the aggravated mayhem conviction since Easley's testimony was the only evidence that established the specific intent necessary for an aggravated mayhem conviction. Of the six remaining claims, one was procedurally barred and the rest were denied on the merits. The court vacated Deltessandro's conviction for aggravated mayhem and ordered that the state retry him or re-sentence him within 90 days. The court's decision was not appealed. It is unknown whether Deltessandro was retried or re-sentenced.

NON-CAPITAL GRANTS REVERSED

Brewster v. Alameda. Thomas Brewster pleaded guilty to possession of a controlled substance and received six years' imprisonment. He filed a pro se petition for writ of habeas corpus in the **EDCA** (Sacramento) challenging his conviction. The district judge dismissed the search and seizure claim based on Stone v. Powell, but granted Brewster's claim that **counsel was ineffective for failing to raise the meritorious Fourth Amendment claim on appeal**. The district court found that a retrial would be pointless since the illegally seized evidence would be suppressed and there would be no evidence justifying a conviction. The district court ordered that Brewster be released. The district court's decision was **reversed** by the Ninth Circuit. Its opinion was not available to determine the reason for reversal.

CAPITAL CASES WITH AT LEAST ONE CLAIM GRANTED , summarized, by state[165]

ALABAMA

Lawhorn v. Haley. James Lawhorn was convicted of capital murder and sentenced to death. He filed his petition in the **NDAL** (Eastern) raising 44 claims and sub-claims of error. The court granted relief on Lawhorn's claim that he was **subjected to unconstitutional delay in securing a judicial determination of probable cause for his warrantless arrest in violation of the Fourth Amendment**. The district court found that the proper remedy for this error is to suppress the confession that Lawhorn gave as a result of that delay. The district court ordered that Lawhorn's conviction be vacated. The district court also found that Lawhorn's **trial counsel was ineffective for failing to make a closing argument at the penalty phase** and the proper remedy for this was to vacate Lawhorn's death sentence. Respondent appealed the district court's judgment, the result in the Eleventh Circuit is unknown. Lawhorn remains on death row. Offender Information for James Lawhorn

ARIZONA

Amaya-Ruiz v. Cluff. Jose Amaya-Ruiz was convicted of first-degree murder, manslaughter, theft, and first-degree burglary. He was sentenced to death. His manslaughter conviction was reversed by the Supreme Court of Arizona. Amaya-Ruiz then filed a petition for writ of habeas corpus in the **DAZ** (Tucson), which was denied. The Ninth Circuit affirmed. The state of Arizona then filed a motion for a competency examination because there was reason to believe that Amaya-Ruiz was incompetent for execution. The superior court found that Amaya-Ruiz was incompetent. After several treatment sessions his competency was deemed restored and a warrant of execution was issued. Amaya-Ruiz then filed another petition for a writ of habeas corpus in the same district court challenging the state's finding that competency was restored. After an evidentiary hearing, the district judge granted Amaya-Ruiz's claim of **incompetency for execution** and ordered he could not be executed until his competency was restored and the determination of that restoration was made using constitutionally adequate procedures. Amaya-Ruiz appealed to the Ninth Circuit but later voluntarily dismissed his appeal. He is currently serving a life sentence. Offender Information for Jose Amaya-Ruiz

Laird v. Schriro. Kenneth Laird was convicted of capital murder and sentenced to death for his involvement in a robbery, kidnapping, and murder. He filed a petition raising 24 claims in the **DAZ** (Phoenix)**.** Several claims were determined to be procedurally barred and several others were denied on the merits. The court granted relief on Laird's claim that his death **sentence violated the Eighth Amendment, as determined in *Roper v. Simmons*, because he was under the age of 18 at the time the offense was committed**. Laird appealed the rejection of his other claims and the Ninth Circuit **affirmed** the district court's decision. Offender Information for Kenneth Laird

OHIO

Mardrigal v. Bagley. Jamie Madrigal was convicted of aggravated murder for his alleged involvement in the robbery of a Kentucky Fried Chicken restaurant. His petition filed in **NDOH** (Cleveland) challenged his conviction and sentence. The district court granted Madrigal's claim that the trial court **violated the confrontation clause by admitting the out-of-court statements of a co-defendant**. The Ohio Supreme Court had earlier found that this error was harmless. The district court disagreed and held that the error was not harmless since the main issue at trial was the identity of the killer and the co-defendant's statement denied culpability and implicated Madrigal. The rest of Madrigal's claims were denied. The district court ordered that Madrigal be released from custody or retried. Both parties appealed the district court's judgment and the

[165] Court of appeals status reported as of March 2007 unless otherwise noted.

Sixth Circuit **affirmed**. He is now serving a sentence of 120 years to life imprisonment. Offender Information for Jamie Madrigal

Taylor v. Bagley. Michael Taylor was convicted of aggravated murder and sentenced to death. His petition in the **NDOH** (Cleveland) challenging his conviction and sentence included a claim that the **evidence was insufficient to support his conviction** for aggravated murder. The district court granted the writ based on this claim, and found that there was not enough evidence to prove that there was prior calculation and design, which is a necessary element of aggravated murder. The rest of Taylor's claims were denied. Both parties appealed. Taylor **died** on January 27, 2004 and the **appeal was dismissed**.

PENNSYLVANIA

Holloway v. Horn. Arnold Holloway was convicted of first-degree murder and sentenced to death. He filed a petition for a writ of habeas corpus in the **EDPA** (Philadelphia) challenging his conviction and sentence. The court denied relief on all of Holloway's guilt-phase claims, including a *Batson* claim, which was found to be procedurally barred and meritless. The district court then granted relief on Holloway's claim that his **penalty-phase counsel was ineffective for failing to investigate mental health issues** and present a mental health expert. The district court ordered that a writ of habeas corpus be issued unless Holloway was re-sentenced. Both parties appealed and the Third Circuit reversed, finding that Holloway's Batson claim was not procedurally barred and should be granted. On remand the district court ordered that Holloway be retried within 120 days. There is no information about Holloway on the Pennsylvania Department of Corrections website.

Rivers v. Horn. Delores Rivers was convicted of first-degree murder and related charges and was sentenced to death. She filed a petition for writ of habeas corpus in the **EDPA** (Philadelphia) raising 58 claims of error challenging conviction and sentence. The parties entered into a **stipulation by which habeas proceedings would be terminated in exchange for Rivers being sentenced to life imprisonment. As part of that stipulation, the district court granted Rivers's claim that trial counsel was ineffective for failing to investigate and present mitigating evidence during the penalty phase** and denied the rest of the claims. Rivers agreed to waive her right to any further appeals as part of the stipulation. Pennsylvania Department of Corrections Offender Search

TEXAS

Arroyo v. Dretke. Randy Arroyo was convicted of capital murder and sentenced to death. He filed a petition for a writ of habeas corpus in the **WDTX** (San Antonio) challenging his conviction and sentence, raising 12 claims of error, including a few sub-claims. Relief was granted on Arroyo's claim that his death sentence violated the Eighth Amendment, as determined in *Roper v. Simmons*, because he was **under the age of 18 at the time of the murder**. The state commuted Arroyo's sentence to life imprisonment. Arroyo appealed the district court's decision and the appeal is **still pending in the Fifth Circuit**. Texas Offender Search

Brewer v. Dretke. Brent Brewer was convicted of capital murder and sentenced to death. He filed a petition N**DTX** (Amarillo) challenging his sentence. The court granted relief on Brewer's claim that **the special issues given to the jury at Brewer's penalty phase did not allow the jury to give effect to relevant mitigating evidence**. The rest of Brewer's claims were denied. The district court ordered that Brewer's sentence either be commuted to life or he be given a new sentencing hearing. Respondent appealed and the Fifth Circuit **reversed**. **The U.S. Supreme Court granted certiorari** and reversed on April 25, 2007 (Brewer v. Quarterman). Texas Offender Search

Colella v. Cockrell. Paul Colella was convicted of capital murder for two killings and sentenced to death. He filed a petition in the **SDTX** (Brownsville) challenging his conviction and sentence. The court granted respondent's Motion for Summary Judgment as to several of Colella's claims. An evidentiary hearing was held and the **parties subsequently agreed to settle the case. Respondent conceded that Colella's trial counsel was ineffective for failing to investigate and prepare the case for trial. The parties agreed that Colella would plead guilty and as the result of a plea bargain, he would receive a 20-year sentence with credit for time served**. Texas Offender Search

Draughon v. Dretke. Martin Draughon was convicted of capital murder and sentenced to death. He filed a petition for a writ of habeas corpus in the **SDTX** (Houston) challenging his conviction and sentence, raising 31 claims. After an evidentiary hearing, the district judge granted relief on Draughon's claim that his **trial counsel was ineffective for failing to retain a ballistics expert at both the guilt and punishment phases of his trial**. The district court found that a ballistics expert would have testified that the fatal bullet ricocheted off something else before striking the victim, which supports Draughon's assertion that the killing was unintentional and he therefore lacked the requisite intent for capital murder. The rest of Draughon's claims were denied. The district court ordered that Draughon be released from custody unless he was granted a new trial or his capital murder conviction vacated and a new sentencing hearing granted. Both parties appealed to the Fifth Circuit, which **affirmed** the district court's judgment. 427 F. 3d 286. Draughon is listed on the Texas Department of Corrections Offender Search website as Draughton, his conviction reduced to murder, he is serving to 40 years.

Goynes v. Dretke. Theodore Goynes was convicted of capital murder and sentenced to death. He filed a petition for a writ of habeas corpus in the **SDTX** (Houston) challenging his conviction and sentence and raising nine claims of error, five of which were denied on the merits and three of which were procedurally defaulted. The court granted relief on the remaining claim: that during the **punishment phase the special issues instruction did not allow the jury to consider and give effect to Goynes's mitigating evidence regarding mental illness and his low IQ**, thus violating due process. The district court's decision was appealed. Goynes moved for permission to file a successive petition, but the Fifth Circuit denied his motion as moot because of his grant of relief from his sentence. The Fifth Circuit then denied a Certificate of Appealability on the claims that Goynes appealed. The re-sentencing was supposed to occur sometime in the fall of 2006. According to the Texas Department of Corrections website, Goynes is still on death row. Texas Offender Search

Guidry v. Dretke. Howard Guidry was sentenced to death for a murder-for-hire. Guidry filed a petition for a writ of habeas corpus in the **SDTX** (Houston) challenging his conviction and sentence, raising four claims of error, two of which were granted. The district court first found that Guidry's Fifth Amendment rights were violated when he was questioned by police, and subsequently confessed, without having an attorney present. The district court found that Guidry **requested to have counsel present and the police tricked him by saying that they had spoken to his attorney and his attorney had given them permission to question him**. The court found that this error was not harmless. Relief was also granted on Guidry's claim that the **admission of hearsay testimony into evidence violated the Confrontation Clause**. The Texas Court of Criminal Appeals found this error was harmless, but the district court disagreed. Guidry's other two claims were denied on the merits. The district court ordered that Guidry be released from custody unless a new trial was conducted within 180 days. Respondent appealed and the Fifth Circuit **affirmed**. According to the Texas Department of Corrections website, Guidry is still on death row. Texas Offender Search

Johnson v. Dretke. Eddie Johnson filed a petition for a writ of habeas corpus in the **NDTX** (Fort Worth) challenging his capital murder conviction and death sentence. The court granted relief on Johnson's claim that he was **under the age of 18 at the time of his offense, making his death sentence unconstitutional under *Roper v. Simmons***. The rest of Johnson's claims were denied on the merits. The district court ordered that Johnson's sentence be vacated and he be either re-sentenced within 180 days or released from custody. The

district court's judgment was not appealed. Johnson was re-sentenced to life imprisonment. Texas Offender Search

Little v. Dretke. Leo Little was convicted of capital murder and sentenced to death for a killing in the course of committing and attempting to commit robbery and kidnapping. Little filed a petition for a writ of habeas corpus in the **WDTX** (San Antonio), challenging his death sentence. Little's petition raised three claims of error. A fourth claim of error was added after the U.S. Supreme Court decided *Roper v. Simmons*. The respondent conceded that Little **was under the age of 18 at the time of the offense and that his death sentence therefore violated the Eighth Amendment under *Roper v. Simmons***. Respondent also waived the exhaustion defense with regard to this claim. The district judge ordered that Little be granted a new punishment trial, or that his death sentence be vacated and a new sentence less than death be imposed. The court did not address the merits of the rest of Little's claims. The district court's decision was not appealed. According to the Texas Department of Corrections website, Little is now serving a life sentence. Texas Offender Search

Saldano v. Texas Department of Criminal Justice-Institutional Division. Victor Saldano was convicted of capital murder for a kidnapping and murder, then sentenced to death. On direct appeal Saldano complained that his Eighth Amendment rights were violated at the punishment phase when the jury considered his race as evidence to support its determination of future dangerousness. The Solicitor General of the State of Texas conceded this error and the United States Supreme Court vacated Saldano's sentence and remanded the case to the Court of Criminal Appeals of Texas. On remand, the Texas Court of Criminal Appeals reinstated Saldano's conviction and death sentence. Saldano filed a petition for writ of habeas corpus in the **EDTX** (Beaumont) challenging his sentence based on claims that included an ineffective assistance of counsel claim. Respondent conceded this error and agreed that Saldano should receive a new sentencing hearing, but the claim was dropped when Saldano filed an amended petition. The amended petition contained a single claim, challenging the trial court's **admission of expert testimony stating that Saldano's Hispanic ethnicity was a positive factor for predicting future dangerousness**. The respondent conceded this error but the *amici curiae*, the District Attorney and Prosecuting Attorney, argued that the claim was procedurally defaulted, and in the alternative, harmless error. The District Attorney also moved to intervene in this case. The district court denied the motion for intervention and held that the admission of the testimony was constitutional error and the procedural default and harmless error defenses were waived by the respondent. The district court ordered that Saldano be released from custody unless a new punishment hearing was held within 180 days or his death sentence was reduced to life imprisonment. The District Attorney appealed the district court's decision. The Fifth Circuit **affirmed** the district court's denial of the motion to intervene and then dismissed the appeal since the District Attorney is not a party to the case. According to the Texas Department of Corrections website, Saldano is still on death row. Texas Offender Search

Williams v. Dretke. Bruce Williams was convicted of capital murder and sentenced to death. He filed a petition for a writ of habeas corpus in the **NDTX** (Dallas) challenging his sentence. The petition raised four claims of error. Relief was granted on Williams's claim that his **death sentence violated the Eighth Amendment because he was under the age of 18 at the time of the offense**. The district court found that the rest of Williams's claims were moot because they challenged his sentence and not his conviction. The district court ordered that Williams be released unless his sentence was commuted to life imprisonment within sixty days. The district court's decision was not appealed and the State of Texas commuted Williams's sentence to life imprisonment. Texas Offender Search

Willis v. Dretke. Ernest Willis was convicted of capital murder for causing death in the course of committing arson on a habitation and sentenced to death. After direct appeal, Willis filed a state petition for a writ of habeas corpus. The trial judge vacated the conviction and sentence but was reversed by the Texas Court of Criminal Appeals. Willis filed a petition for a writ of habeas corpus in the **WDTX** (Pecos) challenging his conviction and sentence. The court granted Willis's claims that his **due process rights were**

violated by the State's administration of medically inappropriate antipsychotic drugs without his consent, that the State suppressed evidence favorable and material to the sentencing determination, and that Willis received ineffective assistance of counsel at the guilt-innocence phase and the sentencing phase. All other claims raised in the petition were denied (Willis maintained he was innocent and argued the state did not present a theory of alleged motive at trial). The district court ordered that the state grant Willis a new trial by November 18, 2004 or else release him from custody. The State chose not to appeal the decision or to retry Willis. He was released from custody on October 6, 2004. Texas Offender Search.

Capital Grants, Appeals Still Pending[166]

OHIO

Johnson v. Bagley. Rayshawn Johnson was convicted of felony murder and sentenced to death in 1998. After state appeal and post-conviction proceedings, Johnson filed his petition in 2002 in the **SDOH** (Cincinnati), raising 26 claims. The judge ordered an evidentiary hearing on Johnson's claim that he was **denied effective assistance of counsel during the mitigation phase** of his trial, and granted relief on this claim. The state appealed the federal court's order to commute Johnson's death sentence or grant him a new hearing, and the appeal is pending in the Sixth Circuit. Offender Information for Rayshawn Johnson

Bies v. Bagley. Michael Bies was convicted of capital murder and sentenced to death. The state court found that Bies was mildly mentally retarded but could still be executed. Bies filed a petition for a writ of habeas corpus in the **SDOH** (Cincinnati) challenging his conviction and sentence. Bies's petition raised 135 claims and sub-claims of error**.** ***Atkins*** *v. Virginia* was subsequently decided and respondent tried to argue it should be able to re-try Bies on the issue of whether he is mentally retarded. Bies's nineteenth claim for relief, which argued that the state's insistence on **re-trying his mental retardation claim violates double jeopardy**, was bifurcated from the rest of his claims, some of which were found to be unexhausted. The court then granted that claim and ordered that Bies's capital sentence be vacated and that he be re-sentenced. Respondent appealed and that appeal is **still pending** in the Sixth Circuit. Offender Information for Michael Bies

D'Ambrosio v. Bagley. Joe D'Ambrosio was convicted of aggravated murder, aggravated felony murder, kidnapping, and aggravated burglary. He was sentenced to death. He filed a petition for a writ of habeas corpus in the **NDOH** (Cleveland) challenging his conviction and sentence. The court granted D'Ambrosio's claim that the **prosecution failed to disclose exculpatory evidence prior to trial in violation of *Brady v. Maryland*.** The rest of D'Ambrosio's claims were denied on the merits or procedurally barred. The district court ordered that D'Ambrosio's convictions and sentence be set aside or a new trial be granted. Both parties appealed and **that appeal is still pending** in the Sixth Circuit. Offender Information for Joe D'Ambrosio

[166] Court of appeals status reported as of March 2007 unless otherwise noted.

OKLAHOMA

Powell v. Mullins. Paris Powell was convicted of first-degree malice-aforethought murder of one victim and shooting with intent to kill another. Powell filed a petition for a writ of habeas corpus in the **WDOK** (Oklahoma City) challenging his conviction and sentence. The court granted relief, after an evidentiary hearing, on Powell's first and second claims alleging that his convictions were obtained using **evidence known by the prosecutor to be false and that exculpatory evidence was suppressed in violation of *Brady* v. *Maryland***. The rest of the claims were found to be moot. Both parties appealed the district court's judgment and that appeal is **still pending** in the Tenth Circuit. Offender Information for Paris Powell

PENNSYLVANIA

Bond v. Beard. Jesse Bond was convicted of first-degree murder, robbery, possessing an instrument of crime, and conspiracy, and then sentenced to death. Bond filed a petition for a writ of habeas corpus in the **EDPA** (Philadelphia), raising 18 claims and sub-claims of error in his petition. All of Bond's claims regarding his conviction were denied on the merits, but the court granted relief from Bond's death sentence because of his **counsel's failure to investigate and present mitigating evidence at the sentencing phase**. The district court also found that the **prosecutor made improper comments during sentencing**. The district court ordered that Bond be re-sentenced within 120 days or else be sentenced to life imprisonment. Both parties appealed and that **appeal is still pending** in the Third Circuit. Pennsylvania Department of Corrections Offender Search

Lewis v. Horn. Reginald Lewis was convicted of capital murder and sentenced to death for a stabbing. He filed his petition in the **EDPA** (Philadelphia) challenging his conviction and sentence. Relief was granted on Lewis's claim that his **trial counsel was ineffective for failing to present mitigating evidence during the penalty phase regarding his mental illness and his traumatic upbringing**. The rest of Lewis's sentencing claims were not addressed since relief was granted on this ground. His conviction-related claims were all denied. The district court ordered that Lewis be given a new sentencing hearing or be sentenced to life imprisonment. Both parties appealed the district court's judgment and that appeal is **still pending** in the Third Circuit. Pennsylvania Department of Corrections Offender Search

Rollins v. Horn. Saharris Rollins was convicted of first-degree murder, robbery, and possession of an instrument of crime, then sentenced to death. His petition, filed in the **EDPA** (Philadelphia), was granted based on Rollins's claims that he was **denied effective assistance of counsel when his trial attorney failed to adequately prepare for the penalty phase and failed to investigate mitigating evidence regarding Rollins's childhood**, as well as his claim that the **judge incorrectly instructed the jury that it must unanimously agree on mitigating circumstances before giving effect to those mitigating factors at sentencing**. The district court ordered that Rollins be sentenced to life imprisonment if the state does not conduct a new sentencing hearing within 180 days. Respondent appealed and that **appeal is still pending**. Pennsylvania Department of Corrections Offender Search

Thomas v. Horn. Brian Thomas was convicted of first-degree murder, burglary, involuntary deviate sexual intercourse, and rape. He received a death sentence. Thomas filed a petition for a writ of habeas corpus in the **EDPA** (Philadelphia) challenging his conviction and sentence. The court denied Thomas's claims challenging his conviction but granted relief from his death sentence due to **ineffective assistance of counsel at sentencing**. The district court ordered that Thomas be granted a new sentencing hearing or have his sentence commuted to life without parole. Both parties appealed and that appeal is still pending in the Third Circuit. Pennsylvania Department of Corrections Offender Search

TEXAS

Adams v. Dretke. John Adams was convicted of capital murder and sentenced to death for killing a woman during the robbery of her home. His petition filed in the **NDTX** (Dallas) challenged his conviction and sentence, raising six claims of error. The court granted Adams's claim that his **counsel was ineffective in the investigation and presentation of mitigating evidence at the penalty phase** of trial. The rest of Adams's claims were denied on the merits. The district court ordered that a new punishment trial be granted. Respondent appealed and that **appeal is still pending** in the Fifth Circuit. Adams remains on death row. Texas Offender Search

Williams v. Dretke. Nanon Williams was convicted of capital murder and sentenced to death. He filed a petition for a writ of habeas corpus in the **SDTX** (Houston) challenging his conviction and sentence. The court granted Williams's claim that his death **sentence violates the Eighth Amendment, as determined in *Roper v. Simmons*, because he was under the age of 18 at the time of the offense**. The rest of Williams's claims were denied. The district court ordered that Williams be released from custody unless his sentence is commuted to life imprisonment within 180 days. Both parties appealed and that appeal is still pending in the Fifth Circuit. Williams is currently serving a life sentence. Texas Offender Search

Capital Grants Reversed[167]

ALABAMA

Callahan v. Haley. James Callahan was convicted of capital murder and sentenced to death. His conviction was reversed on direct appeal and a new trial was conducted. He was convicted again and sentenced to death a second time. That conviction was affirmed on appeal. He filed a petition for a writ of habeas corpus in the **NDAL** (Eastern) challenging his conviction and sentence. The petition raised 24 claims of error. The district judge disagreed with the magistrate judge's recommendation that the petition be denied, and granted relief on two of Callahan's claims. The district court held that Callahan's **Sixth Amendment right to a fair and impartial tribunal was violated when the state judge was present during custodial interrogation, where Callahan made a confession without the presence of an attorney**. The district court also held that Callahan's **counsel was ineffective at the sentencing stage for failing to present various types of mitigating evidence**. The district court did not address the rest of Callahan's claims. The district court ordered that Callahan be released within 90 days unless a new trial is scheduled. A Certificate of Appealability was granted with regards to eight of Callahan's claims despite the fact that the district court had addressed two of those claims. The Eleventh Circuit vacated the district court's judgment without prejudice and remanded the case to the district court for it to address the six appealed claims it had failed to address earlier. On remand, those six claims were denied. The Eleventh Circuit **reversed the grant on appeal and denied relief**. Callahan remains on death row. http://www.doc.alabama.gov/deathrow.asp.

OHIO

Biros v. Bagley. Kenneth Biros was convicted of aggravated robbery, attempted rape, and aggravated murder. He was sentenced to death. The conviction for aggravated robbery was dismissed by the Ohio Court of Appeals. The Supreme Court of Ohio then upheld the death sentence and reinstated the aggravated robbery conviction. Biros filed a petition challenging his conviction and sentence in the **NDOH** (Cleveland). The court granted relief on Biros's claim that the **indictment was defective because it did not include the language from O.R.C. § 2929.04(A)(7) that "either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design."** The district court held that this was structural error and Biros's

[167] Court of appeals status reported as of March 2007 unless otherwise noted.

death sentence must be set aside. The rest of Biros's claims were denied. The Sixth Circuit disagreed and held that the error was subject to harmless error analysis and in this case it was harmless. The district court's judgment was **reversed** and relief was denied. Biros remains on death row. Offender Information for Kenneth Biros

TEXAS

Chester v. Johnson. Elroy Chester was convicted of capital murder for a killing in the course of burglarizing a house. He was sentenced to death. He filed his petition in the **EDTX** (Texarkana), challenging his sentence only. The petition raised three claims of error, two of which were denied as moot. The court granted Chester's claim that his death **sentence violated the Eighth Amendment, as determined in *Atkins v. Virginia,* because Chester is mentally retarded**. The district court ordered that Chester be released from custody unless new proceedings were held to determine whether he is mentally retarded, or in the alternative, that his sentence be commuted to life imprisonment. Respondent appealed and the Fifth Circuit **vacated the district court's judgment and remanded, finding that the Atkins claim was unexhausted**. On remand, the district court dismissed the petition without prejudice. It is unclear whether Chester has since exhausted his state court remedies. Chester remains on death row. Texas Offender Search

Conner v. Dretke. Johnny Conner was convicted of capital murder and sentenced to death. He filed a petition in the **SDTX** (Houston) challenging his conviction and sentence. The petition raised three claims of error, two of which were denied on the merits. The court granted relief on Conner's claim that his **trial counsel was ineffective for failing to investigate and present evidence of his medical history**. Conner's medical history was important because he had a leg injury that interfered with his ability to run and the eyewitnesses in this case all agreed that the perpetrator ran from the scene of the crime. Conner's other two claims were denied on the merits. The district court ordered that Conner be released from custody unless he is granted a new trial. Respondent appealed and the Fifth Circuit **reversed**. Conner remains on death row. Texas Offender Search

Foster v. Dretke. Kenneth Foster was convicted of capital murder, which resulted from his involvement in a string of armed robberies. He was sentenced to death. Foster filed a petition for a writ of habeas corpus in the **WDTX** (San Antonio) challenging his conviction and sentence, raising 14 claims for relief, including a few sub-claims. Eight of those claims were denied on the merits and one was barred by *Teague v. Lane*. Two claims related to newly discovered evidence of actual innocence were barred as not cognizable on federal habeas review. The district court granted relief on Foster's fourth, fifth, and seventh claims. The district court found that there was no evidence that Foster actually killed the victim or intended to kill the victim or another person. Foster's sentencing jury was never given the opportunity to decide whether he was a major participant in the armed robbery conspiracy that resulted in murder. Because this finding was never made by the jury, the district court held that Foster's death **sentence violated the Eighth Amendment because it is not supported by the factual findings mandated by *Emmund* and *Tison* and it violated *Ring v. Arizona***. Both parties appealed the decision and the Fifth Circuit denied a Certificate of Appealability. Foster then asserted an actual innocence claim. The Fifth Circuit denied a Certificate of Appealability on the actual innocence claim but went on to discuss the Eighth Amendment claim for which the district court had granted relief. The Fifth Circuit **reversed**, finding that *Ring v. Arizona* does not apply retroactively and that the state court did in fact make the findings required by *Emmund* and *Tison.* The Supreme Court denied certiorari. Foster remains on death row. Texas Offender Search.

Appendix D. List of District names and numbers

Capital case sample

AO number	District
13	PA-E
26	AL-N
3A	FL-M
39	TX-N
40	TX-E
41	TX-S
42	TX-W
47	OH-N
48	OH-S
70	AZ
73	CA-C
78	NV
87	OK-W

Appendix E. List of variables collected[168]

Per case variables

Coder Name
Date coded
Sample
Where coded
Documentation
available for coding
Petitioner sex
Petitioner race
Not a state hab case
Proceeding challenged
Conviction date
Number of counts of conviction
Conviction type
Most serious count of conviction
1st Offense Attempt/Conspiracy
Second most serious count of conviction
2d off Attempt/Conspiracy
Third most serious count of conviction
3d off Attempt/Conspiracy
List additional convictions
Sentence date
Judgment date
Sentence type
Length of sentence
Prior direct appeal or no
Prior state collateral review or no
Representation on state PCR
Date state judgment final for SOL (cap cases only)
Date of first docket entry in case
Date federal petition first filed
Date first counseled petition filed
Amended petition filed
IFP ruling
Representation at time of first filing in case
Attorney added
Atty substituted
Date atty starts
Attorney appointed for what
Answer filed
pleading by st requesting dismissal or sj
Reply by petitioner
State record filed
Discovery
Evidentiary Hearing
Evidentiary hearing by who
Magistrate R&R on disposition of any claim
DCt stayed death sentence in state
Prior petition dismissed w/o prej referred to in record

[168] Additional variables derived from the data collected or from other sources (e.g., AO data sets, FJC documentation) were added to the data set for analysis. A complete list with codebook will be included with the data sets submitted for archiving.

Record reflects fed case put on hold for exhaustion
Date of stay for exhaustion, consideration by state ct entered
Date stay lifted
Date case first terminated in DCt
Docket number of 1st termination order

Appellate information*
Notice of Appeal filed
CoA considered by DJ
Date DJ COA ruling docketed
Total no of docket entries

Per claim variables:
Type of claim raised
Disposition by DJ, type
Defense of SOL ruling by DJ
Reason DJ rejected SOL
Defense of PD ruling by DJ
Reason DJ rejected PD
Def of exhaustion ruling by DJ
Defense of Teague ruling by DJ
Successive petition
waiver of review ruling
Reason for DJ denial/dismissal
Alternative reason for denial/dismissal
Std of review applied if reached merits
Application of Harmless error

*appellate information was not available for cases that had recently terminated or were still pending.