Procedural Issues in Innocence Cases

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Trial / Appeal

State Post-Conviction

Burdens shift/must show constitutional violation affected the outcome
Comity and Federalism

Habeas Corpus, Jim Crow and Lynchings: The Expansion of the Habeas Remedy
The Trial of Leo Frank

State’s Rights vs. Constitutional Rights

- Frank v. Mangum (1915): 14th Amendment Due Process is satisfied by a “full and fair” appeal of lynch-mob dominated trial precludes habeas review.
- Holmes, dissenting: “…the supremacy of the law and of the Federal Constitution should be vindicated in a case like this.”
Frank’s Commutation & Lynching

Moore v. Dempsey (1922):

- Frank v. Mangum overruled; Federal district courts have the power to adjudicate constitutional claims.
- Justice Holmes’ dissent for *Leo Frank* becomes the law of the land
- Res Judicata does not apply to habeas corpus

Doug Linder's Famous Trials Web Site, http://law2.umkc.edu/faculty/projects/ftrials/
Fourteenth Amendment Due Process: the 1930’s

- **Powell v. Alabama** (Scottsboro cases): The right to counsel in capital cases
  - See also Betts v. Brady (special circumstances)
- **Brown v. Mississippi**: Coerced confessions
  - See also Ashcraft v. Tennessee, Watts v. Indiana

Federal Adjudication—the 1950’s

- **Brown v. Allen**: Federal District Courts provide a federal forum for plenary review of constitutional claims
- **Case v. Nebraska**: Must states provide PCR process? [never decided]
- **Kaiser v. Williams**: Missouri violated due process by denying a hearing on prisoner’s claim that he was denied counsel
Gideon v. Wainwright Oral Argument:

THE COURT: Well, Betts and Brady did not proceed on that basis; it did not deny the obvious. Obviously, a man who is not represented ... hasn’t had as good a shake in court as the man who is represented. Betts and Brady didn’t go on any such basis as that.

Gideon (continued))

MR. FORTAS: Are you suggesting, Mr. Justice Harlan ... that the real basis for Betts against Brady is ... That a man does not get a fair trial if he is not represented by a lawyer, but that the demands of federalism overweigh the absence of a fair trial?

THE COURT: That’s what I understood the basis of Betts and Brady to be, yes.
Balancing Act: Federalism vs. Constitutional Rights

Habeas Corpus: Equitable Principles

- Exhaustion
- Presumption of Correctness of State Fact-Finding
- Procedural Default & Abuse of the Writ
  - Cause & Prejudice
  - Miscarriage of Justice
AEDPA and Habeas “Reform”

SOL
Deference
Restrictions on Evidentiary Hearings
Bar on Successive Petitions

SOL
- Finality on Direct Review = denial of cert., or last day for filing cert. (*Allen v. Hardy*)
- Properly filed postconviction action does not include cert.
- SOL continues to run on claims not pled in habeas petition, but equitable tolling allowed in rare cases (*Artuz v. Bennett*)
Deference

- 2254 (d): relief cannot be granted on claim decided on merits in state court unless:
  - Contrary to/unreasonable application of clearly established federal law; or
  - Unreasonable determination of facts in light of evidence presented in state court

- Williams (Terry) v. Taylor

Deference

- *Cullen v. Pinholster:* The reasonableness of the State court decision is determined based on the state court record. *But see--*
  - Williams (Terry) v. Taylor
  - Williams (Michael) v. Taylor
Abuse of the Writ—sec. 2244

- Successive Claims shall be denied
- Successor claim shall be denied unless:
  - Based on new retroactive rule, or
  - Claim undiscoverable by due diligence and new clear and convincing evidence that no reasonable juror would find defendant guilty.
- Permission from Circuit required
  - Mother, may I?
  - Unappealable by cert. (*Felker v. Turpin*), but 2241 may be an escape hatch in rare cases
Procedural Barriers

1. TRIAL
   - Pretrial Motions
   - New Trial Motions
   - Contemporaneous Objection Rule

2. APPEAL
   - Briefing Rules
   - Keeney v. Tamayo-Reyes
   - 2254(e) hearing limitation
   - Coleman v. Thompson

3. CERT.
   - Briefing Rules
   - Resume SOL

4. PCR

5. APPEAL
   - Keeney v. Tamayo-Reyes
   - 2254(e) hearing limitation

6. CERT.

7. HABEAS
   - Exhaustion
   - Procedural Bar
   - 2254(d) deference
   - 2254(e) hearings
   - Statute of Limitations

8. APPEAL
   - COA

9. CERT.
   - Abuse of the Writ
   - 2244 “Mother, may I?”

Is the Claim Exhausted?

- **Rose v. Lundy.** Did the State court have a fair opportunity to decide the factual and legal basis of the claim? **Or** is there no non-futile state remedy available?

- **O’Sullivan v. Boerckle.** Was the claim presented to the state’s highest court of jurisdiction?

- **Rhines v. Weber.** Authorizes stay-abeyance procedure

- **28 U.S.C. 2254 (e):** unexhausted claim can be **denied** on the merits
Is the Claim Procedurally Defaulted (Barred)?

1. Did the prisoner violate a procedural rule?
2. Is the Rule and Independent & Adequate State Ground?
   - Is the state ruling intertwined with the constitutional claim? *Ake v. Oklahoma*
   - Is the state rule clearly announced, consistently enforced? *James v. Kentucky*
   - Is the state rule hostile to federal rights? *Ford v. Georgia*

Is the Claim an Abuse of the Writ?

- **Salinger v. Loisel:** *Res Judicata* does not apply, but court can consider prior denial
- **Fay v. Noia:** Deliberate by-pass? This standard still has legs in Mo. State courts
- **McCleskey v. Zant:** *Faye* overruled; Was the prisoner diligent?
- **Stewart v. Martinez-Villareal:** Was there a prior opportunity to litigate claim?
Does the Claim depend on a new rule? (Retroactivity)

- **Teague v. Lane**: “New rule” = Not “dictated by precedent;” Reasonable jurists could differ. Exceptions:
  - *Watershed Rule* (Gideon v. Wainwright)
  - Excludes from punishment (Atkins v. Va., Roper v. Simmons, Lawrence v. Tex.)
- **Butler v. McKellar**: Roberson v. Ill. is a “new rule”

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**Federal Adjudication**

- § 2254(d) Deference to States
- § 2254(e) Hearing Restrictions and Fact Bars
Are State Fact-findings presumed correct?

- Yes: The federal court must assume the fact is true unless rebutted by clear and convincing evidence.
- No: The federal court must hold a hearing.
- Open issue: Is this rule abrogated by AEDPA?

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Townsend v. Sain: There must be a hearing if:

- (1) the merits of the factual dispute were not resolved in the state hearing;
- (2) the state factual determination is not fairly supported by the record as a whole;
- (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing;
**Townsend** mandatory hearings (con’t)

- (4) there is a substantial allegation of newly discovered evidence;
- (5) the material facts were not adequately developed at the state-court hearing;* or
  - *but see Keeney v. Tamayo-Reyes, § 2254 (e), Williams (Michael) v. Taylor
- (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.

**AEDPA: § 2254(e)**

- If prisoner “failed to develop” facts, no hearing unless:
  - Claim relies on new rule made retroactive by Supreme Court, or
  - Claim undiscoverable by due diligence and there is clear and convincing evidence of innocence [Cause + Innocence]
- *Williams v. Taylor:* “Fail” = Fault
FAILURE

- "fail" connotes some omission, fault, or negligence on the part of the person who has failed to do something
- to be wanting; to fall short; to be or become deficient in any measure or degree
- to leave some possible or expected action unperformed or some condition unachieved
- "fault, negligence, or refusal"

NOT FAILURE

- a person is not at fault when his diligent efforts to perform an act are thwarted, for example, by the conduct of another or by happenstance.
- a failure to develop the factual basis of a claim is not established unless there is lack of diligence, or some greater fault, attributable to the prisoner or the prisoner’s counsel.
Equitable Principles: Safety Valves

Cause and Prejudice
Miscarriage of Justice

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Cause and Prejudice

- **Wainwright v. Sykes:** Federal Court can decide merits of claim based on showing of cause + prejudice
  - **Cause** = objective factor external to prisoner or his counsel that prevents compliance w/rule
  - **Prejudice** = Reasonable likelihood outcome would be different
Cause and Prejudice

- **Amadeo v. Zant**: Prosecutor concealed race discrimination in jury selection
- **Reed v. Ross**: Novelty of issue = cause
- **Coleman v. Thompson**: Ineffective Trial or appellate counsel = cause (but not pcr counsel)

Miscarriage of Justice

- **Sanders v. U.S.**: Court can hear claim if it would serve the “ends of justice”
- **Schlup v. Delo**: “ends of justice” = actual innocence, i.e.
  - New evidence establishes reasonable probability that no reasonable juror would find the defendant guilty
Litigation Resources in Postconviction

Lawyers, Guns and Money

Right to counsel

- **Evitts v. Lucey**: Right to counsel on direct review
- **Pennsylvania v. Finley**: No constitutional right to counsel on postconviction
- **Martinez v. Ryan**: IAC in a first collateral review proceeding in which a claim can be raised = cause to excuse default
- **Coleman v. Thompson**: Prisoner bound by lawyer malpractice on postconviction appeal
Right to Funds?

- **Ake v. Oklahoma:** Due process right to basic tools of adequate defense at trial
- **Williams (Michael) v. Taylor:** State not obliged to provide funds in postconviction, but prisoner’s request for $ = diligence
- **McFarland v. Scott:** Right to funds and counsel pre-petition in death cases

Other Remedies

- Executive Clemency
  - DNA Statutes (e.g., § 547.035 RSMo.)
Prof. O’Brien’s Simplified Rules of Postconviction Procedure

- **The Rule**: Constitutional Issues & Evidence MUST be Properly Raised at the Earliest Possible Time.

- **The Exception**: Always be prepared to explain why you are where you are, and why it is not your fault that you are there.

- **Context**: It helps to be innocent