Federal Review of State Prisoner Petitions

Habeas Corpus

The right of convicted State offenders to attack State court determinations pursuant to a Federal writ of habeas corpus has sparked debate among legal scholars, criminologists, and judges during the past decade. A key factor underlying this debate has been the dramatic increase (almost 190%) in filings of State prisoner habeas corpus petitions in the past 10 years.

This report provides a comprehensive summary of available statistical data describing the Federal processing of State prisoner habeas corpus actions. The report has two sections. Section I presents aggregate data describing rates, trends, and comparisons of State prisoner habeas corpus filings in Federal district and appellate courts. Tables and figures are included to illustrate major points. Aggregate data included in this section are drawn primarily from the extensive statistical series compiled by the Administrative Office of the U.S. Courts. Section II summarizes findings of a study of Federal review of State prisoner habeas corpus petitions. Funded by the U.S. Department of Justice in 1979, this study represents the only empirical statistical study of the issue completed within the past 5 years that addresses activity in multiple jurisdictions. It is hoped that the report will prove useful for the evaluation of current procedures and the review of proposed legislative reforms.

Background Issues

Recently introduced legislative proposals directly address the reform of Federal habeas corpus procedures. In general terms, the proposed reforms relate to the standard of review in habeas corpus proceedings, the effect of procedural defaults on the subsequent availability of habeas corpus relief, the time within which habeas corpus relief may be sought, the requirement of exhaustion of State remedies, and the procedure for appeal in habeas corpus proceedings.

Reform of procedures governing Federal review of State prisoner habeas corpus petitions was also proposed in recommendation 42 of the Report of the Attorney General's Task Force on Violent Crime. Concern has also focused on the constitutional implications of habeas corpus review and on the impact that procedural limitations might have on the peaceful expression of inmate grievances.

This report has been prepared to provide background statistical data relevant to the discussion of habeas corpus and to serve as a resource for future consideration of these issues.

In applying these data, it must be recognized, however, that statistical data do not, and in some cases cannot, directly resolve some of the basic dilemmas relating to habeas corpus procedures. This is not intended to detract from the significance of the statistical data. Rather, it is merely to emphasize the fact that the complexity of the issues involved in habeas corpus review requires prudent judgment, which statistical analysis can inform but not replace.

Steven R. Schlesinger
Director

Habeas corpus procedures provide a means for convicted persons to attack the validity of their convictions after their appeals have been unsuccessful. Article III of the Constitution extends "the great writ" of habeas corpus to Federal prisoners; the right of State prisoners to obtain Federal review of State court convictions was legislatively established by the Congress in 1867.

In recent years, increasing concern has arisen over the impact current procedures for Federal review of State convictions may have on the effective operation of the criminal justice system and on its ability fully to protect the rights of individual citizens as well as of the accused. In particular, debate has focused on the extent to which current procedures may affect the ability of inmates in State/Federal judicial relations, the finality of criminal convictions, and the unique interests of the victims of crime.

The debate regarding habeas corpus reforms focuses on the extent to which:
- current procedures redress or eliminate the finality of criminal determinations by permitting Federal collateral review of sentences that have been fully appeals on the State level;
- habeas corpus procedures defeat the goal of deterring crimes by undermining the certainty that sanctions will be applied when criminal laws are violated;
- the lengthy time delays and uncertainties that may result from Federal review of habeas corpus actions frustrate the interests of victims and witnesses;
The current litigation that issues may be resolved at the Federal level is justified by the incentive for a comprehensive analysis of orders to habeas corpus petitions by State and Federal judicial circuits. The graph reflects the magnitude of habeas corpus activity at both the district and appellate court levels; the data describe habeas corpus activity in the American judicial system and that associated with habeas corpus reform are significant. Conversely, the percentage of prisoner habeas corpus petitions as a percentage of the total civil cases filed in Federal district courts during 1982 is 4%. This reflects the fact that the number of habeas corpus filings declined slightly during a period in which total civil filings more than doubled (from about 87,000 in 1970 to more than 168,000 in 1980).

The number of State prisoner habeas corpus petitions filed in Federal district courts during 1982 is shown in Table 7. This number is based on a comparison of the total number of prisoner habeas corpus petitions filed in Federal district courts during 1982. The data indicate that the number of prisoner habeas corpus petitions filed in Federal district courts during 1982 is 4%. This reflects the fact that the number of habeas corpus filings declined slightly during a period in which total civil filings more than doubled (from about 87,000 in 1970 to more than 168,000 in 1980).

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Table 6. State prisoner habeas corpus cases terminated in U.S. district courts, by circuits, 1982

| Circuit      | Total | D.C. | Fifth | Sixth | Seventh | Eighth | Ninth | Tenth | District
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1,054</td>
<td>58</td>
<td>129</td>
<td>143</td>
<td>142</td>
<td>141</td>
<td>141</td>
<td>144</td>
<td>127</td>
</tr>
</tbody>
</table>

The total number of cases includes all cases commenced during 1982 and terminated by decision, dismissal, or death of the party. The table includes cases involving state prisoners and those involving Federal prisoners.

Table 7. State prisoner petitions filed in U.S. district courts, by circuits, 1981-82

| Circuit      | Total | D.C. | Fifth | Sixth | Seventh | Eighth | Ninth | Tenth | District
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td>910</td>
<td>49</td>
<td>105</td>
<td>91</td>
<td>118</td>
<td>118</td>
<td>118</td>
<td>122</td>
<td>108</td>
</tr>
</tbody>
</table>

The table includes cases involving state prisoners and those involving Federal prisoners.

Table 8. State prisoner petitions disposed of by magistrate, 1977-80

<table>
<thead>
<tr>
<th>Year</th>
<th>Denied</th>
<th>Dismissed</th>
<th>Filed</th>
<th>Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
<td>1,000</td>
<td>500</td>
<td>1,500</td>
<td>2,500</td>
</tr>
<tr>
<td>1978</td>
<td>1,500</td>
<td>750</td>
<td>2,250</td>
<td>3,500</td>
</tr>
</tbody>
</table>

Table 9. State prisoner habeas corpus cases terminated by courts, by circuits, 1981-82

| Circuit      | Total | D.C. | Fifth | Sixth | Seventh | Eighth | Ninth | Tenth | District
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
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<td>141</td>
<td>144</td>
<td>127</td>
</tr>
</tbody>
</table>

The table includes cases involving state prisoners and those involving Federal prisoners.

Table 10. Types of cases filed in U.S. courts of appeals, 1981-82

<table>
<thead>
<tr>
<th>Type</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. cases</td>
<td>7,800</td>
</tr>
<tr>
<td>Civil</td>
<td>2,500</td>
</tr>
<tr>
<td>Criminal</td>
<td>5,300</td>
</tr>
</tbody>
</table>

Table 11. Civil cases, by subject matter, 1981-82

<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diversity of citizenship</td>
<td>1,258</td>
</tr>
<tr>
<td>Contract</td>
<td>1,593</td>
</tr>
<tr>
<td>Torts</td>
<td>1,222</td>
</tr>
<tr>
<td>Real property</td>
<td>1,488</td>
</tr>
<tr>
<td>Antitrust</td>
<td>1,043</td>
</tr>
<tr>
<td>Patent</td>
<td>1,804</td>
</tr>
<tr>
<td>Copyright</td>
<td>1,228</td>
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<tr>
<td>Trademark</td>
<td>1,258</td>
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<tr>
<td>Securities</td>
<td>1,258</td>
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<tr>
<td>Trust</td>
<td>1,258</td>
</tr>
<tr>
<td>Other</td>
<td>1,258</td>
</tr>
</tbody>
</table>

Table 12. Disposition of state prisoner habeas corpus cases in U.S. district courts, 1981-82

<table>
<thead>
<tr>
<th>Type</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affirmed or granted</td>
<td>632</td>
</tr>
<tr>
<td>Denied</td>
<td>219</td>
</tr>
<tr>
<td>Dismissed</td>
<td>19</td>
</tr>
</tbody>
</table>

Appendix B: State Prisoner Habeas Corpus Actions

The data presented in this section describe the nature of appeals reviewed by the Federal courts of appeals. The data reflect both the cases in which the habeas corpus petition was filed in the district court and the cases in which the habeas corpus petition was granted in the district court.

Table 13. Disposition of prisoner habeas corpus cases filed in state courts, by circuits, 1981-82

<table>
<thead>
<tr>
<th>Circuit</th>
<th>Total</th>
<th>Denied</th>
<th>Dismissed</th>
<th>Filed</th>
<th>Granted</th>
</tr>
</thead>
<tbody>
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<td></td>
<td>1,054</td>
<td>58</td>
<td>129</td>
<td>143</td>
<td>142</td>
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</tbody>
</table>

The table includes cases involving state prisoners and those involving Federal prisoners.

Table 14. Disposition of State Prisoner Habeas Corpus Actions, 1981-82

<table>
<thead>
<tr>
<th>Type</th>
<th>Total</th>
<th>Denied</th>
<th>Dismissed</th>
<th>Filed</th>
<th>Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affirmed or granted</td>
<td>632</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>Denied</td>
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<td>Dismissed</td>
<td>19</td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The data reflect both the cases in which the habeas corpus petition was filed in the district court and the cases in which the habeas corpus petition was granted in the district court.
the "total habeas corpus filings" against previously, the success rate was 1.6%).

The extent to which such subsequent judicial review on procedural grounds (e.g., failure of the petitioner to exhaust state remedies) as a factor in successive filings was

The data described above,12 The data indicate that, although 30% of those who had filed no prior State habeas corpus actions filed successive habeas corpus petitions, more than 40% of those who had filed one or more petitions at the State level filed successive Federal habeas corpus actions. Correspondingly, the data show that almost 73% of the filings by petitioners who had filed two or more Federal habeas corpus actions but had filed successive Federal habeas corpus actions. The possibility that successive filings reflect merely Stare decisis decisions is supported by the study, which suggests that the petitions filed by persistent petitioners in Federal court tend to be more detailed than those filed by first-time petitioners. The study also noted that the frequent claim (appearing in 45% of all petitions) was based on alleging ineffective assistance of counsel.

To further identify the extent to which cases had received prior judicial review, the study analyzed the extent to which the relation of State prisoner filings for Federal habeas corpus review had resulted from a trial rather than a guilty plea. The study found that almost 86% of the State prisoner petitioners in Federal court had been convicted following a trial, thus indicating that habeas corpus petitioners are more likely than average prisoners to receive trial court review at the appellate level.

The data presented in Section I describe the nature of magistrate reviews and the impact of magistrate review on case outcomes.

Specifically, the study reports 13 that more than 39% of State prisoner habeas corpus petitioners had filed more than two or more habeas corpus petitions in State court. The data obtained in this study indicate that about 30% of petitioners denied habeas corpus relief were represented by appointed attorneys in Federal court. The data indicate, however, that about 30% of all State prisoner habeas corpus cases filed in district court were appealed either by the petitioner or by the State (48.6%) by petitioners, 1.6% by the States.14

The study also found that about 30% of the petitioners denied habeas corpus relief sought certiorari to the United States Supreme Court. The data also indicate that about 36% were denied; the figures indicate an area of work that appears to be a focus for Federal habeas corpus activity. It is hoped, therefore, that these recommendations were made and, although discussions of habeas corpus are restricted to these criteria were not made. The data study was completed before the current legislative proposal would establish a 1-year statute of limitations on Federal habeas corpus actions, which might reflect on the appellate process. The data indicate, however, that about 30% of all State prisoner habeas corpus cases filed in district court were appealed either by the petitioner or by the State (34.6% by petitioners, 1.6% by the States).14

Calculations of time (in months) during which habeas corpus cases were "pending" in district court and the court of appeals were undertaken. The data indicate that an average of 4.6 months passed between filing and entry of judgment, and that about 13% of cases ultimately relaxed in appellate review. The data also indicate that about 30% were denied; the figures indicate an area of work that appears to be a focus for Federal habeas corpus activity. It is hoped, therefore, that these recommendations were made and, although discussions of habeas corpus are restricted to these criteria were not made. The data study was completed before the current legislative proposal would establish a 1-year statute of limitations on Federal habeas corpus actions, which might reflect on the appellate process. The data indicate, however, that about 30% of all State prisoner habeas corpus cases filed in district court were appealed either by the petitioner or by the State (34.6% by petitioners, 1.6% by the States).14

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(Revised February 1984)

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Bureau of Justice Statistics

Washington, D.C. 20531

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- Prisoners in 1982, NCJ-65533, 4/83
- Prisoners 1982-83, NCJ-65581, 12/83
- Prisoners in State and Federal institutions on December 31, 1981 (final report), NCJ-65465, 7/82
- Cars parked at midyear 1981 (final report), NCJ-65044, 5/82
- 1979 survey of inmates of State correctional facilities and justice of State convicts: Career patterns in crime (JFS special report), NCJ-65575, 6/83

BJS bulletins:
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- Corrections, NCJ-76879, 10/81
- Inmates of correctional facilities, Washington, D.C., 12/81
- Inmates of prisons, NCJ-75905, 1/82
- Census of jail and survey of jail inmates, NCJ-74682, 10/81
- Census of jails and survey of jail inmates, 1979, preliminary report, NCJ-75672, 4/81
- Parole and probation
  - JFS bulletin:
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    - Characteristics of parolees entering parole during 1979 and 1980, NCJ-68742, 5/83
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- Courts
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Justice expenditure and employment in the U.S., 1979: Preliminary report, NCJ-75029, 4/82
Expenditure and employment data for the criminal justice system, 1978, NCJ-64660, 7/82
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- BJS Surveys program plan, FY 1982-83, 7/82

Violent crime in the U.S. White House briefing book, NCJ-72574, 7/82

Dictionary of Criminal Justice data terminology:
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