FEDERAL HABEAS CORPUS

Cases and Materials

SECOND EDITION

Andrea D. Lyon

CLINCIAL PROFESSOR OF LAW,
ASSOCIATE DEAN FOR CLINICAL PROGRAMS
DIRECTOR, THE CENTER FOR JUSTICE IN CAPITAL CASES
DEPAUL UNIVERSITY COLLEGE OF LAW

Emily Hughes

Associate Professor of Law Washington University in St. Louis School of Law

Mary Prosser

CLINICAL ASSISTANT PROFESSOR OF LAW FRANK J. REMINGTON CENTER UNIVERSITY OF WISCONSIN LAW SCHOOL

Justin Marceau

Assistant Professor of Law University of Denver, Sturm College of Law

Carolina Academic Press

Durham, North Carolina

Copyright © 2011 Andrea D. Lyon, Emily Hughes, Mary Prosser, and Justin Marceau All Rights Reserved

ISBN 978-1-59460-866-7 LCCN 2010938806

Carolina Academic Press 700 Kent Street Durham, NC 27701 Telephone (919) 489-7486 Fax (919)493-5668 www.cap-press.com

Printed in the United States of America

Contents

Foreword Preface Acknowldegments

PART I Introduction

Chapter 1 · The Great Writ	3
A. What Is Habeas Corpus?	3
B. When Is Habeas Corpus?	4
(1) The Stages of a Criminal Case	5
(2) The Three Phases of Review	5
C. Habeas in Context: The History and Evolution of the Writ	7
(1) The Origins of Habeas Corpus	8
(2) Habeas Corpus Recognized in the United States	8
Frank v. Mangum	9
Notes	15
(3) The Warren Era and the Habeas Trinity	15
Brown v. Allen	16
Notes	19
(4) The Anti-Warren Counter-Revolution	19
Finality in Criminal Law and Federal Habeas Corpus for State Prisoners	20
Notes	33
Chapter 2 · Introduction to AEDPA	35
A. When Do the Restrictions Announced in AEDPA Apply?	35
B. Statute of Limitations	36
Notes	37
C. 28 U.S.C. § 2254	38
Notes	41
(1) Making Sense of §2254(d)	42
Williams v. Taylor	42
Notes	55
(2) "Clearly Established Federal Law"	56
Carey v. Musladin	56
Notes	60
(3) "Contrary to" and "Unreasonable Application of"	61
Woodford v. Visciotti	61
Notes	63

iv CONTENTS

Chapter 3 · The Statute of Limitations	69
A. The One-Year Statute of Limitations	70
Notes	70
B. Statutory Tolling of the Statute of Limitations	72
Pace v. DiGuglielmo	72
Lawrence v. Florida	75
Notes	80
C. Equitable Tolling of the Statute of Limitations	81
Holland v. Florida	81
Notes	90
Part 11	
COGNIZABLE CLAIMS	
Chapter 4 · When Is a Claim Cognizable?	93
Carafas v. LaVallee	93
Notes	95
Sibron v. New York, Peters v. New York	96
Notes	99
Lane v. Williams	100
Notes	102
The Conviction That Keeps on Hurting—Drug Offenders and Federal Benefits	108
Chapter 5 · Types of Cognizable Claims	109
A. Ineffective Assistance of Counsel	109
Williams v. Taylor	109
Notes	114
Wiggins v. Smith	115
Notes	123
B. Withholding Exculpatory Evidence	125
Strickler v. Greene	126
Notes	134
C. Politics and Race	138
(1) Politics	139
A Broken System: Error Rates in Capital Cases, 1973–1995	139
A Broken System, Part II: Why There Is So Much Error in	
Capital Cases, and What Can Be Done About It	140
Notes	144
(2) Race	145
McCleskey v. Kemp	145
Notes	159
Miller-El v. Cockrell	160
Notes	174
Chapter 6 · Limiting Access to Federal Review	177
Stone v. Powell	177
Notes	183
Kimmelman v. Morrison	185
Notes	192
Withrow v. Williams	193
Notes	198

CONTENTS v

Chapter 7 · Innocence	201
Herrera v. Collins	202
Notes	211
Schlup v. Delo	215
Notes	222
House v. Bell	224 244
Notes District Attorney's Office for the Third Judicial District v. Osborne	244
Notes	259
In re Troy Anthony Davis	263
Notes	266
Is Innocence Irrelevant? Collateral Attack on Criminal Judgments	268
Notes	276
PART III	
Access to Federal Courts	
Chapter 8 · Exhaustion of State Remedies	279
Fay v. Noia	280
Notes	288
Rose v. Lundy	290
Notes	296
Granberry v. Greer	298
Notes	300
Chapter 9 · Procedural Default	301
Wainwright v. Sykes	301
Notes	309
Coleman v. Thompson	311
Notes	325
Chapter 10 · Successive Petitions	327
Sanders v. United States	327
Notes	332
Kuhlmann v. Wilson	333
Notes	341
McCleskey v. Zant	342
Notes	352
Felker v. Turpin	353 359
Notes	339
PART IV Federal Habeas Procedure	
	2.62
Chapter 11 · Litigating Questions of Fact	363
A. The Habeas Rules Harris v. Nelson	363 364
Notes	368
B. The Right to a Federal Hearing	369
Townsend v. Sain	370
Notes	380
Keeney v. Tamayo-Reyes	381
Notes	389

vi CONTENTS

C. AEDPA's Role in Limiting Evidentiary Hearings and Requiring Deference to State Court Findings of Fact Michael Williams v. Taylor Notes	390 391 397
Insyxiengmay v. Morgan	398
Notes	403
Schriro v. Landrigan	404
Notes	410
Chapter 12 · Litigating Questions of Deference: When AEDPA Doesn't Apply A. De Novo Review of the Merits of a Claim Permitted When State Court Denial of Relief Does Not Amount to an Adjudication on the Merits	411 411
B. De Novo Review of the Merits of a Claim Permitted When the State Court	
System Summarily Denies the Constitutional Claim	413
(1) There Need Be No Deference to Silent State Court Judgments	414
Washington v. Schriver	414
Note	416
Section 2254(d) of the Federal Habeas Statute: Is It Beyond Reason?	416
Note	417
(2) Complete Deference to Silent State Court Judgments	417
Reid v. True	417
Notes	418
C. Statutory Interpretation: Full and Fair Procedures	420
(1) No "Full and Fair" Requirement Implied by § 2254(d)(2) Valdez v. Cockrell	420 420
Note (2) "Full and Fair" Requirement Implied by § 2254(d)(2)	428 428
Taylor v. Maddox	428
Notes	435
(3) "Full and Fair" Requirement and Adjudication on the Merits	436
Monroe v. Angelone	437
Notes	438
Chapter 13 · Harmless Error	441
Greer v. Miller	441
Notes	448
Arizona v. Fulminante	448
Notes	459
Brecht v. Abrahamson	460
Notes	468
Fry v. Pliler	469
Notes	473
Chapter 14 · Guantánamo Bay	477
Rasul v. Bush	478
Notes	484
Boumediene v. Bush	488
Notes	502
Reflections from a Guantanamo Detainee Lawyer	503
Notes	504