

HABEAS PETITION DRAFTING

Ngozi Ndulue

Ngozi.Ndulue@udc.edu

University of the District of Columbia David A. Clarke School of Law

AGENDA

- Preliminary issues
- Creating a new narrative
- Drafting common habeas claims
- Anticipating potential counterarguments

BEFORE THE DRAFTING...

- Client communications
- Identification of potential claims
- Review of records
- Investigation/fact development

BEFORE THE DRAFTING...

Investigation

- ABA GUIDELINES
- Investigate ALL aspects of client's case
- Sources: People & Records
- The investigation is massive & in-person
- Requires diligence
- Requires organization

Credit: Kristen Samuels, Southern Center for Human Rights

EFFECTIVE STORYTELLING

A stock story, learned either through experience or vicariously, 'resolves ambiguity and complements 'given' information with much 'assumed' information.' We use known stories to make sense of a set of facts, filling in any gaps (or even overriding discordant facts) with the stories. We make narrative sense of known facts by fitting them to a story that seems plausible.

--Helen A. Anderson, *Police Stories*, 111 Nw. U. L. Rev. Online 19 (2016),
<https://digitalcommons.law.uw.edu/faculty-articles/48>

CHANGING THE NARRATIVE



What was the narrative that prevailed in earlier stages?



How does your narrative differ?



What building blocks do you have to tell a different story?



Who is your villain? What should motivate the decisionmaker to rule for your client?

The background of the image is a dark teal color, overlaid with a repeating pattern of speech bubbles. Each speech bubble is a different color (red, yellow, purple, grey) and contains a large, dark blue question mark. The bubbles are scattered across the entire frame, creating a textured, busy background.

ADDRESSING THE CONTEXT FOR YOUR CLAIMS

RULES FOR CONSIDERATION OF HABEAS PETITIONS

- Rules Governing 2254 and 2255 Cases
- Federal Rules of Civil Procedure
- Local rules for the district and standing orders

PROCEDURAL ISSUES

- Is your client in custody?
- Was the petition timely filed?
 - If not, does equitable tolling apply?
- Have previous petitions been filed?
 - If so, would this be considered “second or successive”?
- Have the claims been exhausted?
 - If not, are there exceptions to exhaustion or other ways to address it?

ADDRESSING UNEXHAUSTED/TARDY CLAIMS

Overcoming Procedural Barriers

- Many possible avenues exist to raise such claims since the barriers in 2244 and 2254(b) are waivable, non-jurisdictional, and overcome-able through equitable tolling or the miscarriage-of-justice gateway.
- Unsettled questions of state law that can impact the 2254(b) barrier.
- Returning to state court using mechanisms like a *Rhines* stay.
- Procedural default can be overcome with a showing of “cause and prejudice.”

Credit: Kevin Lehrman, District of Puerto Rico Federal Public Defender’s Office

EXCEPTIONS TO PROCEDURAL BARRIERS

Actual Innocence/Miscarriage of Justice

- *Schlup v. Delo*, 513 U.S. 298 (1995)

Ineffective assistance of post-conviction
counsel

- *Martinez v. Ryan*, 566 U.S. 1 (2012)



CORE ASPECTS OF HABEAS CLAIMS

WHAT CONSTITUTIONAL VIOLATION ARE YOU CHALLENGING?

- Ineffective assistance of counsel (*Strickland*)
- Withholding evidence (*Brady*)
- Presenting false evidence (*Napue*)
- Discrimination in jury selection (*Batson*)
- Judicial bias
- Jury misconduct

HOW DO YOU SATISFY THE 28 U.S.C. § 2254 STANDARD

(d)An application for a writ of habeas corpus . . . shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- **(1)** resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- **(2)** resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

CONSTRUCTING YOUR CLAIM

- Does 2254(d) apply?
- If it does apply, was there ...
 - a decision that was contrary to clearly established federal law (d)(1)
 - a decision that was an unreasonable application of clearly established federal law (d)(1), and/or
 - a decision that relied upon an unreasonable determination of facts (d)(2)?

The background features a dark blue-grey field with several grey arrows of varying lengths pointing towards the right. A single, prominent red arrow is positioned centrally, pointing towards a target on the right. The target consists of concentric circles in shades of red and grey. A white rectangular box is superimposed over the red arrow, containing the text 'WINNING STRATEGIES'.

WINNING STRATEGIES

SUCCESS STORY: CLEARLY ESTABLISHED FEDERAL LAW

Andrew v. White, 145 S.Ct. 75 (Jan. 21, 2025)

- At trial, the prosecution “spent significant time . . . introducing evidence about Andrew’s sex life and about her failings as a mother and wife, much of which it later conceded was irrelevant.”
- The Court found that *Payne v. Tennessee*, 501 U.S. 808, 825 (1991), was relevant clearly established law because “the Due Process Clause can in certain cases protect against the introduction of unduly prejudicial evidence at a criminal trial.”
- The Court remanded to the Tenth Circuit for further proceedings.

DISTRICT OF PUERTO RICO EXAMPLES

- **Cruz-Berríos v. Borrero,**

No. 14-cv-1232 (ADC/SCC), 2020 WL 12814753

- **Núñez Pérez v. Rolón Suárez,**

No. 19-cv-1555, 618 F. Supp. 3d 49 (D.P.R. 2022) (WGY), aff'd on other grounds sub nom., *Escobar-Pabón*, 133 F.4th 33 (1st Cir. 2025)

- **Ramos-Cruz v. Emanuelli,**

No. 20-cv-1589, 2024 WL 4403699 (FAB)

Credit: Franco Perez, District of Puerto Rico Federal Public Defender's Office

THANK YOU!