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# EDWARD V. SPARER PUBLIC INTEREST LAW FELLOWSHIP SYMPOSIUM: ROAD BLOCKS TO JUSTICE: CONGRESSIONAL STRIPPING OF FEDERAL COURT JURISDICTION -- Introduction

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EDWARD V SPARER PUBLIC INTEREST  
LAW FELLOWSHIP SYMPOSIUM:  
ROAD BLOCKS TO JUSTICE:  
CONGRESSIONAL STRIPPING OF  
FEDERAL COURT JURISDICTION

INTRODUCTION\*

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Brooklyn Law School's annual Edward V. Sparer Public Interest Law Fellowship Symposium held on April 5, 2001 was entitled "Road Blocks to Justice: Congressional Stripping of Federal Court Jurisdiction." The topic was three pieces of federal legislation passed in 1996 and signed into law by President Clinton. These were the Anti-terrorism and Effective Death Penalty Act ("AEDPA"),<sup>1</sup> the Prison Litigation Reform Act ("PLRA"),<sup>2</sup> and the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA").<sup>3</sup> Essays on this legislation by the Symposium panelists, James Liebman, John Boston, and Lee Gelernt follow this introduction.

AEDPA was designed to place often insurmountable procedural barriers before prisoners seeking federal court review of the constitutionality of their imprisonment or death sentences. It places a one-year time limit from final judgment in state court on filing a petition for a writ of habeas corpus,<sup>4</sup>

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<sup>1</sup> Pub. L. No. 104-132, 110 Stat. 1214 (1996).

<sup>2</sup> Pub. L. No. 104-134, 110 Stat. 1321-66 (1996).

<sup>3</sup> Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

<sup>4</sup> Pub. L. No. 104-132, § 101, 110 Stat. 1214 (1996).

limits the number of successive petitions that a prisoner may file,<sup>5</sup> and restricts the circumstances under which a judgment of conviction may be overturned.<sup>6</sup> AEDPA also eliminates judicial review of deportation and exclusion orders and expands the definition of "aggravated felonies" to permit the deportation of legal resident aliens who have committed minor crimes long in the past.<sup>7</sup>

PLRA's purpose was to make it more difficult (some would say impossible) for prisoners to obtain redress in federal court for constitutionally impermissible conditions of confinement. The Act, among other provisions, effectively bars from court indigent prisoners who have previously filed "frivolous" law suits by imposing prohibitive filing fees;<sup>8</sup> dictates the explicit findings that courts must make to remedy unconstitutional prison conditions;<sup>9</sup> prohibits money damages for "psychological" harm;<sup>10</sup> and automatically terminates orders granting relief in prison conditions cases.

Finally, IIRIRA eliminates judicial review of deportation orders in any court, and removes jurisdiction from all courts to hear any claim by any noncitizen arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any noncitizen.<sup>11</sup>

This trio of Acts shares two common features. The most obvious feature is their applicability only to two vulnerable and politically powerless groups of people: prisoners and immigrants. The second is their interference with the historic role of the federal courts to provide remedies to those whose constitutional rights have been violated by acts of the other branches of government. The personal suffering caused by the inability to obtain an impartial hearing of a claim of injustice is incalculable. One can only imagine the despair of a death row inmate who realizes that his right to obtain federal review of his conviction or sentence has been forfeited by his

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<sup>5</sup> Pub. L. No. 104-132, § 106, 110 Stat. 1214 (1996).

<sup>6</sup> Pub. L. No. 104-132, § 104, 110 Stat. 1214 (1996).

<sup>7</sup> Pub. L. No. 104-132, § 440, 110 Stat. 1214 (1996).

<sup>8</sup> 28 U.S.C. § 1915 (2001).

<sup>9</sup> 18 U.S.C. § 3626 (2001).

<sup>10</sup> 42 U.S.C. § 1997e(e) (2001).

<sup>11</sup> 8 U.S.C. § 1252 (2001).

inexperienced (or lazy or drunk or sleeping) lawyer's failure to meet the abbreviated deadlines or to take the complicated procedural steps required by AEDPA. Nearly as tragic is the plight of the immigrant who, after living legally in the United States since infancy, finds that, as a result of a minor crime committed decades ago, he or she must, by the unreviewable order of the Attorney General, be separated from family and friends and deported to a distant, unfamiliar, and probably poverty-stricken country where they speak a strange tongue.

Even worse than these individual costs, however, is the lasting damage that AEDPA, PLRA, and IIRIRA do to the system of separation of powers that has for centuries served so well to protect the rights of the individual against governmental overreaching. When so many other countries, from England to Eastern Europe to South Africa, are realizing the crucial role that an independent judiciary plays in the creation and maintenance of a constitutional democracy that respects human rights, it is ironic that our own Congress is manipulating federal jurisdiction to cut back on those rights.

Questions that arises naturally are: what purpose was this legislation designed to serve? What evil was it supposed to prevent? One answer has been that the federal courts are flooded with frivolous lawsuits by prisoners and that this tide must be stemmed. As James Liebman and John Boston discuss, however, this is simply not the case. Moreover, the complicated and incomprehensible procedures mandated by both AEDPA and PLRA have, in fact, increased litigation and lengthened the time that inmates convicted of capital crimes remain on death row

*New York Times* columnist Anthony Lewis, who has written frequently about jurisdiction-stripping, told of a German-born woman who immigrated to the United States when she was one-year old and faced deportation because she had, two decades earlier, pled guilty to pulling another woman's hair in a squabble over a boyfriend. "What's the point?" Lewis asked rhetorically "Who would want to bother prosecuting someone because twenty years before she pled

guilty on the advice of counsel to a misdemeanor?"<sup>12</sup> There does not appear to be a satisfying answer.

Massachusetts District Court Judge Nancy Gertner, speaking at a recent ACLU conference, suggested that the purpose of jurisdiction-stripping legislation is to curb an "activist" judiciary. She went on to criticize this suggestion by pointing out that in the areas of immigrants' and prisoners' rights, the federal courts had not been at all "activist" for decades. Indeed, she said, "when you look at these areas, the courts had stripped themselves long before President Clinton did it and long before Congress did it."<sup>13</sup>

Judge Gertner's explanation for why Congress has passed such unnecessary and harmful legislation is dispiriting. She said,

What's happened here is the politics of demonology. This is the demonizing of the most vulnerable among us and this happened when nobody was looking. It wasn't necessary for the workload of judges, it wasn't necessary to enact this legislation for the fanaticism of the federal courts. It was pure symbolism. And it is symbolism which unfortunately has real and substantial consequences to the human beings who pass in front of us.<sup>14</sup>

A 1998 survey indicates that the members of Congress who voted to pass AEDPA, PLRA, and IIRIRA may not in fact have understood their constituents' views. The great majority of Americans—some 67%—believe that it is more important to protect the rights of individuals than to follow what the community as a whole wants.<sup>15</sup> They also believe, however, that individual rights are adequately protected.<sup>16</sup> Moreover, the same survey showed that the American public knows very

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<sup>12</sup> Anthony Lewis, Remarks at Blocking the Courthouse Doors: Contemporary Congressional Limits on Federal Jurisdiction, Harvard Law School (Mar. 10, 2001).

<sup>13</sup> Hon. Nancy Gertner, Remarks at Blocking the Courthouse Doors: Contemporary Congressional Limits on Federal Jurisdiction, Harvard Law School (Mar. 10, 2001).

<sup>14</sup> *Id.*

<sup>15</sup> American Civil Liberties Union, Defending the Integrity and Restoring the Jurisdiction of Federal Courts: A Proposal from the Public Education Department of the American Civil Liberties Union Foundation (Mar. 10 2001) (presented at conference entitled "Blocking the Courthouse Doors: Contemporary Congressional Limits on Federal Jurisdiction," co-sponsored by Harvard Law School and the ACLU).

<sup>16</sup> *Id.*

little about the federal courts.<sup>17</sup> Thus, it is not surprising that this legislation was passed “when no one was looking.” But as DNA evidence has revealed the legal system’s unreliability, the shift in public opinion on the fairness of the death penalty over the last year has shown that public education can be effective. Thus, there may be reason to hope that the trend in Congress may be reversed through the hard work of lawyers like the Sparer panelists to challenge jurisdiction-stripping legislation and to increase public awareness that such laws exist and pose a danger to all of us.

An optimistic note: At the time that the Sparer forum took place, panelist Lee Gelernt was busy working on the ACLU’s Supreme Court briefs in *Calcano-Martinez v. Immigration and Naturalization Service*<sup>18</sup> and *Immigration and Naturalization Service v. St. Cyr*,<sup>19</sup> which challenged provisions of IIRIRA and AEDPA. Both cases were decided on June 25, 2001. In *Calcano-Martinez*, the Court held that while the federal courts lack the power of direct review over deportation decisions by the INS, the jurisdiction-stripping provisions of IIRIRA do not apply to habeas corpus petitions.<sup>20</sup> In *St. Cyr* the Court held that neither AEDPA nor IIRIRA deprived the federal courts of jurisdiction to review the habeas corpus petitions of immigrants challenging orders for their deportation.<sup>21</sup> The Court also held that the statutory provisions mandating the automatic deportation of immigrants who had been convicted of particular crimes were not retroactive.<sup>22</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> 121 S. Ct. 2268 (2001).

<sup>19</sup> 121 S. Ct. 2271 (2001).

<sup>20</sup> *Calcano-Martinez*, 121 S. Ct. at 2270.

<sup>21</sup> *St. Cyr*, 121 S. Ct. at 2278-80, 2283-87.

<sup>22</sup> *Id.* at 2275-78, 2283-84.

