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NOTE

POST-CONVICTION CHANNELING

*Alexander Hanna**

People seeking to vacate their criminal convictions face bleak prospects. The reasons for this are myriad, from deferential standards of review to blanket bans on entire categories of claims. Yet lurking beneath these contributors is another, lesser-studied problem: when petitioners seek post-conviction relief, their cases are often decided by the same judges who presided over their trials or accepted their guilty pleas. That practice—which this Note calls "judge channeling"—is widespread, with most jurisdictions adopting it through either formal rules or informal practices. Proponents argue that judge channeling maximizes judicial economy because the trial judge's familiarity with a case enables more efficient claim resolution. However, a robust body of social science research reveals a devastating trade-off: unconscious biases prevent judges from recognizing their own errors, hobbling petitioners seeking to challenge their convictions and vindicate meritorious claims. Prior scholarship has emphasized normative problems with judge channeling, but the analysis ends there. This Note intervenes in that narrow discourse by making two novel contributions to existing literature. First, it offers the first

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comprehensive study of state channeling procedures, explaining what they do and how they differ across jurisdictions. Second, this Note lays out alternative procedures that balance independent review with deliberative efficiency, and it considers which institutions are best poised to bring those procedures to life.

INTRODUCTION

In the popular imagination, the life cycle of a criminal case begins with an indictment and ends on appeal. For many defendants, however, exhaustion of direct appeal marks the beginning, not the end. There also exists a vast universe of post-conviction relief, including federal and state habeas corpus, writs of error, actual innocence petitions, and more. Those convicted at trial face a steep uphill battle, with only twelve percent of state convictions[1] and less than seven percent of federal

[1] Nicole L. Waters, Anne Gallegos, James Green & Martha Rozsi, U.S. Dep't of Just., Criminal Appeals in State Courts 1 (2015), https://bjs.ojp.gov/content/pub/pdf/casc.pdf [https://perma.cc/2M64-RMA2].

convictions[2] being reversed on appeal. And if direct appeal is a hill, then post-conviction relief is a mountain: less than one percent of federal habeas petitions succeed,[3] and state habeas presents similar challenges.[4]

That dire prognosis makes sense on some level. After a defendant has pled guilty or lost at trial, and after they have benefitted from the rigors of direct appeal, post-conviction relief *should* be an uncommon remedy. Yet innocent people are convicted and imprisoned notwithstanding these safeguards,[5] so there must be reasons other than guilt that explain their continued incarceration. Many of these reasons are procedural: people seeking habeas relief must navigate a tangled labyrinth of exhaustion requirements, procedural default rules, statutes of limitations, and bars to successive petitions—obstacles that also pervade state law.[6] Layered atop these rules governing challenges to legally defective convictions are additional rules that make proving innocence exceedingly difficult for those afforded the full panoply of constitutional rights.[7]

These procedural hurdles matter, but hiding in plain sight is another potent factor that shapes case outcomes: who decides the case. The availability of post-conviction relief is often determined by the same judge who presided over the petitioner's trial or accepted their guilty plea, a phenomenon this Note calls "judge channeling." The practice is popular, with most jurisdictions having statutes, judicial rules, and informal practices that permit, and in some cases require, the original

[2] Just the Facts: U.S. Courts of Appeals, Admin. Off. of the U.S. Cts. tbl. 2 (Dec. 20, 2016), https://www.uscourts.gov/data-news/judiciary-news/2016/12/20/just-facts-us-courts-appeals [https://perma.cc/T9C7-5HW7].

[3] Nancy J. King & Joseph L. Hoffmann, Envisioning Post-Conviction Review for the Twenty-First Century, 78 Miss. L.J. 433, 437 (2008).

[4] Aggregated state habeas data is elusive, but studies focused on particular states and case types support this claim. See, e.g., David R. Dow & Jeffrey R. Newberry, Reversal Rates in Capital Cases in Texas, 2000–2020, 68 UCLA L. Rev. Discourse 2, 12 (2020) (finding a 5.6% success rate on state habeas review of death penalty cases in Texas); Mary K. McComb, Off. of the State Pub. Def., California's Broken Death Penalty: It's Time to Stop Tinkering with the Machinery of Death 58–59 (2021), https://www.ospd.ca.gov/wp-content/uploads/2024/04/White-Paper.pdf [https://perma.cc/5HDM-UHHZ] (finding that the California Supreme Court has granted habeas relief in 4% of state capital cases since 1978).

[5] See Charles E. Loeffler, Jordan Hyatt & Greg Ridgeway, Measuring Self-Reported Wrongful Convictions Among Prisoners, 35 J. Quantitative Criminology 259, 259, 261, 276 (2019) (estimating that 6% of non-capital state offenders are factually innocent).

[6] See infra Section I.A.

[7] See infra Section I.C. See generally Daniel S. Medwed, Barred: Why the Innocent Can't Get Out of Prison (2022) (exploring procedural barriers to proving innocence after conviction).

trial judge to adjudicate petitions for post-conviction relief.[8] Defenders of judge channeling argue that the trial judge's familiarity with the facts and issues animating a case allows them to dispose of cases more efficiently.[9] This Note turns that argument on its head: familiarity with the underlying case is precisely the issue, creating blind spots and preventing the correction of judicial errors—sometimes grave and consequential ones.

Despite its popularity among legislatures and courts, judge channeling has long been a target of attack in the academic literature surrounding post-conviction procedure.[10] However, no piece of legal scholarship has made post-conviction judge assignment its exclusive or even primary focus. This Note fills that gap. While it leans on past normative critiques, it also makes two novel contributions of its own. The first contribution is descriptive, providing the first comprehensive survey of state post-conviction channeling procedures. The second contribution is prescriptive, introducing and comparing alternative ways of adjudicating post-conviction claims. Prior work begins and ends by pointing out a problem; this Note takes the additional steps of analyzing that problem in detail and offering workable solutions.

This Note proceeds in four parts. Part I broadly surveys post-conviction relief in the United States, paying special attention to habeas corpus, writs of error, and claims of actual innocence. Part II explores the phenomenon of post-conviction judge channeling, describing what it is, how it works across jurisdictions, and the general arguments marshaled in its favor. Part III then pivots from the descriptive to the normative, explaining how judge channeling entrenches bias, ossifies

[8] See infra Section II.B; Appendix.

[9] See infra Section II.A.

[10] See, e.g., Daniel S. Medwed, Up the River Without a Procedure: Innocent Prisoners and Newly Discovered Non-DNA Evidence in State Courts, 47 Ariz. L. Rev. 655, 679, 699–708 (2005) [hereinafter Medwed, Up the River Without a Procedure]; Daniel S. Medwed, California Dreaming? The Golden State's Restless Approach to Newly Discovered Evidence of Innocence, 40 U.C. Davis L. Rev. 1437, 1472–75 (2007) [hereinafter Medwed, California Dreaming?]; Eli Paul Mazur, "I'm Innocent": Addressing Freestanding Claims of Actual Innocence in State and Federal Courts, 25 N.C. Cent. L.J. 197, 230–34 (2003); Stephanie Roberts Hartung, Missing the Forest for the Trees: Federal Habeas Corpus and the Piecemeal Problem in Actual Innocence Cases, 10 Stan. J.C.R. & C.L. 55, 61–62 (2014); Joseph M. Bowman, Note, Processing a Motion Attacking Sentence Under Section 2255 of the Judicial Code, 111 U. Pa. L. Rev. 788, 800–02 (1963). As these titles suggest, most prior scholarship addresses innocence claims specifically rather than post-conviction relief more generally.

error, and deprives petitioners of meaningful review. Finally, Part IV considers alternative models of post-conviction adjudication that would better allow petitioners to vindicate meritorious claims without forfeiting judicial economy. In doing so, it explores what alternative regimes might look like and how reform might take place.

I. POST-CONVICTION RELIEF

Most of the criminal process is familiar to lawyers and members of the public alike. Prosecutors bring charges against a defendant in a trial court, followed by a flurry of events including arraignment, appointment of counsel, a detention hearing, discovery, plea negotiation, occasionally trial,[11] and, for those ultimately convicted, sentencing. Unsuccessful trials are often followed by direct appeals where defendants ask intermediate appellate courts, state supreme courts, and sometimes the U.S. Supreme Court to overturn their convictions. Yet outside this "core" of criminal procedure are additional procedures which, taken together, constitute post-conviction review. This Part describes three vehicles for relief that cover the bulk of post-conviction cases: habeas corpus, writs of error, and actual innocence claims. Each form of relief has a unique function and historical pedigree, but all focus on attacking the validity of the underlying conviction, either because it is legally defective or because the petitioner is, in fact, innocent of the crimes charged.[12] Each also presents a steep uphill battle because, after conviction, "the presumption of innocence disappears" and the petitioner bears the burden of showing they were wrongly convicted.[13]

A. Habeas Corpus

Long hailed as the "great writ of liberty,"[14] the writ of habeas corpus is an English common law device that has existed for over four

[11] Although trial is the best-known phase of the criminal process, the vast majority of cases are instead resolved through plea bargains. Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness 87 (rev. ed. 2011).

[12] By contrast, other forms of post-conviction relief focus on features of criminal proceedings unrelated to due process or guilt, such as the sentence imposed. See, e.g., 18 U.S.C. § 3582(c)(2) (permitting the sentencing court to retroactively reduce a defendant's sentence based on changes to the federal sentencing guidelines).

[13] Herrera v. Collins, 506 U.S. 390, 399 (1993).

[14] Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539, 619 (1842); see also 3 William Blackstone, Commentaries *131 (calling the writ of habeas corpus "the great and efficacious

centuries.[15] In the English legal tradition, the writ served as a bulwark against arbitrary confinement without due process, empowering judges to demand justification for a person's imprisonment by the government.[16] The Founding generation took up the writ of habeas corpus in earnest, making it a central feature of the nascent American legal tradition. The North Carolina, Georgia, and Massachusetts state constitutions included the right to habeas relief before ratification of the first Federal Constitution in 1787, and today all states have analogous provisions.[17] Crucially, the U.S. Constitution does not directly provide the right to habeas relief, but rather conditions *suspension* of the privilege on rebellion or invasion in the Suspension Clause.[18] The affirmative right to federal habeas is a creature of statute; Congress initially authorized habeas relief for prisoners in federal custody,[19] and after the Civil War it extended the privilege to state prisoners.[20]

Today, three statutory provisions govern federal habeas relief. The first allows petitioners in federal custody—but generally not convicted "prisoners"—to challenge the legality of their confinement.[21] The second allows federal prisoners to collaterally attack convictions "imposed in violation of the Constitution or laws of the United States."[22] And the third extends the privileges of the first two provisions to people in state custody.[23] The second and third provisions are most relevant here because they provide vehicles for post-conviction relief, allowing prisoners to challenge the validity of their convictions after exhausting trial and appellate remedies. For example, the third provision, 28 U.S.C.

writ"). But see Leah M. Litman, The Myth of the Great Writ, 100 Tex. L. Rev. 219, 225 (2021) (arguing that "habeas, on balance, is not as good as conventional narratives or sanitized histories of the writ might suggest").

[15] Paul D. Halliday, Habeas Corpus: From England to Empire 1 (2012).

[16] Amanda L. Tyler, Habeas Corpus and the American Revolution, 103 Calif. L. Rev. 635, 641–42 (2015).

[17] Gerald L. Neuman, The Habeas Corpus Suspension Clause After *INS v. St. Cyr*, 33 Colum. Hum. Rts. L. Rev. 555, 564 (2002).

[18] U.S. Const. art. I, § 9, cl. 2 (commonly known as the Suspension Clause).

[19] Lee Kovarsky, AEDPA's Wrecks: Comity, Finality, and Federalism, 82 Tul. L. Rev. 443, 446 (2007) (citing Judiciary Act of 1789, ch. 20, § 14, 1 Stat. 73, 81–82).

[20] Id. at 446–47 (citing Habeas Corpus Act of 1867, ch. 28, § 1, 14 Stat. 385, 385).

[21] 28 U.S.C. § 2241; see, e.g., Boumediene v. Bush, 553 U.S. 723, 732–33 (2008) (holding that noncitizens detained at Guantanamo Bay may seek habeas relief under § 2241).

[22] 28 U.S.C. § 2255(a). Prisoners must ordinarily bring habeas petitions under § 2255 rather than § 2241. See id. § 2255(e) (requiring dismissal of a prisoner's § 2241 habeas petition unless § 2255 is "inadequate or ineffective to test the legality of his detention").

[23] 28 U.S.C. § 2254.

§ 2254, would allow a petitioner to challenge their state conviction based on pervasive prosecutorial misconduct or ineffective assistance of counsel.[24] Habeas corpus thus offers a third bite at the proverbial apple.

The federal habeas landscape experienced a seismic shift in 1996 with the passage of the Antiterrorism and Effective Death Penalty Act ("AEDPA").[25] Commentators felt that existing procedures allowed prisoners to endlessly relitigate their convictions and delay executions in capital cases, so concerns over effective and conclusive punishment dovetailed with a burgeoning interest in federal habeas reform.[26] AEDPA brought numerous changes to habeas procedure including, but not limited to, imposing a one-year statute of limitations, restricting factual development by federal courts, prohibiting successive applications, and barring relief where a petitioner cannot demonstrate that a state court's decision constitutes an unreasonable determination of the facts or application of federal constitutional law.[27] State habeas law was not directly impacted by the passage of AEDPA, but the states have nevertheless replicated many of its provisions.[28] In light of these developments, legal scholars have excoriated AEDPA for making federal habeas relief increasingly unattainable.[29]

[24] See, e.g., Roberts v. Broomfield, 637 F. Supp. 3d 872, 904 (E.D. Cal. 2022) (granting habeas relief on both grounds).

[25] Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214.

[26] See Larry Yackle, AEDPA *Mea Culpa*, 24 Fed. Sent'g Rep. 329, 330 (2012).

[27] Eve Brensike Primus, Equitable Gateways: Toward Expanded Federal Habeas Corpus Review of State-Court Criminal Convictions, 61 Ariz. L. Rev. 291, 299–304 (2019).

[28] Radley Balko, Opinion, It's Time to Repeal the Worst Criminal Justice Law of the Past 30 Years, Wash. Post (Mar. 3, 2021), https://www.washingtonpost.com/opinions/2021/03/03/its-time-repeal-worst-criminal-justice-law-past-30-years/ (observing that many states have enacted their own "mini-AEDPAs").

[29] See, e.g., Yackle, supra note 26, at 329 ("This statute has been a conceptual and practical nightmare—crippling the ability of federal courts to enforce federal rights, disserving legitimate state interests, delivering unjust and bizarre results even in the run of ordinary cases, and, at best, squandering resources on endless and pointless procedural digressions."); Lynn Adelman, Federal Habeas Review of State Court Convictions: Incoherent Law but an Essential Right, 64 Me. L. Rev. 379, 384 (2012) (arguing that AEDPA "made habeas law incoherent"); Samuel R. Wiseman, What Is Federal Habeas Worth?, 67 Fla. L. Rev. 1157, 1161 (2015) (noting that "AEDPA has generated an enormous amount of litigation and very little relief"). Yet for all this scholarly criticism, there is some dispute in the empirical literature about AEDPA's impact on federal habeas grant rates. Contrast, e.g., Nancy J. King, Fred L. Cheesman II & Brian J. Ostrom, Nat'l Ctr. for State Cts., Final Technical Report: Habeas Litigation in U.S. District Courts 58, 61 (2007), https://www.ojp.gov/pdffiles1/nij/grants/219559.pdf [https://perma.cc/B9XW-DDTM] (finding lower grant rates in both non-capital and capital cases after AEDPA), with John H. Blume,

These statutory limits worked in tandem with changes to the Supreme Court's habeas jurisprudence. Although the Warren Court made federal habeas more accessible to state prisoners, the Burger and Rehnquist Courts ended that period of leniency by erecting new barriers to relief.[30] Some were procedural; between the 1970s and 1990s, the Court handed down decisions prohibiting review of claims never raised in state court,[31] barring "mixed" petitions combining exhausted and non-exhausted claims,[32] and adopting a more stringent standard of review.[33] Other barriers were deeply substantive. In *Stone v. Powell*, the Court held that federal habeas claims based on Fourth Amendment violations are not cognizable where state courts provide an "opportunity for full and fair litigation."[34] Later, in *Teague v. Lane*, the Court prohibited federal courts from granting habeas relief based on retroactive application of new criminal procedure rules in most cases.[35] Many state courts have replicated these doctrinal developments, limiting the availability of habeas relief in their respective jurisdictions.[36] The twin

AEDPA: The "Hype" and the "Bite," 91 Corn. L. Rev. 259, 277 (2006) (showing little to no change). This discrepancy could be explained methodologically. For example, Professor Blume's study considers only federal habeas cases that ultimately reached the Supreme Court. Blume, supra, at 276. This may skew results if the Court chooses to grant certiorari in cases that already appear more favorable to the petitioner.

[30] See Adelman, supra note 29, at 381–82 (discussing cases cited infra notes 31–35).

[31] Wainwright v. Sykes, 433 U.S. 72, 86–87 (1977).

[32] Rose v. Lundy, 455 U.S. 509, 510 (1982).

[33] See Brecht v. Abrahamson, 507 U.S. 619, 637 (1993) (adopting *Kotteakos* rather than *Chapman* harmless error review for federal habeas petitions). *Kotteakos* harmless error requires that the trial error have a "substantial and injurious effect or influence in determining the jury's verdict." Kotteakos v. United States, 328 U.S. 750, 776 (1946). By contrast, *Chapman* harmless error only requires the error to be "harmless beyond a reasonable doubt." Chapman v. California, 386 U.S. 18, 24 (1967). The Court equated this standard to one where a petitioner wins if there is a "reasonable possibility" that the trial error contributed to the verdict. Id.

[34] 428 U.S. 465, 481–82 (1976).

[35] 489 U.S. 288, 310–11 (1989) (plurality opinion). The Supreme Court has further limited retroactive application of new procedural rules after *Teague*. In 2021, it emphasized that *Teague*'s exception for "watershed" rules of criminal procedure is "extremely narrow" and has only been applied to the right to counsel. Edwards v. Vannoy, 141 S. Ct. 1547, 1557 (2021) (quoting Whorton v. Bockting, 549 U.S. 406, 417 (2007)). It went on to clarify that "[a]t this point, some 32 years after *Teague*, . . . no new rules of criminal procedure can satisfy the watershed exception." Id. at 1559.

[36] See, e.g., Fitzgerald Council v. Comm'r of Corr., 944 A.2d 340, 348 (Conn. 2008) (dismissing a state habeas petition on procedural default grounds where the petitioner failed to challenge his guilty plea at trial or on appeal); Jacobs v. Hopper, 233 S.E.2d 169, 170 (Ga. 1977) (per curiam) (following *Stone* and denying appellant's state habeas petition because he had a "full and fair" opportunity to litigate his illegal search and seizure claim).

forces of legislation and evolving jurisprudence have thus relegated habeas to an increasingly limited role.

B. Writs of Error

A lesser-known form of post-conviction relief is the writ of error, which, much like the writ of habeas corpus, has an extensive common law pedigree. Originating in sixteenth-century England, writs of error allowed courts rendering final judgments to correct factual errors that, if known at the time, would have prevented entry of the final judgment.[37] There were two general types of writs of error: writs of *coram nobis* (brought in the court which originally entered the judgment) and writs of *coram vobis* (brought in appellate courts).[38] Writs of error migrated to the United States in the early nineteenth century and were used in both civil and criminal cases,[39] though today they have been completely eliminated from federal civil practice.[40]

Despite their decline in the civil context, writs of error—*coram nobis* in particular—have remained a persistent feature of federal criminal practice,[41] and many state courts continue to use them too.[42] They are also employed more expansively today than at common law; the Supreme Court has emphasized that *coram nobis* reaches beyond mere technical errors to remedy errors "of the most fundamental character."[43] In *United States v. Morgan*, for example, the Court granted a writ of error based on a violation of the respondent's Sixth Amendment right to counsel—a constitutional defect rather than a factual issue.[44] Since then,

[37] Morgan Prickett, The Writ of Error Coram Nobis in California, 30 Santa Clara L. Rev. 1, 3–5 (1990).

[38] Edward N. Robinson, Note, The Writs of Error *Coram Nobis* and *Coram Vobis*, 2 Duke Bar J. 29, 29–30 (1951).

[39] Kathleen M. Bure, Note, *Coram Nobis* and *State v. Stinney*: Why South Carolina Should Revitalize America's Legal "Hail Mary," 68 S.C. L. Rev. 917, 924 (2017).

[40] See Fed. R. Civ. P. 60(e).

[41] See 28 U.S.C. § 1651(a) (authorizing federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"); United States v. Denedo, 556 U.S. 904, 911 (2009) (reading § 1651(a) to authorize federal courts to grant writs of *coram nobis*).

[42] See, e.g., State v. Hutton, 776 S.E.2d 621, 633 (W. Va. 2015) (holding that *coram nobis* remains available in state criminal cases, despite being abolished in civil cases); Skok v. State, 760 A.2d 647, 662–63 (Md. 2000) (remanding the case for a hearing on *coram nobis* relief); State v. Larimore, 17 S.W.3d 87, 88–89 (Ark. 2000) (affirming the trial court's grant of a writ of error based on prosecutorial misconduct).

[43] United States v. Mayer, 235 U.S. 55, 69 (1914).

[44] 346 U.S. 502, 512–13 (1954).

numerous state courts have expanded writs of error to cover constitutional challenges ordinarily raised through habeas corpus.[45]

Yet to say that writs of error are enduring and elastic is not to say they are frequently granted. The Court has described the writ of error as an "extraordinary" remedy, available "only under circumstances compelling such action to achieve justice."[46] The First Circuit has aptly described the writ of *coram nobis* as the "criminal-law equivalent" of a Hail Mary football pass.[47] One likely explanation is that writs of error are confined to narrow situations where other remedies like habeas corpus are unavailable.[48] One such case might involve a petitioner seeking to attack their conviction based on a constitutional defect once they have already completed their prison sentence and thus are no longer a "prisoner" under federal law.[49] This example crystalizes the key difference between writs of habeas corpus and writs of error. While both are derived from the common law and both allow courts to remedy legal errors resulting in conviction, writs of error uniquely provide post-conviction relief for non-incarcerated people. Thus, while rarely sought or granted, writs of error offer a vital remedy for those statutorily barred from seeking habeas relief.

C. Innocence Claims

The two categories of post-conviction relief described above have nothing to say about whether the petitioner actually engaged in conduct the government sought to punish. That is, they are concerned with legal guilt as a function of constitutional deprivations rather than true innocence. Yet claims of innocence also hold an important place in the world of post-conviction relief. As Judge Learned Hand once famously

[45] See, e.g., State v. Sinclair, 2012 VT 47, ¶ 11, 191 Vt. 489, 49 A.3d 152 ("As to the scope of relief available, the Supreme Court's decision to extend coram nobis to fundamental or constitutional legal errors has generally, although not uniformly, been followed by state courts."); Magnus v. United States, 11 A.3d 237, 246 (D.C. 2011) (observing that the scope of *coram nobis* relief "has expanded to encompass the correction of fundamental legal errors in addition to factual ones").

[46] *Morgan*, 346 U.S. at 511.

[47] United States v. George, 676 F.3d 249, 251 (1st Cir. 2012).

[48] United States v. Denedo, 556 U.S. 904, 911 (2009) (citing *Morgan*, 346 U.S. at 510–11).

[49] See, e.g., *Morgan*, 346 U.S. at 504 (involving a *state* prisoner challenging his prior *federal* conviction through a writ of *coram nobis*); see also 28 U.S.C. § 2255(a) (only authorizing federal "prisoner[s]" to challenge their convictions through habeas corpus).

observed, "Our procedure has been always haunted by the ghost of the innocent man convicted."[50] For most of American history, however, cases of wrongful conviction were deemed rare and anomalous—deviations from an otherwise accurate criminal process.[51] That perception changed with the advent of the DNA revolution at the end of the twentieth century and the exonerations that followed in its wake, which showed alarmingly high rates of error.[52] Since the first DNA exoneration in 1989, at least 375 people have been exonerated through DNA evidence,[53] and innocence claims have expanded to other sources of wrongful conviction like unreliable and perjured witness testimony, false confessions, "junk" science, prosecutorial misconduct, and ineffective assistance of counsel.[54]

At the federal level, claims of innocence are routed through habeas corpus, which is subject to AEDPA's strict limits.[55] However, federal habeas is an unwieldy tool for exoneration. In *Herrera v. Collins*, the Supreme Court held that habeas does not "extend[] to freestanding claims of actual innocence," leading it to deny relief to a prisoner on death row.[56] Two years later, in *Schlup v. Delo*, it found that federal habeas *was* a permissible conduit for relief because the petitioner "accompanie[d] his claim of innocence with an assertion of constitutional error at trial."[57] Taken together, *Herrera* and *Schlup* reveal that federal habeas corpus can only exonerate people suffering some legal harm *beyond* the harm of being wrongly convicted. That deficiency has led some to suggest a separate post-conviction "track" in

[50] United States v. Garsson, 291 F. 646, 649 (S.D.N.Y. 1923).

[51] Katherine R. Kruse, Wrongful Convictions and Upstream Reform in the Criminal Justice System, 3 Tex. A&M L. Rev. 367, 370 (2015).

[52] Id.

[53] DNA Exonerations in the United States (1989–2020), Innocence Project, https://innocenceproject.org/dna-exonerations-in-the-united-states/ [https://perma.cc/V4GA-ZCJT] (last visited Feb. 11, 2026).

[54] Emily Hughes, Innocence Unmodified, 89 N.C. L. Rev. 1083, 1093–94 (2011); Mark A. Godsey & Thomas Pulley, The Innocence Revolution and Our "Evolving Standards of Decency" in Death Penalty Jurisprudence, 29 U. Dayton L. Rev. 265, 272 (2004).

[55] Stephanie Roberts Hartung, Post-Conviction Procedure: The Next Frontier in Innocence Reform, *in* Wrongful Convictions and the DNA Revolution: Twenty-Five Years of Freeing the Innocent 247, 253–54 (Daniel S. Medwed ed., 2017); see also 28 U.S.C. § 2255(h)(1) (permitting successive federal habeas petitions based on newly discovered evidence).

[56] 506 U.S. 390, 404–05 (1993).

[57] 513 U.S. 298, 316 (1995).

federal habeas law focused entirely on innocence claims, but such proposals have not gained traction.[58]

Some states already have a bifurcated system of post-conviction review, providing separate procedures for people alleging innocence rather than legal or procedural deprivation. In Georgia, petitioners can file a written motion with the trial court to seek post-conviction DNA testing.[59] The petitioner must, among other requirements, produce DNA evidence which was never tested at trial and demonstrate that the requested testing would raise a "reasonable probability" that they would not have been convicted, considering all the other evidence in the case.[60] Aside from DNA testing procedures, many states also have procedures for considering non-biological evidence. In Virginia, a petitioner may seek a writ of actual innocence by identifying non-biological evidence that "could not, by the exercise of diligence, have been discovered or obtained" before conviction, and by alleging that "no rational trier of fact would have found proof of guilt or delinquency beyond a reasonable doubt" in light of the evidence.[61] Interestingly, the statute specifically provides that "biological evidence may not be used as the sole basis for seeking relief," although such evidence "may be used in conjunction with other evidence."[62] Taken together, these statutes illustrate divergent approaches to post-conviction claim resolution, but they share a common focus on exonerating innocent people convicted at trial.

II. POST-CONVICTION CHANNELING

Having provided a rough sketch of post-conviction relief, this Note now describes the process by which post-conviction petitions are "channeled" to the court—and usually the judge—that originally convicted the petitioner. Legal scholars have long observed that judge channeling exists, but such scholarship assumes that it looks roughly the same everywhere and thus provides an incomplete descriptive account

[58] See Hartung, supra note 55, at 254–56; see also Joseph L. Hoffmann & William J. Stuntz, Habeas After the Revolution, 1993 Sup. Ct. Rev. 65, 95–96 (proposing a similar doctrinal reform before *Schlup*).

[59] Ga. Code Ann. § 5-5-41(c)(1) (2025).

[60] Id. § 5-5-41(c)(3)(B), (D).

[61] Va. Code Ann. § 19.2-327.11(A)(vi)–(vii) (2025).

[62] Id. § 19.2-327.11(A).

of channeling.[63] This Part fills that gap, providing a detailed taxonomy of post-conviction judge-assignment procedures and explaining how they differ across jurisdictions.

A. Justifications for Judge Channeling

The rationale behind judge channeling can be reduced to a simple proposition: the trial judge has the greatest familiarity with the underlying criminal case, so they are best equipped to rule on claims for post-conviction relief. Early commentators believed that petitions for writs of *coram nobis* should be adjudicated by the same judge who oversaw the trial because of their preexisting knowledge of the facts.[64] Courts have taken a similar position vis-à-vis other forms of post-conviction relief as well. In a case where the petitioner moved for a new trial based on the discovery of exculpatory evidence, the Supreme Court of Alaska suggested that the trial judge was best poised "to determine the possible effect and merit of the alleged newly discovered evidence since he presided over the original trial and heard all the evidence there."[65]

This position supposes that judges who are more familiar with a case are best able to dispose of it efficiently. As Professor Larry Yackle has noted, many deemed it preferable for the judge who rendered the conviction to determine the availability of post-conviction relief because "that judge was already familiar with the case and thus able to determine quickly whether the facts alleged in the petition had been adjudicated at trial."[66] Professor Daniel Medwed has made a similar point about innocence-based claims:

> Traditionally, the chief policy justification for assigning allegations of newly discovered evidence to the original judge lay in the idea that that jurist was already familiar with the litigation and, therefore, better situated to assess the merits of the innocence claim than a person without any prior link to the case, a practice deemed both more efficient and more likely to yield the proper outcome.[67]

[63] See supra note 10; infra note 127.
[64] Medwed, Up the River Without a Procedure, supra note 10, at 670.
[65] Salinas v. State, 373 P.2d 512, 513 (Alaska 1962).
[66] Larry W. Yackle, Postconviction Remedies 34 (1981).
[67] Medwed, California Dreaming?, supra note 10, at 1472.

These remarks suggest that "efficiency" plays a dual role in justifications for judge channeling, encompassing the tendency to decide claims both more quickly *and* more accurately. Commentators also emphasize the trial judge's unique ability to sift through frivolous claims. For instance, the Fourth Circuit explained that it is "highly desirable" that motions for post-conviction relief be decided by the trial judge "who is familiar with the facts and circumstances surrounding the trial, and is consequently not likely to be misled by false allegations as to what occurred."[68] Thus, while rationales for judge channeling vary slightly in flavor, they are similarly concerned with swift and accurate claim resolution.[69]

The American Bar Association ("ABA") practice standard on post-conviction judge assignment indicates that petitions "should be brought in the court in which the applicant's challenged conviction and sentence was rendered."[70] It goes on to clarify that "[n]either a general rule favoring nor one disfavoring submission of a postconviction application to the same trial judge who originally presided is clearly preferable."[71] Yet despite the ABA's agnostic stance, petitioners must often seek post-conviction relief by filing a petition with the same judge who presided over their trial.[72]

B. Federal and State Judge-Assignment Practices

Due in large part to the arguments discussed above, judge channeling has gained a steady foothold in American post-conviction procedure. This Section provides a comprehensive sketch of judge-assignment rules at both the federal and state levels.[73] Most jurisdictions employ

[68] Carvell v. United States, 173 F.2d 348, 348–49 (4th Cir. 1949) (per curiam).

[69] Commentators have made similar claims about motions for resentencing. See Ryan W. Scott, In Defense of the Finality of Criminal Sentences on Collateral Review, 4 Wake Forest J.L. & Pol'y 179, 224 (2014).

[70] Standards for Crim. Just.: Postconviction Remedies § 22-1.4(b) (A.B.A. 1978), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/post-conviction-remedies-2d-ed-ch22.pdf [https://perma.cc/W5U9-3ARH].

[71] Id. § 22-1.4(c).

[72] See Katherine I. Puzone, When Counsel Abandonment Forecloses Post-Conviction Relief: An Argument for Applying the Doctrine of Cause and Prejudice to the AEDPA Statute of Limitations, 21 Geo. J. on Poverty L. & Pol'y 365, 367 (2014) (discussing habeas); Medwed, Up the River Without a Procedure, supra note 10, at 699 (discussing innocence claims); infra Section II.B.

[73] To avoid needless duplication, this Section does not discuss the channeling procedures of every state. For a full accounting, see infra Appendix.

channeling in some form, directing petitions either to the specific judge who entered the petitioner's conviction or to the same court generally, phenomena this Note calls "judge channeling" and "court channeling," respectively. Although some judge-assignment procedures require that petitions be decided by the original trial judge, the plain language of most rules requires only that cases be decided by the same trial court. Yet this court-only channeling exists largely as a matter of form; as a matter of real legal practice, petitions are typically directed to the original trial judge even where judge channeling is not formally required.[74] The reasons for this discrepancy are not entirely clear, but one explanation may be that the practice maximizes flexibility, allowing courts to redirect petitions to other judges if the original trial judge takes a leave of absence or has too many cases on their docket.

Having made these preliminary points, it now bears examining channeling procedures in greater detail. Start with federal habeas corpus, the primary device for managing federal post-conviction relief. Channeling does not occur when *state* prisoners challenge their convictions in federal court for obvious reasons; the value of the federal forum is to provide independent review by not only a different judge, but by a different sovereign entirely.[75] Yet challenges to *federal* convictions are a different story. The statute governing post-conviction review of federal convictions mandates court channeling, stating that a petitioner "may move the court *which imposed the sentence* to vacate, set aside or correct the sentence."[76] The statute does not require that

[74] Contrast, e.g., 725 Ill. Comp. Stat. Ann. 5/122-1(b) (West 2025) (requiring filing a petition "with the clerk of the court in which the conviction took place"), and Mont. Code Ann. § 46-21-101(1) (2023) (specifying that the petitioner must seek relief from "the court that imposed the sentence"), with Direct Appeal vs Post-Conviction, Pissetzky L. (Dec. 9, 2021), https://www.pissetzkylaw.com/blog/2021/12/direct-appeal-vs-post-conviction/ [https://perma.cc/5KAW-6VR8] (Illinois law firm noting that "[p]ost-conviction petitions are usually heard by the same judge who presided over the jury trial"), and Criminal Cases Post-Conviction, Mont. Innocence Project, https://mtinnocenceproject.org/criminal-cases-post-conviction/ [https://perma.cc/U6R4-UBLJ] (last visited Feb. 11, 2026) ("State post-conviction relief starts at the trial court where the trial originally occurred with the same judge."). See infra text accompanying notes 96–102 (discussing de facto judge channeling in Indiana, Nebraska, and Rhode Island).

[75] See Z. Payvand Ahdout, Direct Collateral Review, 121 Colum. L. Rev. 159, 168–69 (2021) (observing that the Reconstruction Congress expanded federal habeas review to counteract the subversion of constitutional rights by states); Wiseman, supra note 29, at 1169 ("During periods of systemic failures of justice in state courts, the threat of federal habeas review served as a deterrent against the worst abuses.").

[76] 28 U.S.C. § 2255(a) (emphasis added).

such petitions be heard by the same district judge who rendered the final judgment, but, as noted above, channeling a petition to the court of conviction usually results in channeling to the original district judge as a matter of legal practice.[77] Some district courts also expressly require judge channeling in their local rules, so the practice is sometimes formally codified.[78]

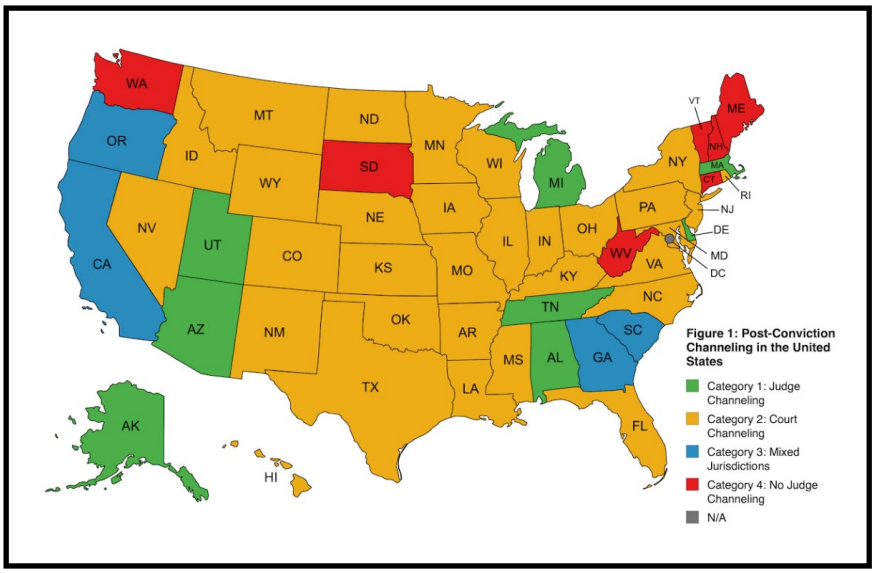
Now consider the states. Providing a comprehensive review is challenging given the sheer number and variety of rules, but it may be helpful to sort jurisdictions into four broad categories: (1) those that explicitly mandate judge channeling; (2) those that mandate court channeling (but likely employ judge channeling as a matter of practice); (3) those with mixed rules; and (4) those that prohibit judge channeling outright or provide numerous alternative options for judge assignment. These categories are mapped below in Figure 1 and are fully outlined in the Appendix. The following Subsections take up each category in turn.[79]

[77] See Habeas Corpus 2255 Motions, Law Offs. of Alan Ellis, https://alanellis.com/habeas-corpus-2255-and-2241-motions/ [https://perma.cc/K7EJ-23DQ] (last visited Feb. 11, 2026) ("Section 2255 motions are first presented to the judge who presided over the defendant's trial and sentencing if that judge is available.").

[78] See, e.g., E.D. Tenn. R. 3.2(d)(2)(A); E.D. Mich. R. 83.11(b)(6); D.D.C. R. 40.3(d).

[79] The following analysis focuses primarily on post-conviction relief analogous to federal habeas corpus. The author made this choice for two reasons. First, it would require many more pages to canvass *all* forms of post-conviction relief across the United States, and settling for a modest descriptive contribution seemed better than overpromising. Second, as more forms of relief enter the equation and, relatedly, as the statutory schemes being analyzed grow more complex, it becomes virtually impossible to provide stable, useful categories. Part II and the Appendix thus exclude statutes governing writs of error, actual innocence claims, and other forms of post-conviction relief such as requests for post-conviction DNA testing. See, e.g., Ga. Code Ann. § 5-5-41(c)(1) (2025); N.H. Rev. Stat. Ann. § 651-D:2(I) (2025). Additionally, while petitioners often use habeas corpus to collaterally attack a conviction after exhausting direct appellate review, some statutes instead codify the common law writ of habeas corpus, which was used to challenge arbitrary executive detention. Contrast, e.g., Conn. Gen. Stat. § 52-466(a)(2) (2025) (providing habeas relief for "inmate[s] or prisoner[s] confined in a correctional facility as a result of a conviction of a crime"), with id. § 52-466(a)(1) (providing habeas relief based on illegal confinement not otherwise covered by subdivision (2)). Because the latter form of habeas applies before a conviction becomes final, the author has excluded it from the survey.

Figure 1: Post-Conviction Channeling in the United States[80]



1. Judge Channeling

Relatively few states formally channel petitions for post-conviction relief to the original trial judge. Massachusetts has the strongest rule by far, specifying that petitions for relief "may be heard by the trial judge *wherever the judge is then sitting*."[81] Unlike rules that direct petitions to courts but which informally employ judge channeling, this procedure centers the judge in clear terms, allowing the case to follow them outside its original jurisdiction. This quirk suggests that Massachusetts places an unusually high premium on familiarity with the facts and issues presented in the trial court.

Other states similarly mandate judge channeling, albeit in a more qualified way. For example, Delaware's rule requires that a petitioner's first motion for post-conviction relief be presented "to the judge who accepted a plea of guilty or nolo contendere or presided at trial in the proceedings leading to the judgment under attack," but it provides for

[80] The author created Figure 1 using https://www.mapchart.net.

[81] Mass. R. Crim. P. 30(c)(7) (emphasis added). The word "may" suggests that judge channeling is not always required, but the very existence of a written judge-channeling rule likely exerts a strong pull on assignment procedures.

alternative case assignment "[i]f the appropriate judge is unavailable to consider the motion."[82] Likewise, post-conviction cases in Michigan "shall be presented to the judge to whom the case was assigned at the time of the defendant's conviction," but "the motion must be assigned to another judge" if the trial judge is unavailable.[83] Interestingly, Michigan includes a safety valve to remedy logistical issues created by this rule, permitting the chief judge to "reassign cases in order to correct docket control problems."[84] In Alaska, petitions must be heard in the convicting court and "may be heard before any judge of that court, but if the sentencing judge is available, the case shall be initially assigned to that judge."[85] While they vary in strength, each of these procedures provides for judge channeling in clear, unambiguous terms.

Tennessee's scheme is more nuanced because its express terms only mandate court channeling, but elsewhere it conveys a clear preference for judge channeling. The relevant statute specifies that a post-conviction proceeding "is commenced by filing, with the clerk of the court in which the conviction occurred, a written petition naming the state as the respondent."[86] Yet a separate section providing more procedural details notes that "the presiding judge of the appropriate court shall assign a judge to hear the petition," and further that "[t]he issue of competency of counsel may be heard by a judge other than the original hearing judge."[87] The latter provision's carveout for specific types of claims suggests that, in most cases, the presiding judge will channel the case to the original trial judge, a norm confirmed by the communications director for the Tennessee courts.[88] Tennessee employs

[82] Del. Super. Ct. R. Crim. P. 61(d)(1); see also Ala. R. Crim. P. 32.6(d) ("The proceeding shall be assigned to the sentencing judge where possible, but for good cause the proceeding may be assigned or transferred to another judge."); Ariz. R. Crim. P. 32.10(a) ("The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge."); Utah R. Civ. P. 65C(g) ("On the filing of the petition, the clerk shall promptly assign and deliver it to the judge who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk shall assign the case in the normal course.").

[83] Mich. Ct. R. 6.504(A).

[84] Id.

[85] Alaska R. Crim. P. 35.1(g).

[86] Tenn. Code Ann. § 40-30-104(a) (2025).

[87] Id. § 40-30-105(b).

[88] See E-mail from Samantha Fisher, Commc'ns Dir., Tenn. Admin. Off. of the Cts., to author (Jan. 5, 2026, at 12:05 ET) (on file with author) (noting that "the practice is to assign the case to the trial judge if they are still on the bench").

a written judge-channeling procedure, albeit a less explicit one than those described above.

Each of the states in this first category formally requires judge channeling. In a superficial sense, they are indistinguishable from states in the next category because, whether through written rules or unwritten practices, judge channeling frequently occurs in both. But in another sense, codified rules introduce a level of rigidity that informal practices do not, committing jurisdictions to judge channeling even where individual courts might prefer an alternative system. And even where flexibility *is* possible, that flexibility turns on predefined criteria—for example, judge unavailability in Delaware and docket control issues in Michigan. These parameters calcify judge-channeling practices, producing judge-assignment regimes that can only change once supplanted by *new* rules.

2. Court Channeling

A second, larger category of states formally requires court channeling, but often employs judge channeling too as a matter of legal practice. For instance, Nevada's statute expressly mentions the possibility of judge channeling, specifying that petitions must "[w]henever possible, [be] assigned to the original judge or court."[89] For most jurisdictions in this category, however, there are no written rules suggesting that judge channeling is required.

Take a few examples. In Colorado, petitioners must seek post-conviction relief "in the court which imposed the sentence,"[90] and in neighboring Wyoming, a petitioner commences proceedings by filing "a petition verified by affidavit" with "the clerk of the court where the conviction occurred."[91] Louisiana specifies that "[a]pplications for post conviction relief shall be filed in the parish in which the petitioner was convicted,"[92] and Hawai`i requires that petitions for relief "be instituted by filing a petition with the clerk of the court in which the conviction took place."[93] In Virginia, petitions for writs of habeas corpus and writs of actual innocence are both adjudicated in the original trial court, but neither form of relief expressly requires that the same judge decide the

[89] Nev. Rev. Stat. Ann. § 34.730(4)(b) (LexisNexis 2025).
[90] Colo. R. Crim. P. 35(c)(3).
[91] Wyo. Stat. Ann. § 7-14-101(b) (2025).
[92] La. Code Crim. Proc. Ann. art. 925 (2025).
[93] Haw. R. Penal P. 40(b).

case.[94] Statutes and judicial rules in numerous other states replicate these provisions.[95]

Importantly, court-channeling jurisdictions often employ judge channeling de facto, illustrating the gap between codified rules and judicial practice. For example, Indiana's rules of post-conviction procedure require that petitions be filed "with the clerk of the court in which the conviction took place," suggesting at first glance that court rather than judge channeling is required.[96] However, the Public Defender of Indiana noted that post-conviction petitions "go to the original judge all the time."[97] Nebraska's post-conviction statute similarly requires filing "in the court which imposed [the] sentence,"[98] but court rules in at least one judicial district clarify that post-conviction cases "shall be assigned to the judge by whom the case was tried, or to that judge's successor," and assignment to the original trial judge is common practice elsewhere in the state.[99] In Rhode Island, "[a]n action to secure post conviction relief . . . shall be brought in the court in which the judgment of conviction was entered,"[100] but judge channeling is required in three counties by judicial rule,[101] and the Chief of the Appellate Division for the Rhode Island Public Defender explained that judge channeling is a statewide practice.[102]

[94] See Va. Code Ann. §§ 8.01-654(B)(1), 19.2-327.12 (2025).

[95] See, e.g., Idaho Crim. R. 39(a); 725 Ill. Comp. Stat. Ann. 5/122-1(b) (West 2025); Kan. Stat. Ann. § 60-1507(a) (2025); Md. Code Ann., Crim. Proc. § 7-102(a) (LexisNexis 2025); Mont. Code Ann. § 46-21-101(1) (2023).

[96] Ind. R. Post-Conviction Remedies PC 1, § 2.

[97] Telephone Interview with Amy E. Karozos, Ind. Pub. Def., Ind. Pub. Def.'s Off. (Jan. 5, 2026).

[98] Neb. Rev. Stat. Ann. § 29-3001(1) (LexisNexis 2025).

[99] Neb. 4th Dist. Ct. R. 4-12(E); see also E-mail from Simon G. Rezac, Clerk of the Dist. Ct., Lancaster Cnty., Neb., to author (Jan. 8, 2026, at 12:00 ET) (on file with author) (noting that in Lancaster County, the "procedure is that the Judge that is assigned the case handles all filings on the case unless there is a conflict of interest or the Judge [r]etires"); E-mail from Todd W. Lancaster, Chief Couns., Neb. Comm'n on Pub. Advoc., to author (Jan. 8, 2026, at 13:54 ET) (on file with author) (similar, and explaining that "this is the rule in every other county as well").

[100] 10 R.I. Gen. Laws § 10-9.1-2(a) (2025).

[101] See R.I. Super. Ct. R. Prac. 2.2(b) (providing that, in Kent, Newport, and Washington Counties, "[t]he justice or magistrate assigned to the civil calendar shall . . . dispose of applications for post-conviction relief in any case wherein the trial justice or magistrate is no longer a member of the court, [or] assign such applications for dispositions by the justice or magistrate who presided at the trial of the applicant").

[102] E-mail from Kara Maguire, Chief of App. Div., R.I. Pub. Def., to author (Jan. 7, 2026, at 10:59 ET) (on file with author). She further explained that a rulemaking committee is

Still, a small number of states expressly provide for court channeling but disclaim any preference for judge channeling. In North Dakota, the statute governing post-conviction relief requires "filing an application with the clerk of the court in which the conviction and sentence took place," closely mirroring the provisions discussed above.[103] However, another part of the same statute provides that "[t]he application may be considered by any judge of the court in which the conviction took place."[104] Iowa similarly provides that petitions for post-conviction relief may be heard before any judge of the convicting court.[105] Judge channeling might still occur in these states, but it is neither explicitly nor implicitly required.

The jurisdictions in this second category frequently deploy judge-channeling practices behind a veneer of court-channeling policies, distinguishing them from the judge-channeling states discussed above. Yet even informal judge-channeling practices are durable and resistant to change. If a court directs post-conviction claims to the original trial judge simply because things have always been done that way, those practices can endure through sheer bureaucratic inertia.[106] Here, as with states in the first category, changing the status quo may require the force of binding rules.

3. Mixed Jurisdictions

In addition to suggesting that petitions for post-conviction relief be heard in the original trial court,[107] the ABA standards also recommend that there be "one comprehensive remedy" in post-conviction cases.[108] Yet not all jurisdictions have unified judge-assignment procedures, thus creating a motley patchwork of statutory and common law vehicles for

proposing a change to this policy for efficiency reasons, since "the judges with the busiest criminal trial calendars also have the busiest [post-conviction relief] calendars." Id.

[103] N.D. Cent. Code § 29-32.1-03(1) (2025).

[104] Id. § 29-32.1-03(7).

[105] Iowa Code § 822.7 (2025).

[106] See Telephone Interview with Amy E. Karozos, supra note 97 (explaining that, in Indiana, petitions are often channeled to the original trial judge because judge channeling is such a longstanding practice).

[107] Standards for Crim. Just.: Postconviction Remedies § 22-1.4(b) (A.B.A. 1978), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/post-conviction-remedies-2d-ed-ch22.pdf [https://perma.cc/W5U9-3ARH].

[108] Id. § 22-1.1.

post-conviction relief. California, Oregon, Georgia, and South Carolina are the four such "mixed jurisdictions."

California has perhaps the most complex remedial scheme. One of the state's written post-conviction rules functions as a statutory equivalent to the writ of *coram nobis*, providing relief to people "no longer in criminal custody" who misunderstood the collateral immigration consequences of their conviction, who could be exonerated through new evidence of innocence, or who were improperly convicted on the basis of race, ethnicity, or national origin.[109] However, the statute does not outline any particular channeling procedure.[110] California's state habeas remedies also provide relief for people still in state custody, and a state judicial rule specifies that habeas petitions challenging the terms of a judgment "may be transferred to the county in which judgment was rendered."[111] In addition to this judge-made rule, a separate statute requires that habeas petitions for prisoners sentenced to death be channeled "to the original trial judge unless that judge is unavailable or there is other good cause to assign the case to a different judge."[112] In sum, California uses judge channeling for capital habeas cases and court channeling for all other habeas cases, yet its rules governing writs of error fail to mention channeling at all—a messy procedural landscape.

Oregon also employs a hybrid system, albeit a much simpler one. Oregon's channeling scheme is contained within a single statute, but it provides for divergent procedures depending on whether the petitioner is in prison. Incarcerated petitioners must file "with the clerk of the circuit court for the county in which [they are] imprisoned," but non-prisoners must instead file "with the clerk of the circuit court for the county in which [their] conviction and sentence was rendered."[113] However, another subsection of the same statute allows courts to transfer an

[109] Cal. Penal Code § 1473.7(a) (West 2025) (effective Jan. 1, 2026).

[110] See id. § 1473.7.

[111] Cal. R. Ct. 4.552(b)(2)(A). The word "may" suggests that the decision to transfer is discretionary, plus the transferring court must give reasons for its transfer of the petition, and the receiving court may send the petition back if it deems those reasons insufficient. See id. 4.552(b)(3)–(4).

[112] Cal. Penal Code § 1509(a) (West 2025). Notwithstanding California's 2019 moratorium on the death penalty, this statute remains operative for prisoners sentenced to death because the moratorium "does not provide for the release of any person from prison or otherwise alter any current conviction or sentence." Cal. Exec. Order No. N-09-19 (Mar. 13, 2019).

[113] Or. Rev. Stat. § 138.560(1) (2025).

incarcerated petitioner's case to the court of conviction if doing so would result in a more expedient resolution.[114]

Georgia and South Carolina similarly bifurcate their habeas procedures. Georgia requires that incarcerated petitioners file in the county of imprisonment, while non-incarcerated petitioners file in the county of conviction.[115] But unlike in Oregon, there is no formal mechanism to transfer a prisoner's case to the court of conviction.[116] Georgia's capital punishment regime adds a further wrinkle, providing that petitions challenging a conviction where the death penalty has been imposed must be assigned "to a judge of a circuit other than the circuit in which the conviction and sentence were imposed," eschewing both judge channeling and court channeling.[117] South Carolina similarly prohibits judge channeling in the death penalty context, requiring that "[t]he judge assigned as the post-conviction relief judge must not be the original sentencing judge."[118] These states have split systems that provide for court channeling but direct petitions to different courts depending on the petitioner's incarceration status and the type of relief sought.

4. No Judge Channeling

The final category of channeling rules includes states that proscribe judge channeling altogether and those that technically permit judge channeling but provide numerous alternative options. For instance, West Virginia allows petitioners to file either in the county of imprisonment or in the court of conviction, but the chosen court may still transfer the case to the other court "[i]f appropriate."[119] But arguably more interesting is the handful of states that consciously reject judge channeling. Six states—Connecticut, New Hampshire, Vermont, South Dakota, Maine, and Washington—provide vivid examples.

In Connecticut, post-conviction habeas petitions by prisoners "shall be made to the superior court, or to a judge thereof, for the judicial

[114] Id. § 138.560(4). The statute provides that such transfer decisions are "not reviewable by any court of this state." Id.

[115] Ga. Code Ann. § 9-14-43 (2025).

[116] See id.; id. § 9-14-41 (stating that the article's provisions are the "exclusive procedure for seeking a writ of habeas corpus").

[117] Id. § 9-14-47.1(b).

[118] S.C. Code Ann. § 17-27-160(A) (2025).

[119] W. Va. R. Governing Post-Conviction Habeas Corpus Procs. 3(a).

district of Tolland."[120] Connecticut is unique in channeling post-conviction relief not to the court or judge of conviction, but rather to a single court in Tolland County that handles all such petitions. Similarly, New Hampshire requires petitioners to seek habeas relief in the jurisdiction of imprisonment rather than the court of conviction.[121] Vermont takes a different approach, requiring that petitioners "move the Superior Court of the county where the sentence was imposed to vacate, set aside or correct the sentence," but the same statute clarifies that "the Superior or District judge who presided when the original sentence was imposed shall *not* hear the application."[122] South Dakota likewise provides that petitions for post-conviction relief "shall be heard before any judge of the court in which the conviction took place," but "[t]here may be no proceedings on an application by a judge who imposed sentence on the applicant or who otherwise denied him relief concerning the subject matter involved in the application."[123] Much like states in the second category that utilize court channeling, Vermont and South Dakota appear to place a high premium on routing cases to their original jurisdictions, yet they also balance the efficiency benefits of doing so against possible biases held by the original trial judge.

Maine and Washington represent perhaps the most substantial deviations because they create opportunities to direct petitions vertically rather than horizontally—that is, to appellate judges rather than other trial judges. In Maine, post-conviction cases are decided by "[a] single Justice of the Supreme Judicial Court, an Active Retired Justice of the Supreme Judicial Court or a judge authorized to sit in the Superior Court on post-conviction review cases," creating the option for review by appellate, retired, or specialized post-conviction judges rather than the original trial judge.[124] In Washington, defendants can collaterally attack

[120] Conn. Gen. Stat. § 52-466(a)(2) (2025).

[121] N.H. Rev. Stat. Ann. § 534:3 (2025). Of course, this scheme might *incidentally* produce judge or court channeling if the petitioner was prosecuted and imprisoned in the same county.

[122] Vt. Stat. Ann. tit. 13, § 7131 (2025) (emphasis added).

[123] S.D. Codified Laws § 21-27-14.1 (2025). A separate section allows petitioners to seek habeas relief from "the Supreme or circuit [trial] court, or any justice or judge thereof." Id. § 21-27-1. However, this latter provision determines where an application is filed, whereas the former provision governs which judge adjudicates the petition. This would allow a situation where a petitioner seeks relief from a judge in the county of imprisonment, but the case is transferred to the convicting court for adjudication.

[124] Me. Rev. Stat. Ann. tit. 15, § 2123(1-A) (2025); see id. § 2121(1-A). While the proper venue for a post-conviction petition is the court of conviction, id. § 2123(2), this fact has

their convictions by filing a motion in superior court. However, the superior court must transfer the petition to the Washington Court of Appeals for consideration unless (1) the motion was filed within one year of the conviction becoming final and (2) either the petitioner makes "a substantial showing that they are entitled to relief" or an evidentiary hearing is required.[125]

The states in this final category share a commitment to independent post-conviction review, but that commitment leads down different paths. Some states channel petitions to a single court that handles all state post-conviction claims, others require court channeling but outright prohibit judge channeling, and still others provide for review by state appellate judges. These approaches offer data points that can drive productive discussions about reform, a topic this Note takes up in Part IV.

* * *

This Part has comprehensively surveyed state channeling procedures throughout the United States, using a four-part framework to explain their functional differences. Three crucial points emerge from this analysis. First, although judge channeling certainly exists in codified form, it is primarily a creature of legal practice rather than written rules. Even among the numerous states that only require court channeling—or that have no stated procedure at all—judge channeling is the norm. Second, as the analysis of "mixed jurisdictions" makes clear, sometimes the desirability of channeling will depend on the type of relief sought. For example, judge-assignment procedures in Georgia and South Carolina could possibly be animated by discomfort with the original trial judge adjudicating post-conviction claims in death penalty cases because the cost of error is terminal. Third and finally, while most states employ

little bearing on judge assignment, since venue merely identifies where the assigned judge hears a case. A helpful analog might be a federal judge sitting by designation in another district or circuit. See generally Marin K. Levy, Visiting Judges, 107 Calif. L. Rev. 67 (2019) (describing this phenomenon). Maine's procedural rules technically permit channeling the petition to the original trial judge, see Me. R. Unified Crim. P. 69A(b)–(c), but this Note has categorized Maine as a no-judge-channeling state because its judge-assignment scheme provides numerous alternative options.

[125] Wash. Super. Ct. Crim. R. 7.8(c)(2); see also Wash. Rev. Code § 10.73.090(1) (2025) (imposing a one-year time limit on collateral attack); State v. Molnar, 497 P.3d 858, 863 (Wash. 2021) (en banc) (explaining that "if the superior court determines that the collateral attack is untimely, then the court must transfer it to the Court of Appeals without reaching the merits").

some form of judge channeling, the practice has not been universally embraced. Some states use alternative case-assignment procedures, recognizing that there are serious drawbacks to allowing the original trial judge to determine the availability of post-conviction relief.

III. THE CASE AGAINST JUDGE CHANNELING

This Note has described the "what" of judge channeling—now for the "so what." Post-conviction relief is difficult to obtain even for people bringing meritorious claims.[126] Why, then, does judge channeling matter? After all, critics might argue, it cannot possibly have a greater impact on post-conviction outcomes than bars to successive petitions or federal deference to state court rulings. Fair enough, but that critique considers the problem from the wrong perspective. Given the likely potent effect of judge channeling on case outcomes, there are surely claims where relief *could* be granted as a matter of procedure and *would* be granted on the merits, but which fail for exogenous reasons. This Part proceeds from the understanding that error particularly matters in these marginal cases.

Judge channeling has long been the target of scholarly attack, but prior treatments have been cursory and underdeveloped.[127] Eli Mazur criticized the practice at length in a 2003 article narrowly focused on North Carolina's post-conviction procedure,[128] and Professor Daniel Medwed gave fulsome attention to the topic in two articles about innocence claims from 2005 and 2007.[129] Suffice it to say, the problems posed by judge channeling have not received academic attention in some time, and no study has directly considered the empirical impact of judge channeling on post-conviction outcomes.[130] More importantly, however,

[126] See supra Part I; see, e.g., King & Hoffman, supra note 3, at 437 (noting that, in a study of federal habeas petitioners, less than one percent "received any sort of relief").

[127] See, e.g., Puzone, supra note 72; Steven M. Cytryn, Guilty Until Proven Innocent: Providing Effective Relief to the Actually Innocent in New York, 10 Cardozo Pub. L., Pol'y & Ethics J. 469, 496–97 (2012); Adam Heder & Michael Goldsmith, Recantations Reconsidered: A New Framework for Righting Wrongful Convictions, 2012 Utah L. Rev. 99, 130, 133.

[128] See Mazur, supra note 10, at 230–34.

[129] See Medwed, Up the River Without a Procedure, supra note 10, at 699–708; Medwed, California Dreaming?, supra note 10, at 1472–75. Professor Stephanie Roberts Hartung has more recently discussed the problem, but her treatment relies heavily on Medwed's work. See Hartung, supra note 10, at 61–62.

[130] Empirical, data-driven research is outside the author's area of competence, but it would be a fruitful area for future study.

because these prior treatments lack the descriptive insights contained in Part II, they implicitly treat judge channeling as uniform across jurisdictions. This Part challenges that assumption, leaning on social science research in the same way as prior scholars but taking the additional step of identifying how that research operates differently across various channeling modalities. In doing so, this Part refreshes and bolsters the normative case against a nearly hegemonic feature of post-conviction adjudication.

Judge channeling comes with a relatively intuitive trade-off. The original trial judge can dispose of claims efficiently because of their familiarity with the underlying facts, yet this same familiarity may cloud their reasoning and impede recognition of their own errors because they are hesitant to replow the same ground. Commentary to a prior version of the ABA post-conviction standards illustrates this fundamental tension:

> The same judge brings to the postconviction proceeding familiarity with the case or the applicant that may enable more efficient handling. . . . On the other hand, there are obvious disadvantages and risks in such a practice. There is value in seeking determination from a mind not predisposed by prior incidents, and a significant related value that the arbiter appear not to be predisposed.[131]

This trade-off is not theoretical. Researchers have identified a series of cognitive biases that influence judicial decision-making. These biases take several forms, but two are particularly relevant to post-conviction channeling: egocentric bias and status quo bias.[132]

[131] Standards for Crim. Just.: Postconviction Remedies § 22-1.4 cmt. at 15 (A.B.A. 1978), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/post-conviction-remedies-2d-ed-ch22.pdf [https://perma.cc/W5U9-3ARH].

[132] Given the existence of elected judges in some states, there is evidence that political considerations may also play a role in determining whether judges grant post-conviction relief. See, e.g., Hartung, supra note 10, at 62 (noting that "in states where judges are elected, the pressure to be tough on crime can . . . influence the courts' decisions" in post-conviction cases); cf. Richard R.W. Brooks & Steven Raphael, Life Terms or Death Sentences: The Uneasy Relationship Between Judicial Elections and Capital Punishment, 92 J. Crim. L. & Criminology 609, 638 (2002) (finding that defendants in Chicago were fifteen percent more likely to be sentenced to death during the trial judge's election year). However, it is unclear whether these incentives are uniquely powerful when a judge denies post-conviction relief in cases where they served as the original trial judge, plus the cognitive biases discussed *infra* may account for any disparity.

Professor Medwed describes egocentric bias as "the proclivity of individuals to develop a positive—and perhaps over-inflated—vision of their own abilities," which is intimately connected with the impulse to preserve a positive self-image and avoid the appearance of professional incompetence.[133] Egocentric bias can be healthy in small doses, but too much of it may lead judges to overestimate their abilities, preventing them from recognizing their own errors.[134] An example may be helpful here. In *United States v. Estep*, a district court entertained a federal habeas petition arguing ineffective assistance of counsel by a lawyer whom the petitioner alleged was drunk at his trial.[135] Rejecting the petitioner's claim, the district judge wrote the following:

> The judge that tried the case is now hearing this petition. He takes judicial knowledge of the fact that Counsel Hughes was duly sober, possessed of his ability and mental capacity to carry on the trial and the Court remembers him as one of the outstanding criminal lawyers of the state . . . .
>
> We therefore find against his complaint of not being properly represented by counsel. [It would] indeed be a dumb Court who could not see that leading counsel was intoxicated during a five-day trial.[136]

The judge's decision is striking not because he maintains that defense counsel was sober during the trial, but rather because he professes an ironclad belief in the infallibility of his senses. The point is not that the judge was necessarily wrong. Indeed, he was likely in a good position to observe defense counsel's possible intoxication. Yet in searching his own recollection, he denies the possibility that such recollection might be contradicted by extrinsic evidence. The possibility of being wrong is not just dismissed: it is wholly unthinkable.

Social science research confirms pervasive egocentric bias in the judiciary. As one early study of federal bankruptcy judges found, judges consistently rate themselves as fairer and more efficient than did the

[133] Medwed, Up the River Without a Procedure, supra note 10, at 701. See generally Michael Ross & Fiore Sicoly, Egocentric Biases in Availability and Attribution, 37 J. Personality & Soc. Psych. 322 (1979) (first describing the phenomenon).

[134] See Sande L. Buhai, Federal Judicial Disqualification: A Behavioral and Quantitative Analysis, 90 Or. L. Rev. 69, 96 (2011).

[135] 151 F. Supp. 668, 670 (N.D. Tex. 1957), *aff'd*, 251 F.2d 579 (5th Cir. 1958).

[136] Id.

attorneys practicing before them.[137] Another widely cited study of 167 federal magistrate judges found that almost ninety percent of the surveyed judges believed they had lower rates of reversal on appeal than at least half of their colleagues.[138] In a subsequent study, the same authors surveyed administrative law judges ("ALJs") to explore how bias influences judicial decision-making.[139] They found that 83.3% of ALJs ranked themselves in the top half of judges for assessing witness credibility, 86.2% ranked themselves in the top half for facilitating settlements, and, ironically, a staggering 97.2% ranked themselves in the top fifty percent for avoiding bias—a mathematical impossibility.[140] The fact that egocentric bias persists across diverse judge types suggests that these findings likely hold true for judges in general, including those adjudicating petitions for post-conviction relief.

Status quo bias is distinct because it focuses on the mere fact that a decision was already made, not the virtues of the decision-maker. People struggle to depart from a prior decision because that decision has become the point of reference for future action, causing them to gravitate toward the current state of affairs.[141] Economists William Samuelson and Richard Zeckhauser provide several examples of the concept in action: "Faced with new options, decision makers often stick with the status quo alternative, for example, to follow customary company policy, to elect an incumbent to still another term in office, to purchase the same product brands, or to stay in the same job."[142] Translated into the language of post-conviction adjudication, this means judges may uphold a conviction not because there are independent reasons to do so, but simply because the conviction occurred in the first instance.

[137] Theodore Eisenberg, Differing Perceptions of Attorney Fees in Bankruptcy Cases, 72 Wash. U. L.Q. 979, 983–86 (1994).

[138] Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, Inside the Judicial Mind, 86 Corn. L. Rev. 777, 814 (2001). However, only 155 of the 167 judges surveyed responded to this particular question. Id. n.181.

[139] Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, The "Hidden Judiciary": An Empirical Examination of Executive Branch Justice, 58 Duke L.J. 1477, 1480, 1494 (2009).

[140] Id. at 1519–20. Interestingly, the authors found that the judges' relative levels of experience had no statistically significant bearing on any of their self-assessments. Id. at 1520 n.148.

[141] Medwed, Up the River Without a Procedure, supra note 10, at 701–02.

[142] William Samuelson & Richard Zeckhauser, Status Quo Bias in Decision Making, 1 J. Risk & Uncertainty 7, 8 (1988).

To be sure, status quo bias can exist absent judge channeling. The status quo—the petitioner's guilty plea or conviction at trial—would be the same even if a different judge heard the petition, so bias persists even under court-channeling regimes. This phenomenon is known as "conformity effects," a predisposition toward prior outcomes even where the decision-maker played no role in those outcomes.[143] Yet conformity effects become more powerful when judge channeling occurs because "[n]ot only has 'guilty' become the reference point, but the judge witnessed the process through which guilt was determined, presumably making her more deeply attached to the status quo than a judge lacking any prior connection to the case."[144] This suggests that some level of status quo bias is inevitable in post-conviction proceedings, but independent review can curtail its distortive effects.

Cognitive biases can blind judges to their personal limitations, making them less likely to set aside a criminal conviction. In the context of newly discovered evidence claims, for example, "a judge might unconsciously dismiss the alleged newfound information as irrelevant or otherwise characterize it as not outcome-determinative."[145] Bias is an inescapable part of the human condition and, because biases often operate subconsciously, they impact the vast majority of judges who *want* to be fair.[146] Yet judge biases may be more intense than equivalent forms of bias among members of the general public because of judges' solitary work styles and high cultural veneration.[147] The reluctance to admit error by some of society's most powerful members can wreak havoc on viable post-conviction claims, particularly those sitting on the knife's edge between success and failure.

Professor Medwed has studied the impact of judge bias on post-conviction outcomes in the context of innocence claims.[148] However, because his critique does not consider the important differences in

[143] Medwed, Up the River Without a Procedure, supra note 10, at 702 (citing Susan Burkhardt, The Contours of Conformity: Behavioral Decision Theory and the Pitfalls of the 2002 Reforms of Immigration Procedures, 19 Geo. Immigr. L.J. 35, 54–56 (2004)).

[144] Id. at 704.

[145] Id. at 703.

[146] Jon P. McClanahan, Safeguarding the Propriety of the Judiciary, 91 N.C. L. Rev. 1951, 1974 (2013).

[147] Jeffrey W. Stempel, In Praise of Procedurally Centered Judicial Disqualification—and a Stronger Conception of the Appearance Standard: Better Acknowledging and Adjusting to Cognitive Bias, Spoliation, and Perceptual Realities, 30 Rev. Litig. 733, 741 (2011).

[148] See Medwed, Up the River Without a Procedure, supra note 10, at 699–706.

judge-channeling procedures identified in Part II, it is incomplete even if ultimately correct. At the granular level, of course, the effect of judge bias is symmetric. When a petitioner brings a post-conviction claim before their original trial judge, it makes no difference to them whether they are among many other petitioners in their jurisdiction following a similar procedure. But to the extent that harm is partly a function of harm *magnitude*, procedural nuance matters. It makes a difference how strong a jurisdiction's preference for judge channeling is because that factor influences how widespread channeling is likely to be, and consequently, how much it distorts aggregate post-conviction outcomes. For instance, Massachusetts's judge-channeling rule—which allows the trial judge to hear a petition even outside the case's original jurisdiction—is almost certain to result in judge channeling, whereas Michigan's rule will likely have a weaker impact because of its "control valve" provision, which allows the chief judge to deviate from judge channeling in order to correct docket control problems.[149] Similarly, Nevada's ambivalent policy of case assignment to "the original judge or court" would make an even smaller difference.[150] Institutional design thus has a powerful normative dimension, magnifying or minimizing bias on a sliding scale in ways that prior scholarship has not captured.

Abandoning the norm of judge channeling would likely have a significant positive impact on the favorable adjudication of post-conviction petitions. If a different judge with fresh eyes reviewed a petitioner's claims rather than the judge who convicted them, the influence of the cognitive biases discussed above would be less prominent, and simply rubber-stamping the prior decision would be less tempting. Egocentric bias would become a nonissue because the new judge had no role in the prior decision and thus would not imperil their reputation by admitting past error. Similarly, while status quo bias is inherent to post-conviction relief and cannot be eliminated entirely, a reviewing judge would likely feel less tethered to a prior decision that was not their own. This is particularly true in alternative regimes that channel petitions not just to other judges, but to other courts entirely, a possibility discussed in Part IV.

The conclusion that judge channeling has a negative influence on favorable post-conviction adjudication is difficult to resist. Proponents

[149] Contrast Mass. R. Crim. P. 30(c)(7), with Mich. Ct. R. 6.504(A).
[150] Nev. Rev. Stat. Ann. § 34.730(4)(b) (LexisNexis 2025).

of judge channeling might respond that, even if this is true, appellate review can always correct error on the back end. Not so. For one thing, appellate review is often minimally effective because it affords great deference to trial courts' decisions.[151] While appellate courts review legal findings *de novo*, they generally only disturb factual findings that were clearly erroneous.[152] Such deference can be devastating in deeply factual cases. Additionally, some states do not guarantee appellate review of trial-level post-conviction decisions in the first instance,[153] meaning that, for many petitioners, an initial post-conviction hearing will be their last chance to press their claim.

Other proponents might concede this descriptive account but argue that the trade-off is acceptable because, once trial and appellate remedies have been exhausted, efficient claim resolution should take priority. This efficiency argument might be understood as asking the question, "Is the just resolution of meritorious claims *really* worth insisting upon if it makes things harder?" There is a compelling argument that the answer is "yes," but even posing the question in those terms is problematic because it wrongly assumes a crippling efficiency trade-off. As the following Part makes clear, alternative channeling procedures can improve objectivity even while maintaining a workable scheme of claim resolution. If the system can be improved on one side of the balance at little cost to the other, the status quo looks far less attractive.

IV. ALTERNATIVE REGIMES

Having described judge channeling and explained its problematic dimensions, this Note now sketches out some possible solutions. Providing a comprehensive blueprint for reform is beyond the scope of this Note, but perhaps it can serve as a launchpad for future study and advocacy. Section IV.A compares alternative ways of adjudicating post-

[151] See Barry C. Edwards, Why Appeals Courts Rarely Reverse Lower Courts: An Experimental Study to Explore Affirmation Bias, 68 Emory L.J. Online 1035, 1042 (2019) (suggesting that, in the appellate context generally, deferential standards of review may explain low reversal rates).

[152] See, e.g., Byrd v. Skipper, 940 F.3d 248, 254 (6th Cir. 2019); Andrews v. Warden, 958 F.3d 1072, 1076 (11th Cir. 2020); People v. Glick, 250 P.3d 578, 582 (Colo. 2011) (en banc).

[153] See, e.g., State v. Kanaras, 742 A.2d 508, 511 n.3 (Md. 1999); State v. Darville, 573 So. 2d 1155, 1156 n.1 (La. Ct. App. 1991); State v. Garcia, 680 P.2d 613, 616 (N.M. Ct. App. 1984).

conviction claims that do not rely on judge channeling, explaining their relative merits and flaws. Section IV.B then steps back to analyze possible mechanisms of reform, considering what approaches are most likely to succeed and which institutional actors are best poised to pursue them.

A. Beyond Judge Channeling

It bears emphasizing at the outset that there is no single alternative to judge channeling. Indeed, as the survey of channeling practices in Part II makes clear, some U.S. jurisdictions have already adopted a diverse and innovative range of judge-assignment procedures in post-conviction cases.[154] That diversity extends abroad as well, with other countries adopting varying modes of claim resolution. In the context of innocence petitions, for instance, some countries have merged post-conviction review with the appellate process, while others employ a separate process that still relies on review by appellate judges.[155] Some even divert innocence claims to administrative bodies that investigate and recommend relief to judges, who then review the cases at a later stage in the process.[156] This Section does not adopt any preferred procedure, but instead lays out the benefits and detriments of each.

One alternative—the one most utilized in the United States—is court channeling with no room for judge channeling. Vermont and South Dakota are emblematic of this approach, requiring that petitioners seek relief in the court of conviction but providing that the original trial judge cannot decide the case.[157] The benefits of this approach are intuitive. While the trial judge likely has deep knowledge of the underlying case, another judge on the same court could be the second-best option from an efficiency standpoint, since they may have acquired vicarious knowledge of the proceedings by working with and around the trial judge.[158] Additionally, the new judge would likely be familiar with local

[154] See supra Section II.B; infra Appendix.

[155] Brandon L. Garrett, Laurence R. Helfer & Jayne C. Huckerby, Closing International Law's Innocence Gap, 95 S. Cal. L. Rev. 311, 326 (2021).

[156] Id.

[157] Vt. Stat. Ann. tit. 13, § 7131 (2025); S.D. Codified Laws § 21-27-14.1 (2025).

[158] See Leslie W. Abramson, The Judicial Ethics of Ex Parte and Other Communications, 37 Hou. L. Rev. 1343, 1377–78 (2000) (noting that judges are generally permitted to consult other judges of the same jurisdiction and court level when adjudicating cases). However, a new judge could not contact the original trial judge about the case after disqualification, id.

rules and procedures, expediting the pace of post-conviction review. The new judge would be less vulnerable to many of the cognitive biases described in Part III, since they would have a limited personal stake, if any, in the outcome of the proceeding. Keeping the case in the same court would also allow the original prosecutor to remain with the case at the post-conviction stage, compounding the efficiency benefits of institutional knowledge.[159] Finally, in jurisdictions that handle a large volume of particular case types—for instance, drug-related crimes in some urban locales—it may be beneficial to lean on specialized judicial experience.[160]

However, court channeling also brings with it significant disadvantages. Cognitive bias would likely play a diminished role in deciding case outcomes, but judges on the same court would be particularly susceptible to one specific form of bias: the "conformity effects" discussed above.[161] They may hesitate to grant relief, worrying that a colleague will interpret ordering a new trial as an indictment of their professional judgment. Relatedly, the new judge may hold a colleague in such high esteem that they subconsciously discount the possibility that they made a mistake. While court channeling retains the efficiency benefits of judge channeling, it necessarily retains some of its flaws. For ardent critics of judge channeling, it may not go far enough.

Another possibility is assigning cases to other trial courts—to nearby towns and cities in state systems and nearby districts or divisions in the federal system. For instance, West Virginia vests jurisdiction over post-conviction petitions with multiple state trial courts, which would allow petitioners to seek relief in other courts.[162] Georgia represents a more restrictive approach, requiring that incarcerated petitioners file in the jurisdiction where they are imprisoned rather than the convicting

at 1378, so if the original judge is disqualified, the new judge's familiarity with the case would likely arise before a petitioner seeks post-conviction relief.

[159] Medwed, Up the River Without a Procedure, supra note 10, at 706. That said, the efficiency benefits of allowing prosecutors to remain with the case may come with ethical pitfalls. See generally Fred C. Zacharias, The Role of Prosecutors in Serving Justice After Convictions, 58 Vand. L. Rev. 171 (2005) (describing ethical issues surrounding post-conviction prosecution).

[160] See Jeffrey W. Stempel, Two Cheers for Specialization, 61 Brook. L. Rev. 67, 81 (1995) (observing that, in urban areas, federal courts have nearly become specialized criminal courts and that they "may be on their way to becoming specialized drug courts").

[161] See supra text accompanying notes 143–44.

[162] W. Va. R. Governing Post-Conviction Habeas Corpus Procs. 3(a).

court.[163] Connecticut is the most unique iteration by far, diverting all post-conviction petitions to the judicial district of Tolland.[164] These procedures likely minimize judge bias to a greater degree than either judge or court channeling because judges in other courts have no reputational stake in case outcomes, and they risk little blowback from colleagues on the same court. The fairness benefits may be especially potent in states where judges are elected rather than appointed. Such judges may face local political pressure to affirm a conviction from communities impacted by the underlying crime—especially in high-profile cases—so sending the petition to another jurisdiction may result in more principled adjudication.[165] This approach to judge assignment is particularly well-suited to rural areas with only a few judges, where assigning the case to another judge on the same court may be logistically challenging and where conformity effects may be especially strong.

However, this approach has drawbacks of its own. The procedures of West Virginia permit exceptional flexibility because petitioners can file in multiple courts, but it may also encourage judge-shopping, where petitioners seek out "defense-friendly" judges, inundating them with too many claims.[166] It may also pose practical challenges. Take Washington, D.C., which has plenty of judges but only a single "state" trial court.[167] Assigning petitions to other courts would be unworkable there because alternative forums simply do not exist. On the opposite end of the spectrum, large jurisdictions like some federal districts might struggle with this approach if petitions must travel vast distances to neighboring courts, inconveniencing lawyers and petitioners alike. For example, consider a federal habeas petition filed in the District of Alaska. If a defense lawyer in Anchorage must travel roughly 360 miles to the neighboring division in Fairbanks for each hearing,[168] even the most zealous advocates might think twice before taking the case.

[163] Ga. Code Ann. § 9-14-43 (2025).

[164] Conn. Gen. Stat. § 52-466(a)(2) (2025).

[165] See Mazur, supra note 10, at 234 n.282; supra note 132 (discussing how electoral incentives shape judicial rulings).

[166] Medwed, Up the River Without a Procedure, supra note 10, at 708.

[167] See District of Columbia Superior Court Judges, D.C. Cts., https://www.dccourts.gov/superior-court/superior-court-judges [https://perma.cc/9VUF-F4H6] (last updated Feb. 13, 2026) (noting that the Superior Court consists of a chief judge, sixty-one associate judges, various magistrate judges, and several senior judges).

[168] Driving Directions from Anchorage, Alaska, to Fairbanks, Alaska, Google Maps, https://www.google.com/maps (last visited Feb. 11, 2026) (follow "Directions" hyperlink; then

It is also possible for post-conviction petitions to be decided by different types of judges or courts entirely. The most obvious example would be conferring original post-conviction jurisdiction upon appellate courts rather than trial courts. Washington already employs a version of this procedure: once a petitioner files a motion to vacate their judgment in the appropriate trial court, the trial court must transfer it to the Washington Court of Appeals for consideration, unless (1) the motion is timely and (2) either the petitioner "has made a substantial showing that they are entitled to relief" or a factual hearing is necessary.[169] Another change might involve allowing petitioners to raise claims of innocence based on newly discovered evidence on direct appeal rather than through a collateral proceeding, an approach taken by several other countries. In India and Canada, for example, appellate courts may admit and consider new evidence of innocence, including witness testimony.[170] Similarly, German appellate courts can weigh both old and new evidence of innocence to render a fresh judgment.[171] Such reforms would likely minimize judge bias in the same way as sending post-conviction cases to different jurisdictions because appellate judges are unlikely to have serious qualms about reversing lower court judges; indeed, that is the very nature of appellate review.[172] The benefits of these two approaches may be especially powerful because appellate review involves not just different judges, but *more* judges. The panel system draws together diverse ways of considering factual and legal issues, and a joint deliberative process theoretically produces fairer decisions.[173] On the other hand, such claims would bog down appellate courts and slow the pace of review, creating a ripple effect that would extend to *all* appeals, not just post-conviction proceedings.

search starting point field for "Anchorage, AK" and search destination field for "Fairbanks, AK").

[169] Wash. Super. Ct. Crim. R. 7.8(c)(2).

[170] Brandon L. Garrett, Towards an International Right to Claim Innocence, 105 Calif. L. Rev. 1173, 1185–86, 1192 (2017).

[171] Id. at 1205–06.

[172] See J. Dickson Phillips, Jr., The Appellate Review Function: Scope of Review, Law & Contemp. Probs., Spring 1984, at 1, 2 (identifying error correction as one key function of appellate review).

[173] See Saul Levmore, Appellate Panels and Second Opinions, 127 Penn St. L. Rev. 811, 812 (2023) ("Appellate panels of three judges, and then a larger Supreme Court of nine, are likely to interpret, apply, or advance law more correctly than a single lower court judge whose effort is under review.").

A more efficient method might involve relying on specialized post-conviction courts, threading the needle between providing independent review and making post-conviction adjudication less "top-heavy" than an appeals-oriented system. No U.S. jurisdiction has yet created a designated post-conviction court, but two states come close in different ways. Connecticut, discussed above, channels all post-conviction claims to a single court in Tolland County.[174] As a standard judicial district, Tolland handles other types of cases as well, but judges in that court have arguably acquired specialized knowledge due to the sheer number of cases sent to them. Maine's rule also gestures at specialized experience, referring to the assignment of judges "authorized to sit in the Superior Court on post-conviction review cases."[175] It would be a modest step forward to create courts solely focused on post-conviction claims, merging the benefits of independent review with high deliberative efficiency.

Of course, this method naturally raises questions about jurisdictional scope, especially in the federal system. Would there be a single, centralized court like the Court of Federal Claims? One court per district? Something in between? The first option seems unworkable given the sheer number of federal habeas claims filed. The federal district courts processed a staggering 17,627 habeas petitions and motions to vacate in 2025,[176] compared with only 2,244 filings in the Court of Federal Claims,[177] so a single court might struggle to manage such a high case volume. Yet establishing a new court in each federal district may create an excessive number of judges, so perhaps a middle path—for instance, creating a single post-conviction court for each federal circuit—would be sensible.

In addition to the approaches described thus far, post-conviction petitions could be removed from the judicial branch entirely during the

[174] Conn. Gen. Stat. § 52-466(a)(2) (2025).

[175] Me. Rev. Stat. Ann. tit. 15, § 2123(1-A) (2025).

[176] See U.S. Courts, U.S. District Courts—Civil Cases Commenced, by Nature of Suit, During the 12-Month Periods Ending September 30, 2021 Through 2025 (Table C-2A), https://www.uscourts.gov/sites/default/files/document/jb_c2a_0930.2025.pdf [https://perma.cc/GJD5-SPY8] (last visited Mar. 11, 2026) (showing 3,218 motions to vacate, 14,317 general habeas petitions, and 92 death penalty habeas petitions in 2025).

[177] U.S. Courts, U.S. Court of Federal Claims—Cases Filed, Terminated, and Pending During the 12-Month Period Ending September 30, 2025 (Table G-2A), https://www.uscourts.gov/sites/default/files/document/jb_g2a_0930.2025.pdf [https://perma.cc/SX8Z-XQDG] (last visited Mar. 11, 2026).

early stages of claim resolution through a system of administrative review. Such procedures are already prevalent in other countries. The United Kingdom, for example, created the world's first post-conviction investigatory body, the Criminal Case Review Commission, which can ask courts to reopen cases based on claims of innocence.[178] Other countries have less formal processes: in China, Canada, and the Netherlands, administrative and legislative bodies may refer concerns about the validity of a criminal conviction to judges for reconsideration, though the process is largely discretionary.[179]

Similar models have emerged in the United States through conviction integrity units ("CIUs"), which review cases prosecuted by their offices for wrongful convictions.[180] CIUs exist in numerous large localities and have been met with considerable success—as of February 2026, they have been responsible for 828 exonerations nationwide.[181] CIUs "have great potential" because of their "access to information and political power," yet skeptics worry that they may struggle to provide objective post-conviction review.[182] In particular, the same conformity effects that prevent judges of the same court from being truly independent also impact CIU attorneys tasked with identifying errors made by their colleagues.[183] These biases make CIUs underinclusive vehicles for post-conviction relief. That said, administrative review can still be beneficial when paired with subsequent judicial review. In cases where CIUs zealously pursue exoneration, their involvement may lend credibility to the petition, which in turn makes it harder to deny relief in meritorious cases because the defense and prosecution are seeking the same outcome. Administrative review alone is not enough, but it is likely a key piece of the larger puzzle.

The chief argument for judge channeling is that it allows for the efficient resolution of post-conviction claims, and, conversely, the chief

[178] Garrett et al., supra note 155, at 325.

[179] See id.

[180] Barry C. Scheck, Conviction Integrity Units Revisited, 14 Ohio St. J. Crim. L. 705, 705 n.1 (2017).

[181] Explore Exonerations, Nat'l Registry of Exonerations, https://exonerationregistry.org/cases?f%5B0%5D=n_cchar%3ACIU [https://perma.cc/9UBT-APQH] (last visited Mar. 11, 2026) (with "Conviction Integrity Unit" box checked under "Case Characteristics").

[182] Evelyn L. Malavé & Yotam Barkai, Conviction Integrity Units: Toward Prosecutorial Self-Regulation?, *in* Wrongful Conviction and Criminal Justice Reform 189, 204 (Marvin Zalman & Julia Carrano eds., 2014).

[183] Id. at 199–200; see supra text accompanying notes 143–44, 161 (describing how conformity effects influence judges).

argument against the alternatives described above is that they are comparatively less efficient.[184] However, recall from the discussion of channeling justifications that "efficiency" has a dual character, encompassing the propensity to decide claims both more quickly *and* more accurately.[185] The cognitive biases discussed in Part III impede accurate adjudication because judges are less likely to recognize their own errors than the errors of other judges. Under this criterion, there is a compelling argument that alternatives to judge channeling are more "efficient" because they result in more correct decisions, even if they take longer.

To the extent that speed matters, it is true that judge channeling results in faster decisions, since it clearly takes longer to decide an unfamiliar case than a familiar one.[186] It is therefore unlikely that any alternative will be strictly faster than judge channeling. However, that does not mean the trade-off would be debilitating. As an empirical matter, several jurisdictions already use alternatives to judge channeling, suggesting that such alternatives are workable.[187] Additionally, stringent procedural requirements in post-conviction cases, while making it difficult to obtain relief, would ironically reduce case processing times. For example, federal prisoners seeking habeas relief must file within the one-year statute of limitations and may only file successive petitions under limited circumstances.[188] Failure to meet these conditions would be grounds for immediate dismissal notwithstanding the merits of the case, and a large number of claims are dismissed for such reasons.[189] Because procedural defects are far easier to identify than substantive legal or factual errors,[190] the pace of claim resolution would likely be

[184] See supra Section II.A.

[185] See supra text accompanying notes 66–69.

[186] See Yackle, supra note 66, at 34 (observing that, because the original trial judge is "already familiar with the case," they can "determine quickly whether the facts alleged in the petition had been adjudicated at trial").

[187] See supra Subsection II.B.4.

[188] 28 U.S.C. § 2255(f), (h).

[189] See King et al., supra note 29, at 64 tbl. 15 (showing that 27.7% of capital habeas cases and 42% of non-capital habeas cases were dismissed by federal courts without reaching the merits).

[190] See Jenny S. Martinez, Process and Substance in the "War on Terror," 108 Colum. L. Rev. 1013, 1031 (2008) (concluding that in many terrorism cases, "process is intentionally used to avoid difficult substantive questions"); Rosaleen T. O'Gara, Note, Procedural Dismissals Under the Alien Tort Statute, 52 Ariz. L. Rev. 797, 798 (2010) (observing that, "where substantive law is contentious and uncertain," American courts sometimes use procedural rules "either to address or avoid addressing difficult issues").

unaffected in a large subset of cases, since judges can identify these defects even without preexisting familiarity with a given case. The aggregate efficiency trade-off would thus be low, suggesting that the benefits of judge channeling have been seriously overstated.

These alternatives to judge channeling are not exhaustive, and this Section has not attempted to survey them all. Rather, it has presented a core set of options and articulated some of their benefits and detriments. There is no one-size-fits-all approach because different methods may work better in some jurisdictions than others. For example, assigning post-conviction cases to trial judges in other courts might be effective in places with numerous jurisdictional units, but it may not be feasible in places with few jurisdictional units or where the courts within those units are separated by vast distances.[191] Likewise, the benefits of diminished political pressure might dwarf the drawbacks of transferring cases to a different court, but the cost-benefit analysis changes if judges are appointed rather than elected because they are already insulated from direct electoral incentives.[192] Finally, it bears emphasizing that pursuing alternatives to judge channeling does not necessarily mean pursuing *one* alternative. Various approaches can be combined and tailored to suit local needs. For instance, it may be helpful to require administrative review before a judge receives the case and then to modify the subsequent judge-assignment procedure to further limit bias. Experimentation is a possible, and perhaps necessary, component of meaningful change.

B. Pathways to Reform

The alternatives described above cannot simply materialize from thin air. They must be implemented somehow, and the possible mechanisms of reform are nearly as diverse as the reforms themselves, ranging from litigation to legislation to judicial rulemaking. This Section briefly considers vehicles for change, describing their possibilities and limitations. However, while the previous Section was agnostic about the shape of that change, this Section takes firm stances on what kinds of

[191] See supra text accompanying notes 167–68. These jurisdictional differences reveal why the descriptive project of Part II, which distinguishes between different types of channeling, is integral to the prescriptive project of this Part.

[192] See Steven P. Croley, The Majoritarian Difficulty: Elective Judiciaries and the Rule of Law, 62 U. Chi. L. Rev. 689, 708–09 (1995) (noting that federal judges are insulated from majoritarian pressures by the absence of elections).

institutions are equipped to pursue it. Legislatures are best poised to tackle judge channeling, and courts have similar potential when they act in a legislative capacity by promulgating jurisdiction-wide or local rules. On the other hand, courts are unlikely to be effective when challenges to existing procedures are routed through litigation.

A lawyer's first impulse might be to use lawsuits to overthrow the judge-channeling regime. The constitutional argument would run like this: due process requires a "'fair trial' . . . before a judge with no actual bias against the defendant,"[193] and, because the judge who entered a defendant's conviction brings biases with them from the prior proceeding, allowing them to decide a related post-conviction claim would violate due process. That line of thinking makes for an appealing syllogism, but the Supreme Court has consistently rejected it. In decisions spanning the past century, the Court has found due process violations only where judges have a clear and substantial bias against the defendant. In *Tumey v. Ohio*, it held that the defendant's due process rights were violated because his case was decided by a judge who had a direct financial interest in his conviction.[194] Later, the Court held that the Due Process Clause forbids a judge from serving as a one-man "judge-grand jury" and then serving as a judge in the defendant's trial, because the role of a grand jury is sufficiently accusatory that "a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused."[195] Most recently, in *Williams v. Pennsylvania*, the Court held that there is an unconstitutional risk of bias when someone who formerly prosecuted a case later serves as an appellate judge in that case.[196] These examples represent unmistakable deviations from anything resembling due process.

By contrast, courts have concluded that subsequent hearings before the same judge fall on the "safe" side of the constitutional line. In *Ungar v. Sarafite*, the Supreme Court found that a judge who held the defendant in contempt for his in-court remarks could preside over the defendant's post-trial contempt hearing because it could not "assume that judges are so irascible and sensitive that they cannot fairly and

[193] Bracy v. Gramley, 520 U.S. 899, 904–05 (1997) (quoting Withrow v. Larkin, 421 U.S. 35, 46 (1975)); see also U.S. Const. amend. XIV, § 1 ("No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .").

[194] 273 U.S. 510, 531–32 (1927).

[195] In re Murchison, 349 U.S. 133, 137–39 (1955).

[196] 579 U.S. 1, 8 (2016).

impartially deal with resistance to their authority or with highly charged arguments about the soundness of their decisions."[197] Although the judge was not ruling on the availability of post-conviction relief, the fact that the defendant accused the trial judge of coercing him to testify and "suppressing the evidence"[198] shows how high the bar for recusal would be in a standard post-conviction case, where accusations of bias would be far more generalized. Numerous state courts have expressed similar sentiments, holding that the original trial judge is sufficiently impartial to rule on a petition for post-conviction relief.[199] Legal doctrine can guard against the most egregious cases of bias, but it is ill-suited to managing ubiquitous, unconscious biases because recusal is a remedy of last resort. Thus, while litigation may sit heavily in the minds of legal practitioners, the current state of due process jurisprudence cannot support its weight.

Policy offers a more effective, enduring solution. The most obvious example is legislation, which could prohibit judge channeling and prescribe an alternative judge-assignment procedure. This Note has already considered case studies in this approach, namely statutes in Connecticut, New Hampshire, Vermont, South Dakota, and Maine that eschew judge channeling in various ways.[200] Legislation can be advantageous because lawmakers are institutionally more capable than courts at aggregating preferences and negotiating competing interests, which better optimizes remedies than judicial rulings.[201] Additionally,

[197] 376 U.S. 575, 584 (1964).

[198] Id. at 580.

[199] See, e.g., State v. Blanton, 171 Ohio St. 3d 19, 2022-Ohio-3985, 215 N.E.3d 467, at ¶ 109 ("[T]he fact that a judge has presided over a previous case involving the same defendant does not by itself establish bias in the current case."); Rossberg v. State, 874 N.W.2d 786, 790 (Minn. 2016) ("A postconviction proceeding is an extension of the criminal prosecution, and often the same judge that presided at trial also presides at the postconviction proceeding. . . . This practice does not—by itself—present an adequate ground for disqualification."); Syvertson v. State, 2000 ND 185, ¶ 27, 620 N.W.2d 362, 369 ("[W]e have stated no policy against using the same judge in a post-conviction proceeding. Absent a showing of bias or prejudice, the post-conviction proceedings should be heard by the same judge." (citation omitted)).

[200] See supra Subsection II.B.4. Washington is not included because its rule is judicial rather than statutory. See Wash. Super. Ct. Crim. R. 7.8(c)(2).

[201] See David L. Shapiro, Courts, Legislatures, and Paternalism, 74 Va. L. Rev. 519, 551–55 (1988) (suggesting that, compared to courts, legislatures have greater control over their agendas, engage in better fact-finding, can implement a wider range of possible remedies, and are more capable of experimentation, points which "all seem to cut against judicial capacity and in favor of legislative authority"); Jonathan T. Molot, An Old Judicial Role for

because legislators have electoral incentives to respond to voter preferences, they are comparatively more accountable to the public than appointed judges, many of whom serve life terms.[202] On the other hand, these same electoral incentives present a problem, since the public may be ambivalent or even hostile toward heightened protections for convicted criminals, making many legislators unlikely to jeopardize their chances of reelection by favorably modifying existing practices.[203] Worsening political gridlock[204] would also make change difficult to achieve independent of the content of the proposed reforms. However, these two problems are obstacles rather than substantive disadvantages. If lawmakers can be sufficiently motivated to change the status quo—as lawmakers in several states have shown themselves to be—then legislation represents a viable path forward.

Yet policy is not the exclusive domain of legislatures. Courts also have a role to play, not as adjudicators of constitutional claims, but rather as administrators and rulemaking bodies. The most obvious

a New Litigation Era, 113 Yale L.J. 27, 60 (2003) ("Judges are relatively poorly equipped to identify social problems or undertake their own factual investigations into those problems. Unlike political officials, . . . courts generally rely on others to initiate cases and to build the factual records upon which those cases will be resolved." (footnote omitted)); see also Victor E. Schwartz & Leah Lorber, Judicial Nullification of Civil Justice Reform Violates the Fundamental Federal Constitutional Principle of Separation of Powers: How to Restore the Right Balance, 32 Rutgers L.J. 907, 913–16 (2001) (arguing that legislatures are more competent than courts to develop tort law because they approach problems systematically rather than individually, are better equipped to consider relevant information, are more transparent, can better correct their own errors, and operate prospectively rather than retrospectively).

[202] See Edward P. Schwartz, Pablo T. Spiller & Santiago Urbiztondo, A Positive Theory of Legislative Intent, Law & Contemp. Probs., Winter 1994, at 51, 58 (explaining that, unlike politicians, members of the Supreme Court do not feel electoral pressure).

[203] See John Rappaport, Some Doubts About "Democratizing" Criminal Justice, 87 U. Chi. L. Rev. 711, 759–63 (2020) (arguing that Americans have long-standing punitive criminal justice policy preferences that are resistant to change and directly influence political elites); see also Peter K. Enns, Incarceration Nation: How the United States Became the Most Punitive Democracy in the World 95 (2016) ("Crime rates appear to influence news coverage, which influences the public's punitiveness, which influences government action.").

[204] Boris Shor, Polarization in American State Legislatures, *in* American Gridlock: The Sources, Character, and Impact of Political Polarization 203, 203 (James A. Thurber & Antoine Yoshinaka eds., 2015); see also 2025 Report for the ABA Task Force for American Democracy, A.B.A. (Sep. 10, 2025), https://www.americanbar.org/groups/public_interest/election_law/american-democracy/our-work/2025-report/ [https://perma.cc/C5BY-WCVQ] (observing that "[p]artisan gridlock represents a major threat to our democracy" and attributing gridlock to a "partisan primary system").

possibility is a top-down approach where high courts promulgate jurisdiction-wide rules of procedure.[205] Such regulations might function negatively (flatly prohibiting judge channeling but giving individual courts room to maneuver) or positively (requiring a specific channeling procedure across the board). For instance, the Federal Rules of Civil Procedure and state analogs could be amended to provide for a uniform method of judge assignment in federal habeas cases. Courts can also regulate from below by promulgating local procedural rules for their respective jurisdictions.[206] Several federal district courts and state courts already require judge channeling in their local rules,[207] so similar rules could be enacted to *prohibit* judge channeling instead. This approach has the advantage of being highly adaptable to local needs, though it may create a confusing labyrinth of procedures within a larger jurisdiction.

As the discussion of legislative avenues makes clear, courts can be suboptimal regulators. They approach problems in fundamentally different ways and are definitionally less accountable than elected officials.[208] Yet to say that courts are less accountable is not to say they are incapable of creating rules in the public interest. There is a persuasive argument that judges' principled decision-making philosophies and resistance to private interests can make them better, not worse, than legislatures at securing prudent yet equitable outcomes.[209] That said, courts' capabilities are somewhat hobbled because, while they can regulate themselves in current form, they cannot alter their size, composition, or core functions. For instance, one workable alternative might involve creating specialized post-conviction

[205] See, e.g., 28 U.S.C. § 2072(a)–(b) (authorizing the U.S. Supreme Court to "prescribe general rules of practice and procedure" in federal cases, provided such rules do not "abridge, enlarge or modify any substantive right"). See generally Thomas Ward Frampton & Brandon Charles Osowski, The End of *Batson*? Rulemaking, Race, and Criminal Procedure Reform, 124 Colum. L. Rev. 1 (2024) (analyzing the role of state judicial rulemaking in criminal procedure).

[206] See generally Zachary D. Clopton & Marin K. Levy, Local Rules, 111 Va. L. Rev. 1187 (2025) (surveying the goals and functions of local rules in federal district and appellate courts); Zachary D. Clopton & Marin K. Levy, Local Rulemaking, 75 Duke L.J. 815 (2026) (describing local rulemaking processes in federal district and appellate courts).

[207] See supra notes 78, 99 and accompanying text.

[208] See supra notes 201–02 and accompanying text.

[209] See generally Patrick Luff, Captured Legislatures and Public-Interested Courts, 2013 Utah L. Rev. 519 (arguing that courts are better situated than legislatures to act in the public interest because they base their decisions on more reliable information and use that information differently).

courts, but that power would rest squarely with legislatures—courts cannot unilaterally extend their reach in this way.[210] Courts can implement meaningful reforms, and they may be uniquely motivated to do so, but truly structural solutions would require coordinated efforts between legislative and judicial actors.

CONCLUSION

Judges in criminal cases bear tremendous responsibility. The decisions they make—whether to admit evidence, how to rule on objections, what instructions to give the jury, whether to find the defendant guilty in a bench trial, what punishment to mete out—have life-changing consequences. Those choices matter, and even the most brilliant, experienced, and well-intentioned judges sometimes choose wrongly. The appellate process can remedy those errors, yet there are times when further review is necessary. The claims that matter are not the frivolous ones brought by people looking to escape prison by any means; those claims will nearly always fail because post-conviction review is simply not designed to provide relief without good reason. However, there exists a subset of claims that are meritorious, that would overcome any procedural hurdles in their path, but which fail because judges cannot review their own decisions with fresh eyes. Judge channeling amplifies that problem, ensuring that a judge who erroneously decides a defendant's fate will seal it permanently. But alternatives exist. Jurisdictions within the United States and abroad have proven that impartial yet efficient review is possible without judge channeling, and both legislatures and courts are equipped to implement it. Post-conviction procedure can change; the proper question is where to start.

[210] See, e.g., U.S. Const. art. III, § 1 (reserving to Congress the power to "ordain and establish" inferior federal courts); R.I. Const. art. X, § 1 (reserving an equivalent power to the state legislature using nearly identical language).

APPENDIX: STATE CHANNELING PRACTICES[211]

Jurisdiction	***Channeling Category***	***Relevant Provision(s)***
Alabama	Judge Channeling	Ala. R. Crim. P. 32.6(d)
Alaska	Judge Channeling	Alaska R. Crim. P. 35.1(g)
Arizona	Judge Channeling	Ariz. R. Crim. P. 32.10(a), 33.10(a)
Arkansas	Court Channeling	Ark. R. Crim. P. 37.1(a), 37.2(c)(i)
California	Mixed Jurisdiction[212]	Cal. Penal Code § 1509(a) (West 2025); Cal. R. Ct. 4.552(b)(2)(A)
Colorado	Court Channeling	Colo. R. Crim. P. 35(c)(3)
Connecticut	No Judge Channeling[213]	Conn. Gen. Stat. § 52-466(a)(2) (2025)
Delaware	Judge Channeling	Del. Super. Ct. R. Crim. P. 61(d)(1)
District of Columbia	N/A[214]	D.C. Code § 23-110 (2025)
Florida	Court Channeling	Fla. R. Crim. P. 3.850(m)
Georgia	Mixed Jurisdiction[215]	Ga. Code Ann. §§ 9-14-43, -47.1(b) (2025)

[211] For a detailed explanation of what forms of relief are covered in the Appendix, see supra note 79.

[212] California uses judge channeling for capital habeas cases and court channeling for all other habeas cases.

[213] Connecticut requires filing in the Tolland Superior Court.

[214] Although the District of Columbia has no specified procedure, there is only one "state" trial court in the jurisdiction, so court channeling is inevitable. However, categorizing it as a court-channeling jurisdiction makes little sense because there is no meaningful alternative.

[215] For habeas in Georgia, incarcerated petitioners file in the county in which they were incarcerated, while non-incarcerated petitioners and those incarcerated by the federal government, in another state, or in a foreign country file in the county in which they were convicted. Both judge and court channeling are prohibited in capital cases.

Jurisdiction	***Channeling Category***	***Relevant Provision(s)***
Hawai`i	Court Channeling	Haw. R. Penal P. 40(b)
Idaho	Court Channeling	Idaho Crim. R. 39(a)
Illinois	Court Channeling	725 Ill. Comp. Stat. Ann. 5/122-1(b) (West 2025)
Indiana	Court Channeling[216]	Ind. R. Post-Conviction Remedies PC 1, §§ (2), (4)(b)
Iowa	Court Channeling[217]	Iowa Code § 822.7 (2025)
Kansas	Court Channeling	Kan. Stat. Ann. § 60-1507(a) (2025)
Kentucky	Court Channeling	Ky. R. Crim. P. 11.42(1), (9)
Louisiana	Court Channeling	La. Code Crim. Proc. Ann. art. 925 (2025)
Maine	No Judge Channeling[218]	Me. Rev. Stat. Ann. tit. 15, §§ 2121(1-A), 2123(1-A) (2025); Me. R. Unified Crim. P. 69A(b)–(c)
Maryland	Court Channeling	Md. Code Ann., Crim. Proc. § 7-102(a) (LexisNexis 2025)
Massachusetts	Judge Channeling	Mass. R. Crim. P. 30(c)(7)
Michigan	Judge Channeling	Mich. Ct. R. 6.503(A)(1), 6.504(A)

[216] Indiana requires court channeling, but Indiana Post-Conviction Remedies Rule 1, Section 4(b) permits the petitioner to request a change of judge by alleging that the judge has a personal bias or prejudice against them.

[217] Iowa permits any judge of the trial court to hear the case.

[218] In Maine, petitions are decided by a single justice or retired justice of the Supreme Judicial Court, an active or retired superior court judge, or a designated post-conviction judge. For a more detailed explanation of Maine's categorization as a no-judge-channeling jurisdiction, see supra note 124.

Jurisdiction	***Channeling Category***	***Relevant Provision(s)***
Minnesota	Court Channeling	Minn. Stat. § 590.01, subdiv. 1 (2025)
Mississippi	Court Channeling	Miss. Code Ann. § 99-39-7 (2025)
Missouri	Court Channeling	Mo. Ann. Stat. § 547.360(1) (West 2025)
Montana	Court Channeling	Mont. Code Ann. § 46-21-101(1) (2023)
Nebraska	Court Channeling[219]	Neb. Rev. Stat. Ann. § 29-3001(1) (LexisNexis 2025)
Nevada	Court Channeling[220]	Nev. Rev. Stat. Ann. § 34.730(4)(b) (LexisNexis 2025)
New Hampshire	No Judge Channeling[221]	N.H. Rev. Stat. Ann. § 534:3 (2025)
New Jersey	Court Channeling	N.J. Ct. R. 3:22-1
New Mexico	Court Channeling	N.M. Stat. Ann. § 31-11-6 (2025)
New York	Court Channeling	N.Y. Crim. Proc. Law § 440.10(1) (McKinney 2025)
North Carolina	Court Channeling[222]	N.C. Gen. Stat. §§ 15A-1413(a), -2007 (2025)

[219] The Nebraska statute provides for court channeling, but some courts in the state have rules requiring judge channeling or employ judge channeling as a matter of practice. See supra notes 98–99 and accompanying text.

[220] The Nevada statute is ambivalent between judge and court channeling.

[221] In New Hampshire, petitioners seek habeas relief in the superior court for the county where they are imprisoned.

[222] North Carolina permits any judge of the convicting court to hear petitions for post-conviction relief based on, inter alia, challenges to the constitutionality of a conviction or to the trial court's jurisdiction. N.C. Gen. Stat. §§ 15A-1413(a), -1415(b) (2025). A defendant may also move the trial court for appropriate relief within ten days of judgment, id. § 15A-1414, and such motions are normally decided by the original trial judge, id. § 15A-1413(b). However, because such motions are filed and heard before the appellate process concludes, this is not the kind of post-conviction relief this Note focuses on.

Jurisdiction	***Channeling Category***	***Relevant Provision(s)***
North Dakota	Court Channeling[223]	N.D. Cent. Code § 29-32.1-03(1), (7) (2025)
Ohio	Court Channeling	Ohio Rev. Code Ann. § 2953.21(A)(1)(a) (LexisNexis 2026)
Oklahoma	Court Channeling	Okla. Stat. Ann. tit. 22, § 1080 (West 2025)
Oregon	Mixed Jurisdiction[224]	Or. Rev. Stat. § 138.560(1), (4) (2025)
Pennsylvania	Court Channeling	42 Pa. Stat. and Cons. Stat. Ann. § 9545(a) (West 2025); Pa. R. Crim. P. 901(B)
Rhode Island	Court Channeling[225]	10 R.I. Gen. Laws § 10-9.1-2(a) (2025); R.I. Super. Ct. R. Prac. 2.2(b)
South Carolina	Mixed Jurisdiction[226]	S.C. Code Ann. §§ 17-27-40, -80, -160(A) (2025)
South Dakota	No Judge Channeling[227]	S.D. Codified Laws § 21-27-14.1 (2025)
Tennessee	Judge Channeling[228]	Tenn. Code Ann. §§ 40-30-104(a), -105(b) (2025); Tenn. Sup. Ct. R. 28, § 6(B)(1)

[223] North Dakota permits assignment to any judge of the trial court.

[224] Oregon requires filing in the jurisdiction of imprisonment for incarcerated petitioners, but non-incarcerated petitioners must file in the court of conviction. Courts may transfer cases to the court of conviction as needed.

[225] Rhode Island requires court channeling by statute, but judge channeling is required in three counties by judicial rule, and judge channeling is common practice statewide. See supra notes 100–02 and accompanying text.

[226] Most post-conviction petitions in South Carolina are subject to court channeling with room for judge channeling, but judge channeling is expressly prohibited in capital cases.

[227] South Dakota requires filing in the court of conviction, but the trial judge may not hear the petition. See supra note 123 and accompanying text.

[228] In Tennessee, the assignment rules in Section 40-30-105(b) suggest a preference for the trial judge, and the communications director for the Tennessee courts confirmed that judge channeling is standard practice. See supra notes 86–88 and accompanying text.

Jurisdiction	***Channeling Category***	***Relevant Provision(s)***
Texas	Court Channeling	Tex. Code Crim. Proc. Ann. art. 11.07, § 3(b) (West 2025); id. art. 11.071, § 4(a)
Utah	Judge Channeling	Utah R. Civ. P. 65C(g)
Vermont	No Judge Channeling[229]	Vt. Stat. Ann. tit. 13, § 7131 (2025)
Virginia	Court Channeling	Va. Code Ann. § 8.01-654(B)(1) (2025)
Washington	No Judge Channeling[230]	Wash. Super. Ct. Crim. R. 7.8(c)(2)
West Virginia	No Judge Channeling[231]	W. Va. Code Ann. § 53-4A-1(a) (LexisNexis 2025); W. Va. R. Governing Post-Conviction Habeas Corpus Procs. 3(a)
Wisconsin	Court Channeling	Wis. Stat. § 974.06(1) (2024)
Wyoming	Court Channeling	Wyo. Stat. Ann. § 7-14-101(b) (2025)

[229] Vermont requires filing in the court of conviction, but the trial judge may not hear the petition.

[230] Washington requires that the petition be transferred to the Court of Appeals, unless (1) the motion is timely and (2) either the petitioner makes a "substantial showing that they are entitled to relief" or an evidentiary hearing is necessary.

[231] West Virginia gives petitioners the option to seek habeas relief in either the county of imprisonment or the county of conviction. However, the chosen court may transfer the case to the other court "[i]f appropriate." W. Va. R. Governing Post-Conviction Habeas Corpus Procs. 3(a).