

FOREWORD:

CALIFORNIA HABEAS HANDBOOK 2.0

Congratulations on your purchase of the long-awaited *California Habeas Handbook 2.0*. This book explains in detail how to prepare, file, defend, and litigate state and federal habeas corpus petitions in the wake of “AEDPA” – the groundbreaking habeas corpus law that took effect in April of 1996, and which governs contemporary habeas corpus practice in California and throughout the United States.

Although the American justice system guarantees all criminal defendants a right to appointed counsel at state expense for trial and, if necessary, on their first (“direct”) appeal, there is no right to appointed counsel for habeas corpus until and unless the prisoner can, on his own, convince a state or federal court to grant an evidentiary hearing – something that is very hard to do and happens only in few cases. Therefore, a primary purpose of the *California Habeas Handbook* is to provide prisoners who don’t have the money to hire private counsel with a one-stop resource – written in plain English rather than in legalese – that will enable them to (1) avoid the numerous procedural pitfalls that will prevent them from ever getting heard on the merits; and (2) sufficiently understand habeas corpus procedure in general and AEDPA in particular to give them a fighting chance of getting a court to grant them that elusive evidentiary hearing which is the gateway to getting a reversal or sentence reduction on habeas corpus.

Additionally, because the *California Habeas Handbook* is loaded with references to current statutes and the latest case law, this book will also prove extremely useful to attorneys who are knowledgeable in other areas of the law but who lack experience with habeas corpus.

New in Edition 2.0

The *California Habeas Handbook 2.0* is the culmination of two decades of development that began with my first edition of the *California Habeas Handbook*, which was hurriedly published just as AEDPA took effect in 1996, in an effort to wake up prisoners to the need to file a habeas corpus petition before the AEDPA one-year statute of limitations ran. Since then, I’ve had a chance to enlarge and

enhance the scope and breadth of the book considerably over the years, with the last revision being the 6th Edition, which was released in 2015-16. In these previous editions I have done the best I could to present the essentials of habeas corpus law while tracking the latest developments in the most important habeas cases.

Nevertheless, all previous editions of the *California Habeas Handbook* were limited to state and federal habeas corpus, and did not cover parole for prisoners serving life sentences or any other post-conviction remedies. That approach made sense until recently because, with the public and its representatives single-mindedly focused on putting more people away for longer and longer sentences rather than on sensibly reducing the prison population, habeas corpus was really the only game in town available to obtain a sentence reduction. In the last couple of years, however, it has become clear that the public no longer has the will or the means to sustain the staggering social and financial costs of using precious tax dollars to pay for a surging and aging prison population without any corresponding effort to reduce that burden through rehabilitation and release of prisoners who were no longer a danger to themselves or anyone else. Therefore, bipartisan reform measures focused on emptying the prisons rather than on building more of them – common-sense solutions which nevertheless were non-starters during the heyday of the “war on drugs” and the “three-strikes” craze of the past several decades – have finally brought the public around to the need to cut down on prohibitively expensive incarceration and start thinking seriously about less costly and more socially beneficial alternatives.

As a result, through legislation, ballot initiatives, and with the blessing of the Governor’s office, California has finally gotten around to enacting reform measures allowing for the selective release of non-dangerous inmates. At the same time, court opinions requiring that parole be considered for prisoners who have shown themselves to be fully rehabilitated from their past crimes, however heinous those original offenses may have been, has made release on parole a realistic alternative rather than just a pipe-dream for prisoners facing indeterminate, life sentences.

In short, the confluence of all of these developments has finally brought us into an era in which habeas corpus is only one of a number of viable approaches to sentence reduction and release from prison. Thus, as we move into the second half of the 20-teens, parole and other post-conviction remedies now have to be considered and employed as alternatives to traditional habeas corpus. With this principle in mind, *California Habeas Handbook 2.0* now contains new chapters which focus on these other alternatives in addition to fulfilling the original mission of this

book, which is to cover habeas corpus “from cradle to grave”.

Moreover, the increasing availability of technology in the prisons has made it possible for prisoners to have access to CD-roms which can contain hundreds of pages of valuable information that was formerly impractical to provide in traditional printed form. Accordingly, although *California Habeas Handbook 2.0* continues to provide an Appendix including official forms and short excerpts from Russell and Russell documents that can be used as models for documents to be drafted by prisoners, I am also offering as an option to the standard printed Appendix, a CD-rom entitled “Best of Russell”, which contains complete copies of documents filed by Russell and Russell in all phases of state and federal habeas corpus litigation.

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OK, that’s enough of the preliminaries and it’s time for the main event: Welcome to *California Habeas Handbook 2.0*.