

# FEDERAL HABEAS CORPUS

*Carolina Academic Press  
Law Casebook Series  
Advisory Board*



Gary J. Simson, Chairman  
*Case Western Reserve University School of Law*

John C. Coffee, Jr.  
*Columbia University Law School*

Randall Coyne  
*University of Oklahoma College of Law*

Paul Finkelman  
*Albany Law School*

Robert M. Jarvis  
*Shepard Broad Law Center  
Nova Southeastern University*

Vincent R. Johnson  
*St. Mary's University School of Law*

Michael A. Olivas  
*University of Houston Law Center*

Kenneth L. Port  
*William Mitchell College of Law*

H. Jefferson Powell  
*George Washington University Law School*

Michael P. Scharf  
*Case Western Reserve University School of Law*

Peter M. Shane  
*Michael E. Moritz College of Law  
The Ohio State University*

Emily L. Sherwin  
*Cornell Law School*

John F. Sutton, Jr.  
*Emeritus, University of Texas School of Law*

David B. Wexler  
*James E. Rogers College of Law, University of Arizona  
University of Puerto Rico School of Law*

# FEDERAL HABEAS CORPUS

---

## *Cases and Materials*

SECOND EDITION

**Andrea D. Lyon**

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

**Emily Hughes**

ASSOCIATE PROFESSOR OF LAW  
WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW

**Mary Prosser**

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

**Justin Marceau**

ASSISTANT PROFESSOR OF LAW  
UNIVERSITY OF DENVER, STURM COLLEGE OF LAW

Carolina Academic Press

Durham, North Carolina

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

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

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

Printed in the United States of America  
2018 Printing

We dedicate this book to  
Arnold, John, and Rebecca,  
Samantha, Will, Molly, Hannah, Ella and Zach,  
Harvey T. Lyon and in fond and grateful memory of Yolanda Lyon Miller 1930–2010,  
and to the many colleagues and clients who have  
generously shared their knowledge and their stories with us.



# Contents

---

Foreword	xi
Preface	xiii
Acknowledgments	xv

## PART I INTRODUCTION

<b>Chapter 1 · The Great Writ</b>	3
A. What Is Habeas Corpus?	3
B. When Is Habeas Corpus?	4
(1) The Stages of a Criminal Case	5
(2) The Three Phases of Review	5
C. Habeas in Context: The History and Evolution of the Writ	7
(1) The Origins of Habeas Corpus	8
(2) Habeas Corpus Recognized in the United States	8
<i>Frank v. Mangum</i>	9
Notes	15
(3) The Warren Era and the Habeas Trinity	15
<i>Brown v. Allen</i>	16
Notes	19
(4) The Anti-Warren Counter-Revolution	19
Finality in Criminal Law and Federal Habeas Corpus for State Prisoners	20
Notes	33
<b>Chapter 2 · Introduction to AEDPA</b>	35
A. When Do the Restrictions Announced in AEDPA Apply?	35
B. Statute of Limitations	36
Notes	37
C. 28 U.S.C. § 2254	38
Notes	41
(1) Making Sense of § 2254(d)	42
<i>Williams v. Taylor</i>	42
Notes	55
(2) “Clearly Established Federal Law”	56
<i>Carey v. Musladin</i>	56
Notes	60
(3) “Contrary to” and “Unreasonable Application of”	61
<i>Woodford v. Visciotti</i>	61
Notes	63
<b>Chapter 3 · The Statute of Limitations</b>	69
A. The One-Year Statute of Limitations	70
Notes	70

B. Statutory Tolling of the Statute of Limitations	72
<i>Pace v. DiGuglielmo</i>	72
<i>Lawrence v. Florida</i>	75
Notes	80
C. Equitable Tolling of the Statute of Limitations	81
<i>Holland v. Florida</i>	81
Notes	90

## PART II COGNIZABLE CLAIMS

<b>Chapter 4 · When Is a Claim Cognizable?</b>	93
<i>Carafas v. LaVallee</i>	93
Notes	95
<i>Sibron v. New York, Peters v. New York</i>	96
Notes	99
<i>Lane v. Williams</i>	100
Notes	102
<i>The Conviction That Keeps on Hurting—Drug Offenders and Federal Benefits</i>	108
<b>Chapter 5 · Types of Cognizable Claims</b>	109
A. Ineffective Assistance of Counsel	109
<i>Williams v. Taylor</i>	109
Notes	114
<i>Wiggins v. Smith</i>	115
Notes	123
B. Withholding Exculpatory Evidence	125
<i>Strickler v. Greene</i>	126
Notes	134
C. Politics and Race	138
(1) Politics	139
A Broken System: Error Rates in Capital Cases, 1973–1995	139
A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It	140
Notes	144
(2) Race	145
<i>McCleskey v. Kemp</i>	145
Notes	159
<i>Miller-El v. Cockrell</i>	160
Notes	174
<b>Chapter 6 · Limiting Access to Federal Review</b>	177
<i>Stone v. Powell</i>	177
Notes	183
<i>Kimmelman v. Morrison</i>	185
Notes	192
<i>Withrow v. Williams</i>	193
Notes	198
<b>Chapter 7 · Innocence</b>	201
<i>Herrera v. Collins</i>	202
Notes	211



<i>Schlup v. Delo</i>	215
Notes	222
<i>House v. Bell</i>	224
Notes	244
<i>District Attorney’s Office for the Third Judicial District v. Osborne</i>	245
Notes	259
<i>In re Troy Anthony Davis</i>	263
Notes	266
Is Innocence Irrelevant? Collateral Attack on Criminal Judgments	267
Notes	276

**PART III  
ACCESS TO FEDERAL COURTS**

<b>Chapter 8 · Exhaustion of State Remedies</b>	279
<i>Fay v. Noia</i>	280
Notes	288
<i>Rose v. Lundy</i>	290
Notes	296
<i>Granberry v. Greer</i>	298
Notes	300
<b>Chapter 9 · Procedural Default</b>	301
<i>Wainwright v. Sykes</i>	301
Notes	309
<i>Coleman v. Thompson</i>	311
Notes	325
<b>Chapter 10 · Successive Petitions</b>	327
<i>Sanders v. United States</i>	327
Notes	332
<i>Kuhlmann v. Wilson</i>	333
Notes	341
<i>McCleskey v. Zant</i>	342
Notes	352
<i>Felker v. Turpin</i>	353
Notes	359

**PART IV  
FEDERAL HABEAS PROCEDURE**

<b>Chapter 11 · Litigating Questions of Fact</b>	363
A. The Habeas Rules	363
<i>Harris v. Nelson</i>	364
Notes	368
B. The Right to a Federal Hearing	369
<i>Townsend v. Sain</i>	370
Notes	380
<i>Keeney v. Tamayo-Reyes</i>	381
Notes	389
C. AEDPA’s Role in Limiting Evidentiary Hearings and Requiring Deference to State Court Findings of Fact	390
<i>Michael Williams v. Taylor</i>	391

Notes	397
<i>Insyxiengmay v. Morgan</i>	398
Notes	403
<i>Schriro v. Landrigan</i>	404
Notes	410
<b>Chapter 12 · Litigating Questions of Deference: When AEDPA Doesn't Apply</b>	411
A. <i>De Novo</i> Review of the Merits of a Claim Permitted When State Court Denial of Relief Does Not Amount to an Adjudication on the Merits	411
B. <i>De Novo</i> Review of the Merits of a Claim Permitted When the State Court System Summarily Denies the Constitutional Claim	413
(1) There Need Be No Deference to Silent State Court Judgments	414
<i>Washington v. Schriver</i>	414
Note	416
Section 2254(d) of the Federal Habeas Statute: Is It Beyond Reason?	416
(2) Complete Deference to Silent State Court Judgments	417
<i>Reid v. True</i>	417
Notes	418
C. Statutory Interpretation: Full and Fair Procedures	419
(1) No “Full and Fair” Requirement Implied by § 2254(d)(2)	420
<i>Valdez v. Cockrell</i>	420
Note	428
(2) “Full and Fair” Requirement Implied by § 2254(d)(2)	428
<i>Taylor v. Maddox</i>	428
Notes	435
(3) “Full and Fair” Requirement and Adjudication on the Merits	436
<i>Monroe v. Angelone</i>	437
Notes	438
<b>Chapter 13 · Harmless Error</b>	441
<i>Greer v. Miller</i>	442
Notes	448
<i>Arizona v. Fulminante</i>	448
Notes	459
<i>Brecht v. Abrahamson</i>	460
Notes	468
<i>Fry v. Pliler</i>	469
Notes	473
<b>PART V</b>	
<b>THE FUTURE OF HABEAS CORPUS</b>	
<b>Chapter 14 · Guantánamo Bay</b>	477
<i>Rasul v. Bush</i>	478
Notes	484
<i>Boumediene v. Bush</i>	488
Notes	502
<i>Reflections from a Guantanamo Detainee Lawyer</i>	503
Notes	505
<b>Table of Cases</b>	507
<b>Index</b>	513

# Foreword

---

## Why Is Habeas Corpus Important?

By John C. Tucker

“Would you write a short introduction for our casebook about why habeas corpus is important?” Professor Lyon asked. “I’d be glad to,” I said.

The problem, I soon realized, is how to write anything short about something as fundamental to our legal system as habeas corpus—the law which Blackstone described as “the stable bulwark of our liberties,” and which American courts commonly refer to as simply “The Great Writ.”

In talking about habeas corpus we can’t avoid starting nearly 800 years ago at Runnymede, with the most famous provision of Magna Carta: “No freeman shall be taken or imprisoned except by the lawful judgement of his peers or by the law of the land.” Magna Carta Art. 39 (1215). For the next 467 years, English kings periodically ignored that stricture and imprisoned their subjects without due process of law, while English parliaments passed laws designed to prevent it—laws referred to by the Latin phrase “habeas corpus”—loosely, “you have the person, now show a legal justification for keeping him or let him go.” Finally, the Habeas Corpus Act of 1679 (the statute Blackstone was talking about) pretty much settled the matter. Unless parliament passed a law temporarily suspending habeas, no citizen of England could be imprisoned without a formal charge and an opportunity to contest it.

Given the importance of habeas corpus as a check on the power of the English monarch, it is not surprising that the American colonists also saw it as their most important guarantee of due process, and were enraged when royal authorities sometimes refused to afford its protections to colonists who challenged their arbitrary conduct. Thus, in Federalist 84, Alexander Hamilton declared that habeas corpus was “the bulwark of the British Constitution” and essential to the protection of liberty in the new nation. Habeas corpus became the only English common-law process explicitly written into our own Constitution, and jurisdiction to enforce the Great Writ was granted to American courts in the first Judiciary Act in 1789, even before the adoption of the Bill of Rights.

From that time forward, the Great Writ has been seen as a cornerstone of American justice. As the Supreme Court declared in *Fay v. Noia*, “there is no higher duty than to maintain it unimpaired.”

It was *Gideon v. Wainwright*, another habeas case, which, with the book and movie *Gideon’s Trumpet*, became the most famous of the decisions which marked the Warren Court’s post World War II effort to extend the protections of the United States Constitution to criminal defendants whose due process rights had previously been left to the less-than-rigorous care of state courts. And while many important cases of that era were decided on direct appeal from state supreme courts, the protections established by cases like *Grif-*

*fin v. Illinois* (free transcript), *Mapp v. Ohio* (exclusionary rule), *Brady v. Maryland* (exculpatory evidence), *Miranda v. Arizona* (warning of rights) and *Malloy v. Hogan* (Fifth Amendment) were initially most often vindicated by a federal petition for writ of habeas corpus.

If you really want to understand why habeas corpus is so important, the people to talk to are the thousands of criminal defendants who have found themselves convicted and imprisoned in state penitentiaries—sometimes on death row—because of ineffective assistance of counsel, or the concealment of exculpatory evidence, or a confession obtained by artifice or coercion. In the roughly two decades following reinstatement of the death penalty in America, nearly 50% of the cases in which a verdict and sentence of death was imposed and approved by the state courts were set aside in federal court by petition for writ of habeas corpus. And while it is probably impossible to give definitive numbers, there is no question that a majority of the 114 men and women who have been released from death row as a result, in part, of the development of DNA testing which proved them innocent, would have died had their executions not been delayed by operation of the Great Writ. Sometimes a life was saved by a finding that the original verdict or sentence was constitutionally defective, sometimes it was delay alone that saved an innocent life until DNA testing was perfected. Such a result would only be decried by the posturing politicians who in recent years have sought to weaken the protections of habeas corpus as a way of demonstrating their supposed “toughness on crime.” The founding fathers—whom such politicians shamelessly invoke at every opportunity—would weep.

As lawyers who will handle criminal cases, whether as a significant element of your practice or simply to fulfill your obligation to the profession by accepting appointed cases at the trial or post-trial levels, an understanding of the law of habeas corpus is as essential as anything the users of this book will learn in law school. Indeed, with the increasingly restrictive and complex procedural requirements which have been imposed on the exercise of the writ in recent years by legislators and the Rehnquist Court, an understanding of the intricacies of habeas corpus law is more important than ever, lest the protections of the Great Writ be lost to a client by ignorance or inadvertence.

Finally, we cannot ignore the frontal assault on the writ which our current royalty has mounted in the name of national security and the “war on terror.” As I write, the detainee cases are awaiting decision in the Supreme Court. By the time you read this introduction they will have been decided. If the Court rules for the Government, non-citizens may no longer have access to the protections of the writ at all, even when held on American-controlled soil. Even citizens, if arbitrarily designated “enemy combatants,” may see the protections of the Great Writ fade like the grin of the Cheshire Cat, until nothing of practical importance remains.

In these times, the ghosts of Runnymede are not grinning, and protection of the Great Writ has never been more important. Whatever is decided in the detainee cases, for ordinary citizens, the Great Writ must remain as a bulwark of our liberties, the ultimate vehicle for protecting our Constitutional rights against the power of government. A lawyer who does not know how to preserve the rights guaranteed by the Writ and to invoke them for her clients is not fully educated in the law.

---

*John Tucker, a lawyer and the author of MAY GOD HAVE MERCY: A TRUE STORY OF CRIME AND PUNISHMENT and TRIAL AND ERROR: THE EDUCATION OF A COURTROOM LAWYER, passed away on October 9, 2010.*

# Preface

---

We undertook this book in hopes of helping students understand and critically examine the political, legal, and pragmatic effects of the role of habeas corpus in our criminal justice system. At the same time, we hope this book may also be useful to attorneys who wish to familiarize themselves with habeas corpus jurisprudence. While we have tried to fairly present the competing concerns that inform this complex and evocative area of the law, because we are defense attorneys, our experiences representing individual—rather than governmental—interests have undoubtedly shaped our personal perspectives. As we finished reading each case, we would often wonder what happened to the person behind the case, the person whose life and liberty the Court’s decision most immediately affected. Many of the cases are thus followed by a brief synopsis of what happened to the defendant after the case was over.

We want to acknowledge the support and assistance our schools provided us while writing this book: DePaul University College of Law and Interim Dean Warren Wolfson, University of Denver Sturm College of Law and Dean Marty Katz, University of Wisconsin Law School and Dean Ken Davis, and Washington University in St. Louis School of Law and Dean Kent Syverud, as well as the Israel Treiman Fellowship at Washington University School of Law. In addition, we would like to thank the University of Iowa College of Law and Dean Gail Agrawal for supporting final editing for this project during the fall of 2010. We also acknowledge the important work of Professors James Liebman, Randy Hertz, Eric Freedman, Larry Yackle, and many others whose treatises, articles, books, and research continue to be both groundbreaking and foundational. In addition, we sincerely thank Professors Susan Bandes, Keith Findley, Samuel R. Gross, James Liebman, Meredith Ross, and Marc Weber, as well as Grant Sovern, for their insightful comments and suggestions. A number of current and former law students also assisted us with various phases of the book, including Kelly Brunie, Delilah Catalan, Julie Darr, Erin Hairoupoulos, Glenn Hui, Elizabeth Klein, Bryon Lichstein, Sarah Mease, Matthew Mulder, Annie O’Reilly, Joshua Pierson, Daniel Rabinovitz, Maryam Toghraee, and Evan Weitz. And finally, we extend a special thanks to our assistants, Mary Bandstra, Lisa Lammey, and Pam Finnigan, and to our proofreader, Susan Burgess, for their patience and diligence.



# Permissions

---

Thanks to the following authors and copyright holders for permission to use their materials:

Various case opinions, contained within the text, are reprinted and/or adapted with the permission of LexisNexis.

Bator, Paul M., *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441 (1963). Reprinted with permission.

*The Conviction that Keeps on Hurting—Drug Offenders and Federal Benefits*, DRUG WAR CHRONICLE #471 (February 5th, 2007). Reprinted with permission.

Friendly, Henry J., *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142 (1970). Reprinted with permission.

Goodman, Leonard. *Reflections from a Guantanamo Detainee Lawyer*. Printed with permission of the author.

Hertz, Randy, and James S. Liebman, APPENDIX A, REPRINTED WITH PERMISSION FROM FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE, 4th Ed. Copyright 2001, Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

Liebman, James S., Jeffrey Fagan and Valerie West, A BROKEN SYSTEM: ERROR RATES IN CAPITAL CASES, 1973–1995 (Executive Summary) (June 12, 2000). Reprinted with permission of the author.

Liebman, James S., Jeffrey Fagan, Andrew Gelman, Valerie West, Garth Davies, and Alexander Kiss, A BROKEN SYSTEM, PART II: WHY THERE IS SO MUCH ERROR IN CAPITAL CASES, AND WHAT CAN BE DONE ABOUT IT (Executive Summary) (February 11, 2002). Reprinted with permission of the author.

