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## Meet Brian R. Means – Featured Author

New West author



Brian R. Means, this month's featured author, serves as Deputy Attorney General with the California Department of Justice and supervisor of its federal habeas corpus team. He is the author of the new West publication *Federal Habeas Manual: A Guide to Federal Habeas Corpus Litigation*. Although Means has authored a variety of articles for bar journals and other manuals, the release of *Federal Habeas Manual* by West marks his first book publication.

### Q. What motivated you to write the *Federal Habeas Manual*?

A. As a federal law clerk, I frequently used The Rutter Group's *California Practice Guide: Federal Civil Procedure Before Trial*. It was indispensable to me; the manner in which it was written and organized allowed me to quickly find legal authority in the area of federal civil procedure. Years later, while working as a prosecutor, I could not find a comparable resource in the area of federal habeas corpus. After speaking with other federal habeas practitioners – judges, prosecutors, and defense attorneys – I decided to write the *Federal Habeas Manual*.

### Q. What is essential to writing a successful legal publication?

A. First, organize legal concepts so that readers can readily locate precedent that answers their legal questions. Practitioners can ill afford to spend time needlessly scouring pages of legal text in search of precedent. Second, don't treat all court decisions equally. Some should be boiled down to a discrete legal principle. Others require a more extended discussion that may include rationales underlying the decision and the possible impact on other legal issues. And third, take great care in identifying when the views are the author's, as opposed to those of the courts.

### Q. What do you see as the greatest challenge facing a legal author?

A. Staying current on developments in the law. For me, that entails reading thousands of published federal court decisions each year. And this already-significant task increased last year with the introduction of Federal Rule of Appellate Procedure 32.1(a). Under that rule, unpublished decisions issued on or after January 1, 2007 may be cited regardless of whether they have been designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like. While these unpublished decisions are not binding, they may be cited as persuasive authority. So staying current now requires familiarity with both published and unpublished decisions.

### Q. Who or what had the greatest influence on you as a lawyer and/or legal author?

A. My experience as a law clerk to a federal judge – which included the criminal actions involving Theodore Kaczynski (the Unabomber) and Gregory Powell (the Onion Field Killer) – taught me how important it is for parties to write in a clear, concise, and persuasive manner. I saw firsthand just how little time judges have to decide cases and witnessed the effect good written advocacy had on persuading the court. It convinced me that every litigator should own (and use) a good book on advocacy. Excellent ones are *Making Your Case: The Art of Persuading Judges*, written by Antonin Scalia and Bryan Garner, and *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Court*, written by Bryan Garner. I also learned how important it is for litigants to cite controlling authority to the court – something they too often fail to do.

### Q. With all of your other career and family responsibilities, how do you find time to write?

A. It pays to be efficient and use time that would otherwise be unproductive to work on my book. For example, I spend nearly two hours each day commuting to and from work on the train, during which I read recent cases and determine whether they should be included in my book. The biggest help, however, is that I write about an area of the law in which I regularly practice.

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The knowledge I gain in my work as state prosecutor specializing in federal habeas corpus law is of an obvious benefit to me as an author writing about this subject matter.

**Q. What has most significantly impacted federal habeas corpus law practice over the last 10 years?**

A. The enactment of the Antiterrorism and Effective Death Penalty Act (AEDPA) in 1996 effected a comprehensive and, in many ways, radical departure from prior law with respect to prisoners challenging their convictions and sentences. Some of the more significant changes included extremely deferential review standards for state court adjudications, a one-year statute of limitations, restrictions on the filing of successive petitions, and limitations on the ability of prisoners to obtain federal evidentiary hearings. Although 12 years have now passed, courts continue to struggle over how to properly interpret and apply the AEDPA.

**Q. What activities or hobbies do you enjoy when you're able to step away from your work and authoring?**

A. I enjoy performing magic, playing the drums, and cycling.

**Q. What is your favorite book?**

A. My favorite book is a Calvin and Hobbes book. It reminds me that not everything in life is to be taken seriously.

**Featured Author's Title:** *Federal Habeas Manual: A Guide to Federal Habeas Corpus Litigation* »

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