

**UNIVERSITY OF HOUSTON LAW CENTER**  
**TEXAS CRIMINAL APPELLATE PROCEDURE**

**Professor: Bob Wicoff**

**Course Description and Syllabus-Fall 2014**

**Course Description:** This upper-level class will focus on state criminal appellate procedure, with emphasis placed on the Texas Rules of Appellate Procedure and, where applicable to state appellate practice, the Texas Code of Criminal Procedure. The general approach of this course will be twofold: 1) to examine case law interpretation of the procedural rules that govern post-judgment criminal procedure in Texas, from motions for new trial through state post-conviction writs of habeas corpus; and 2) to discuss the most common substantive issues which arise in post-judgment proceedings, including claims of ineffective assistance of trial counsel, evidence sufficiency law, appellate review of jury charge error, *Brady* violations and actual innocence claims.

Throughout this course, practical and strategic aspects of appellate practice will regularly be discussed. In addition to reading assigned cases, students will be required to read an appellate transcript of an appeal that has been handled by the Harris County Public Defender's Office appellate division, thereby seeing how the subject matter of the course applies, step-by-step, to an actual appeal. The students will also be invited to watch the oral argument that is held in the case. The aim is to provide students with an appropriate mix of theory and practice. So, for example, you will not only learn the rules regarding appeals, but will be provided with an appellate record that illustrates much of what you learn. Additionally, you will not only have that record as an illustration of what is being discussed in class, but you will be taught how to read that record if you were charged with handling the appeal.

**Reading materials:** The primary reading material in the course will be written material provided by the instructor regarding Texas criminal appellate practice. In addition to being responsible for reading this general review, students will also be responsible for reading assigned cases within such material that the instructor will designate as mandatory reading. It will be necessary to obtain a copy of the Texas Rules of Appellate Procedure. Professor Secrest's Texas Criminal Codes plus contains those rules with annotations. Either the 2012-2013 or 2013-2014 edition would be

fine, but purchase of such text is optional. All that students are required to have is a copy of the Texas Rules of Appellate Procedure, which may be accessed online at <http://www.supreme.courts.state.tx.us/rules/traphome.asp>.

In addition to the reading materials listed above, students will regularly be required to read new opinions issued by the Court of Criminal Appeals and various courts of appeals, as specifically assigned by the professor. Each class will conclude with one or two students presenting a recent case that has been assigned to him or her from the CCA or court of appeals “hand-downs.” Cases will be assigned which either deal with important issues of criminal appellate procedure or which serve as an illustration of how post-conviction procedure works in Texas state courts.

A CD containing a complete appellate record from a case currently being handled by the Harris County Public Defender’s Office Appellate Division will be distributed to the students. This record will be used to illustrate the topics that are discussed in each class. Excerpts from other appellate records will also be distributed to the class as needed. These records will enable students to become familiar with actual examples of the procedures discussed in class.

**Grading:** In addition to a final exam, students will be graded on their presentation in class of the assigned cases, as described above. Additionally, there will be one short writing assignment, allowing the student the choice of either writing a memorandum selected from a list of topics provided by the instructor, or an issue in an appellate brief, based on a trial record provided by the instructor.

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<b>Week 1</b> August 26 & 28	<b>Introductory matters</b> Sources of Texas criminal appellate procedure; Jurisdiction and authority of Texas appellate courts handling criminal cases; Appealable orders and perfection of appeal; Certification of the Defendant's Right of Appeal; Bail pending appeal; (Texas Rules of Appellate Procedure 25.2, 26.2, 26.3, 27.1(b), 32.2); Some recent statistics from the Court of Criminal Appeals and the 14 courts of appeal; Resources for the appellate practitioner
<b>Week 2</b> September 2 & 4	<b>Pre-trial writs of habeas corpus and post-judgment motions in the trial court</b> Pre-trial writs of habeas corpus; Motions for New Trial (Texas Rule of Appellate Procedure 21); Motions in Arrest of Judgment (Texas Rule of Appellate Procedure 22); <i>Nunc Pro Tunc</i> Proceedings (Texas Rule of Appellate Procedure 23)
<b>Week 3</b> September 9 & 11	<b>Preservation of Error for Appeal</b> Specificity, timeliness and obtaining an adverse ruling in order to preserve matters for appellate review; (Texas Rule of Appellate Procedure 33.1); Preserving error in various situations: when pleading guilty, pre-trial motions, during voir dire, when evidence is excluded or wrongfully admitted, with respect to jury charge error, and during final argument
<b>Week 4</b> Sept. 16 & 18	<b>The record on appeal</b> (Texas Rule of Appellate Procedure 34); Ensuring a complete record on appeal; lost records; supplementation of the record; extensions of time; how to read an appellate record; Most common issues on direct appeal
<b>Week 5</b> Sept. 23 & 25	<b>The brief and oral argument-Defense perspective</b> (Texas Rule of Appellate Procedure 38). <i>Anders</i> briefs; Structuring the brief; Standards of review; Harm analyses; Oral argument
<b>Week 6</b> September 30	<b>The brief and oral argument-State's perspective</b> Examination of State's reply brief, and common

& Oct. 1	“avoidance” arguments employed by the State to defeat appellant’s claims (waiver, harmless error, inadequate objection at trial, hypothetically correct jury charges)
<b>Week 7</b> Oct. 7 & 9	<b>Decisions by the court of appeals</b> (Texas Rule of Appellate Procedure 41, 43, 44); Internal procedures in the courts of appeal; Types of opinions and their precedential value; Motions for rehearing and rehearing <i>en banc</i> ; The defense attorney’s obligation upon issuance of an opinion.
<b>Week 8</b> Oct. 14 & 16	<b>Petitions for Discretionary Review</b> (Texas Rules of Appellate Procedure 66-70); Requisites of a PDR; How to phrase your issue; Internal procedures at the Court of Criminal Appeals regarding PDRs; The Brief on the Merits and oral argument at the CCA; Opinions by the Court of Criminal Appeals.
<b>Week 9</b> Oct. 21 & 23	<b>Analysis of a capital murder record</b> By this time, the class will have had time to read the complete appellate record in a (non-death) capital murder appeal being handled by the teacher; The teacher will provide a thorough review of the record and what each part of it means; The class will discuss possible issues to raise in the appeal.
<b>Week 10</b> Oct. 28 & 30	<b>Post-conviction Writs of Habeas Corpus</b> Procedure surrounding post-conviction writs in Texas; Substantive law of habeas corpus; The mechanics of investigating and filing a post-conviction writ will be explained; Cognizable issues; the procedure at the CCA; An example of a 11.07 writ application will be provided to the class; Substantive law regarding 11.07 writs; Types of orders issued on 11.07 writs

**Week 11**  
Nov. 4 & 6

**Post-conviction Writs of Habeas Corpus: Ineffective assistance of counsel.**

This (most commonly litigated) ground in Texas criminal appellate practice will be discussed in depth, with case examples from every area of criminal practice. Students will also be provided excerpts from trial transcripts which illustrate instances of ineffective assistance of trial counsel.

**Week 12**  
Nov. 11 & 13

**Post-conviction Writs of Habeas Corpus: Brady claims and the Michael Morton case.**

The prosecutor's obligation under *Brady v. Maryland* and its progeny will be examined, as will the Michael Morton case from Georgetown, Texas, which led to a seismic change in the way discovery is conducted in Texas criminal practice.

**Week 13**  
Nov. 18 & 20

**Post-conviction Writs of Habeas Corpus: Actual Innocence**

The types of actual innocence claims will be examined. The Michael Anthony Green case will be discussed in detail. Green, who served 28 years in prison before being exonerated in 2010 through DNA testing, will appear, as will the prosecutor who secured his release, Alicia Devoy O'Neill.

**Week 14**  
November 25

**Miscellaneous matters: Extraordinary writs; Motions for Forensic DNA Testing; sentencing issues on remand; the role of the Texas Forensic Science Commission.**

**December 9, 2014 Final exam**

