

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

**- PROFESSOR: CARMEN ROE -**

***COURSE DESCRIPTION*  
FALL 2017**

**Course Description:**

This upper-level class will focus on state criminal appellate procedure, with emphasis placed on the **Texas Rules of Appellate Procedure** (TRAP) and, where applicable to state appellate practice, the **Texas Code of Criminal Procedure** (CCP). 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 appellate proceedings in state courts, including claims of ineffective assistance of trial counsel, sufficiency of the evidence, 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 actual appellate transcript, thereby seeing how the subject matter of the course applies, step-by-step, to an actual appeal. The students will also be asked to present oral argument based on the record provided for a participation grade. 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 work 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 “*Winning an Appeal*” by Myron Moskovitz. 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, which may be accessed for free at [www.supreme.courts.state.tx.us/rules/traphome.asp](http://www.supreme.courts.state.tx.us/rules/traphome.asp). I recommend students obtain a copy of Professor Secrest’s Texas Criminal Codes, which

contains those rules with annotations for a thorough understanding of the rules. Either the 2012-2013 or 2013-2014 edition would be fine, but purchase of such text is optional.

In addition to the reading materials listed above, students will regularly be required to read new opinions issued by the Court of Criminal Appeals (CCA) and various Courts of Appeals (COA), as specifically assigned by the professor. Each class will conclude with one or two students presenting a recent case from the CCA or court of appeals “hand-down” list, which may be accessed at [www.txcourts.gov](http://www.txcourts.gov). Cases will be assigned that 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 link containing a complete appellate record from a recent case will be distributed to the students on the first day of class. This record will be used to illustrate the topics that are discussed throughout the semester. Excerpts from other appellate records will also be distributed to the class as needed.

**Required Textbooks:**

Myon Moskovitz, *Winning an Appeal*, 5th Edition.

**Grading:**

In addition to a final exam, students will write and submit a brief arguing the issues in the appellate record reviewed in class from either the Appellant or Appellee’s perspective. In addition, students will receive participation points on their presentation in class of the assigned cases and on the two-appellate advocacy skill assignments.

Assignment	Grading
Appellate Brief	50%
Essay Exam (take home)	50%
(2) Appellate Advocacy Skill Assignments	Participation Points
Cases Review	Participation Points

**Professor contact information:**

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*COURSE SYLLABUS*  
**FALL 2017**

**FIRST HALF OF SEMESTER**

**Introductory matters; Post-trial matters in the trial court: Motions for New Trial (TRAP Rule 21)**

Sources of Texas criminal appellate procedure; Jurisdiction and authority of Texas appellate courts handling criminal cases; Recent statistics from the CCA and the 14 courts of appeal; Motions for New Trial; Practice Commentary (Why motions for new trial may be the most important phase of post-conviction litigation); Discussion of Motion for New Trial hypotheticals.

**Still in the trial court: Appealable orders and waivers; (TRAP 25.2(a) & (d))**

What can be appealed and what can't; Certification of the Defendant's Right of Appeal; Waiver of the right to appeal; Useful links for Texas appellate practitioners, with practice exercises; Hypotheticals re: pleas/waivers, to be discussed next class.

**Appeals in the court of appeals: mechanics of perfecting appeal (form, time limits, obtaining an adequate record on appeal, docketing statements, etc.) and getting a brief filed; By Defense (TRAP 26.2-26.3, 32, 34)**

Form and deadlines for notices of appeal, ensuring a complete record on appeal; docketing statements, lost records; supplementation of the record; extensions of time. Appeals in the court of appeals: The brief and oral argument TRAP 38. Tips on how to evaluate a record to discover issues to raise Reply briefs; Oral argument.

**Appeals in the court of appeals: Preservation of appellate complaints and appeal by the State (TRAP 33 & CCP 44.01)**

Prerequisites for presenting a complaint for appellate review; What is an appealable order; Who must sign a notice of appeal; Time to file and other formalities by State.

**Appeals and Decisions in the COA (TRAP 41, 43, 44)**

Internal procedures in the courts of appeal; Types of opinions and their precedential value; Motions for rehearing and rehearing en banc; The defense attorney's obligations upon issuance of an opinion.

## **Direct appeals to the CCA; Petitions for Discretionary Review (PDR); (TRAP 66-70)**

Requisites of a PDR; How to phrase your issue; Internal procedures at the CCA regarding PDRs; The Brief on the Merits and oral argument at the CCA; Opinions by the CCA.

## **Common substantive issues on direct appeal**

Jury charge issues; Sufficiency of evidence and variance rules; harm analysis.

## **SECOND HALF OF SEMESTER**

### **Post-conviction Writs of Habeas Corpus under CCP 11.07**

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 an 11.07 writ application will be provided to the class; Substantive law regarding 11.07 writs; Types of orders issued on 11.07 writs.

### **Post-conviction Writs of Habeas Corpus: Ineffective assistance of counsel; *Strickland v. Washington***

The most commonly litigated ground in Texas post-conviction 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 counsel.

### **Post-conviction Writs of Habeas Corpus: Brady claims, Post-conviction DNA testing under CCP Chapter 64 Ann., Hannah Overton and the Michael Morton Act**

The prosecutor's obligation under *Brady v. Maryland* and its progeny will be examined, as will the Michael Morton Act, which led to a systematic change in the way discovery is conducted in Texas criminal practice. Super lawyer, John Raley, will visit to discuss Brady, DNA evidence and his representation and exoneration of two actual innocence cases in Texas: Hannah Overton and Michael Morton. Mr. Raley is the senior partner at Raley & Bowick, LLP, a civil litigation in Houston. Mr. Raley's first criminal case was Michael Morton, who he represented pro bono until he was exonerated in 2011.

## **Post-conviction Writs of Habeas Corpus: Actual Innocence and Death Penalty Cases in Texas**

We will discuss wrongful convictions and actual innocence cases in Texas. Anthony Graves, the 138th death row exoneree in America, will visit to tell us how he was arrested at 26 years old, wrongfully convicted, and incarcerated for 18 years before finally being exonerated and released.<sup>1</sup> Mr. Graves spent 12 years on Texas death row and survived two execution dates.

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<sup>1</sup> [https://en.wikipedia.org/wiki/Anthony\\_Charles\\_Graves](https://en.wikipedia.org/wiki/Anthony_Charles_Graves).