

# CRIMINAL LAW AND PRACTICE CONCEPTS OF HABEAS LITIGATION

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## AGENDA

- Important aspects of criminal procedure
- A quick federal habeas corpus primer
- Issue spotting
- Common habeas claims

# CRIMINAL PROCEDURE OVERVIEW

# PRE-TRIAL ASPECTS OF A CRIMINAL PROSECUTION

Crime

Investigation

Interrogation

Arrest

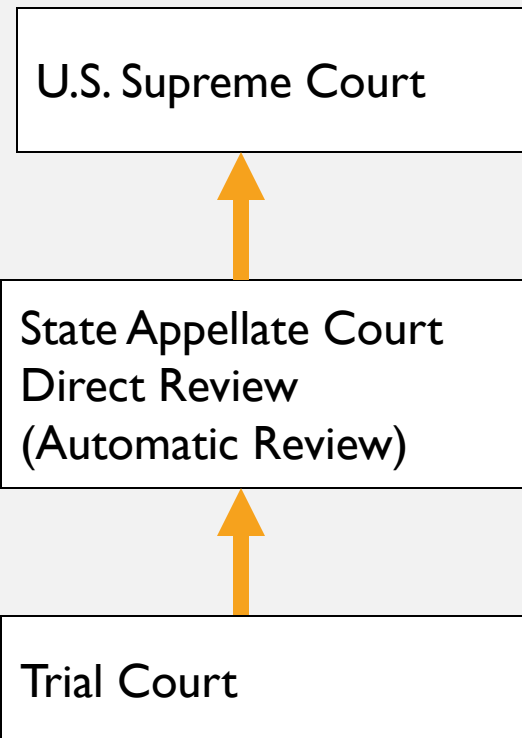
Charging

Pre-trial  
motions

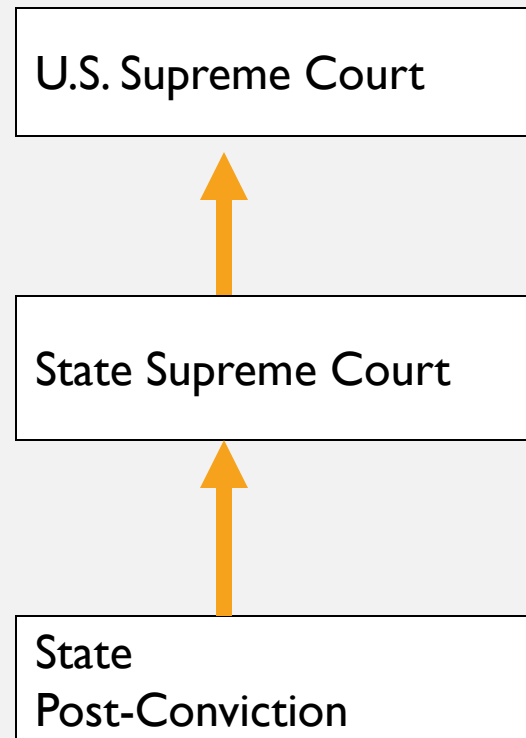
Plea  
negotiations

# POST-TRIAL PROCEDURE

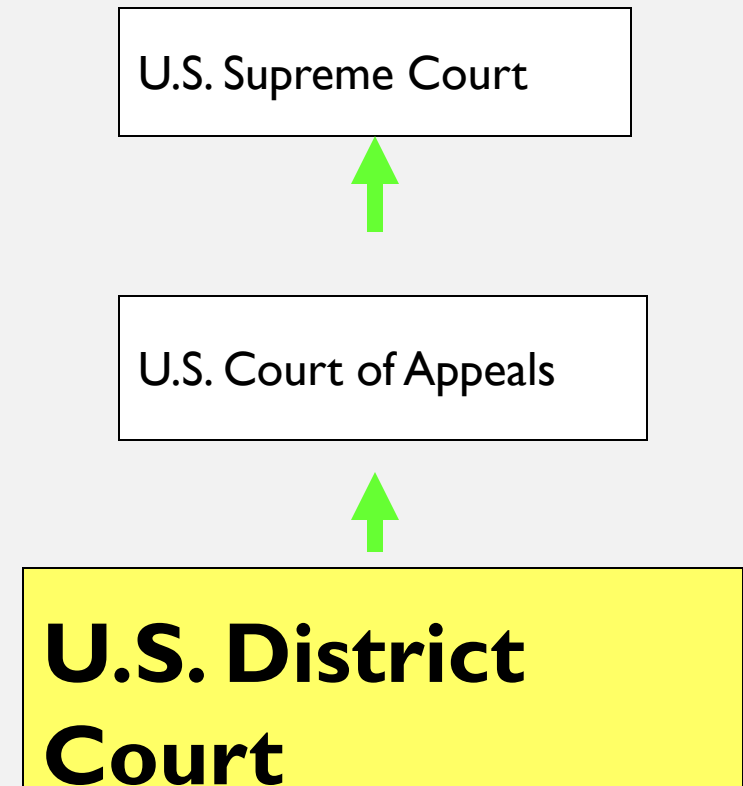
## **Trial/Direct Appeal**



## **Post-Conviction**



## **Federal Courts**



# FEDERAL HABEAS CORPUS FUNDAMENTALS

## REQUIREMENTS FOR RELIEF

- Custody: 2254(a)
- Exhaustion: 2254(b)(1)
- Timeliness: 2244(d)

## THE 28 U.S.C. § 2254 STANDARD

**(d)** An application for a writ of habeas corpus ... shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- **(1)** resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- **(2)** resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.



## SUCCESS STORY

### *Andrew v. White*, 145 S.Ct. 75 (Jan. 21, 2025)

- At trial, the prosecution “spent significant time . . . introducing evidence about Andrew’s sex life and about her failings as a mother and wife, much of which it later conceded was irrelevant.”
- The Court found that *Payne v. Tennessee*, 501 U.S. 808, 825 (1991), was relevant clearly established law because “the Due Process Clause can in certain cases protect against the introduction of unduly prejudicial evidence at a criminal trial.”
- The Court remanded to the Tenth Circuit for further proceedings.

## HOW DO I KNOW WHAT CLAIMS TO RAISE?

- What has been raised before?
- What is in prior counsel's files?
- What does the client say?
- What do you see in your records requests?
- What do witnesses/jurors say?

# COMMON HABEAS CLAIMS

## COMMON HABEAS CLAIMS

- Ineffective assistance of counsel
  - Trial
  - Appeal
- Decisionmaker misconduct
  - Juror misconduct
  - Judicial bias
- Government misconduct
  - Withholding favorable evidence
  - Presenting false testimony
  - Juror discrimination

# INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

*Strickland v. Washington*, 466 U.S. 668 (1984): “A convicted defendant’s claim that counsel’s assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel’s performance was deficient. ... Second, the defendant must show that the deficient performance prejudiced the defense.”

- 6<sup>th</sup> amendment right to counsel
- Two prongs
  - Deficient performance
  - Prejudice

## INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

*Evitts v. Lucey*, 469 U.S. 387 (1985): “A first appeal as of right... is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney.”

- 14<sup>th</sup> Amendment due process right
- Two prongs
  - Deficient performance
  - Prejudice

## WITHHOLDING FAVORABLE EVIDENCE

*Brady v. Maryland*, 373 U.S. 83 (1963): “We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”

- Claim components
  - Withheld (willful or inadvertent suppression)
  - Favorable- exculpatory or impeaching
  - Material

## PRESENTING FALSE TESTIMONY

*Napue v. Illinois*, 360 U.S. 264 (1959): The prosecution “may not knowingly use false evidence, including false testimony, to obtain a tainted conviction.”

- 14<sup>th</sup> amendment due process violation



# JUROR DISCRIMINATION

*Batson v. Kentucky*, 476 U.S. 79 (1986): The government may not discriminate based on race in exercising peremptory challenges.

*J.E.B. v. Alabama*, 511 U.S. 127 (1994): The government may not discriminate based on gender in exercising peremptory challenges.

- 14<sup>th</sup> Amendment equal protection violation
- Three step test
  - Prima facie case
  - Race neutral reason
  - Court decision

# JUROR MISCONDUCT

- Dishonesty on Voir Dire
- Unqualified/Misbehaving/Biased Jurors
- Premature Deliberations/Prejudgment
- Improper Jury Discussions
- Juror Misstatements of Law
- Court Officer Improper Influence
- Third Party Contact
- Media Influence
- Extra Record Evidence
- Juror Experimentation and Investigation
- Religious Source Material
- Jury Agreements
- Separation of Jurors
- Missing Jurors
- Alternate Jurors in Jury Room

Credit: [Juror Misconduct | Habeas Assistance and Training](#)

NOT QUITE CLAIMS

## NOT CLAIMS BUT AVENUES TO RELIEF

### Actual Innocence

- *Schlup v. Delo*, 513 U.S. 298 (1995)

### Ineffective assistance of post-conviction counsel

- *Martinez v. Ryan*, 566 U.S. 1 (2012)