

Center for Justice in Capital Cases
Death Penalty Clinic
Semester Two Syllabus
Fall 2008

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This is the second of a two-semester clinic (four credits per semester). One credit is a seminar credit and the other three credits are clinic credits. All credits are graded. Classes will meet twice a week for 90 minutes on Tuesdays and Wednesdays at 4pm, and all of the classes will be held in **Room 633**. You will be primarily responsible for one or two cases and will work with a partner or a small group. You will become familiar with all of the Center's cases. Your clinical work is as important as any other class you take. It is expected that you will treat these cases seriously and confidentially. The work involved will vary from week to week.

Most of the reading materials will come from Rivkind and Shatz, Cases and Materials on the Death Penalty (Second Edition) and from Lyon, Hughes, and Richards' Illinois Death Penalty Law and Practice Manual. In addition, you should purchase the Mitigation Manual, Motions Manual, Investigation Manual and Managing the Capital Case Manual published by Andrea Lyon et al. (The four manuals published by CJCC cost a total of \$60. Contact Mary Bandstra in the Legal Clinic to purchase). One of your texts will also be the Race to Execution Symposium Issue of the DePaul Law Review (which we have available for you in the Legal Clinic). There will also be some additional reading materials which will be handed out to you, e-mailed to you or available to you online.

You will also have occasional writing assignments. When I ask you for a brief reaction paper, I do mean brief (600 to 800 words). I am looking for your honest reactions to the topic at hand, and analysis of the reading(s). These papers are graded and are considered as a part of your grade for the 1-credit class.

In addition to casework, class, and writing assignments, your team is expected to meet once a week with me. (At the beginning of the semester, you will sign up for a weekly meeting time.)

Last, you are expected to keep a time log and detailed notes of what you are working on in the clinic, as well as copies of everything you do. You will receive an Excel spreadsheet (via email) that will help you record your time and notes. You will need to print out and turn in your log during your weekly meeting. This is for your benefit as much as mine: at the end of the semester, you will be asked to write a transition memo in which you document everything you have done in the clinic.

1. Week One –

1.1 Tuesday, August 26, 2008: 4:00 - 5:30 PM

1.1 Subject: Brainstorm tasks that need to be done; volunteer for specific assignments and volunteer to introduce specific clinic cases on Wednesday.

1.2 Joint class, Wednesday, August 27, 2008: 4:00 - 5:30 PM

2.1 Clinic Orientation. Meet other clinic students and learn about active clinic cases. (Second semester students will present the cases they worked on last semester.)

2. Week Two –

2.1 Tuesday, September 2, 2008: No class meeting.

2.2 Joint class, Wednesday, September 3, 2008: 4:00 - 5:30 PM

2.1 Readings: Begin reading case files to get up-to-speed on clinic cases

2.2 Assignment: Sign up for weekly meetings with an instructor and sign up for your primary clinic case.

3. Week Three –

3.1 Tuesday, September 9, 2008: 4:00 - 5:30 PM

1.1 Reading: Chapter 5 in Haney – on CD, Chapter 7 in Rivkind; Chapter 4 (“Jury Selection in Capital Cases”) in the Manual; and Handout: Andrea Lyon’s article “Naming the Dragon” in Race to Execution Symposium Issue of the DePaul Law Review

1.2 Subject: Jury Selection. Also volunteer to discuss specific investigative experiences during class on Wednesday.

1.3 Assignment: Come to class prepared to discuss your sense of the effect of “death qualifying” juries on the outcome of cases, and write a brief reaction paper reflecting on the nature of capital jury selection, drawing on any of the readings from this week or last week.

3.2 Joint class, Wednesday, September 10, 2008: 4:00 - 5:30 PM

2.1 Subject: Working in teams on clinic cases & basic research review

2.2 Assignment: Finish reading clinic case files by today. Come prepared to meet with your team to discuss and plan what you want to do, and when you plan to do it. We’ll also do a basic review of research skills (with emphasis on learned treatises) during this class.

4. Week Four –

- 4.1 Tuesday, September 16, 2008: 4:00 - 5:30 PM
- 1.1 Subject: The role of defense counsel; the role of the prosecutor.
 - 1.2 Readings: Chapter 8, Section B in Rivkind; Chapter 9 in Rivkind; Chapter 6 in the Manual; and Rory Little's article from the Race to Execution Symposium Issue of the DePaul Law Review
 - 1.3 Assignment: Come to class prepared to discuss the role of defense counsel in capital cases. Also, Write a brief reaction paper addressing the conflicting role of the capital prosecutor: to seek justice and to seek to win. What factors can you identify that affect prosecutorial decision making?
- 4.2 Joint class, Wednesday, September 17, 2008: 4:00 - 5:30 PM
- 2.1 File Organization. Why file management is a crucial part of our professional responsibility. How to build and maintain an efficient file management system.
 - 2.2 Readings: Chapter 2 in Managing the Capital Case.

5. Week Five –

- 5.1 Tuesday, September 23, 2008: No class meeting
- 5.2 Joint class, Wednesday, September 24, 2008: 4:00 - 5:30 PM
- 2.1 Records Exercise, plus Calendar Class (each working group sets deadlines for what it plans to accomplish and when it plans to do it)

6. Week Six –

- 6.1 Tuesday, September 30, 2008: 4:00 - 5:30 PM
- 1.1 Subject: Procedural requisites and evidentiary limits
 - 1.2 Readings: Chapter 10 Rivkind (note that you should read the entire Payne v. Tennessee case on either Lexis or Westlaw because you will want to read Marshall's dissent). It would also be helpful for you to read Booth v. Maryland, 482 U.S. 496 (1987) and South Carolina v. Gathers 490 U.S. 805 (1989) in doing this assignment.
 - 1.3 Assignment: Come prepared to discuss the political underpinnings of these cases and what you believe procedural requests should be: how much guidance does the court give states on what the due process limitations are?
- 6.2 Joint class, Wednesday, October 1, 2008: 4:00 - 5:30 PM
- 2.1 Case rounds.

7. Week Seven –

7.1 Tuesday, October 7, 2008 – No class meeting.

7.2 Joint class, Wednesday, October 8, 2008: 4:00 - 5:30 PM

2.1 Subject: Investigation By Wandering Around (Mort Smith)

2.2 Readings: Read Mort Smith's article from the Investigation Manual

2.3 Discuss basic investigation in the context of our clinic cases; second semester students will describe specific investigations from last semester.

8. Week Eight –

8.1 Tuesday, October 14, 2008: 4:00-5:30pm

1.1 Subject: Guiding the sentencer

1.2 Readings: Chapter 11 in Rivkind and Chapter 8 in Haney

1.3 Assignment: Come to class prepared to discuss what you feel jurors understand in a capital case. What role does the judge play in their level of understanding?

8.2 Joint class, Wednesday, October 15, 2008: 4:00 - 5:30 PM

2.1 Subject: Motions arguments, Part I. These arguments should be brief (approximately 5 minute) overviews. First semester students will argue a motion and second semester students will rebut.

9. Week Nine –

9.1 Tuesday, October 21, 2008 – No class meeting.

9.2 Joint class, Wednesday, October 22, 2008: 4:00 - 5:30 PM

2.1 Subject: Motions arguments, Part II. These arguments should be brief (approximately 5 minute) overviews. First semester students will argue a motion and second semester students will rebut.

10. Week Ten –

10.1 Tuesday, October 28, 2008: 4:00 - 5:30 PM

1.1 Subject: the Death Penalty in the International Context

1.2 Readings: Chapter 15 Section A in Rivkind; also read "The Execution of Angel Breard: Apologies Are Not Enough" (handout available)

through the administrative assistant at CJCC) and *Breard v. Greene*, 523 U.S. 371 (1998).

1.3 Assignment: Come to class prepared to discuss the role that international relations should play in the administration of justice within a country's borders.

10.2 Joint class, Wednesday, October 29, 2008: 4:00 - 5:30 PM

2.1 Subject: Working Together as a Team.

11. Week Eleven –

11.1 Tuesday, November 4, 2008 – No class meeting.

11.2 Joint class, Wednesday, November 5, 2008: 4:00 - 5:30 PM

2.1 Case rounds – Calendar class (report on progress and plan what to do between now and the end of the semester)

12. Week Twelve –

12.1 Tuesday, November 11, 2008: 4:00 - 5:30 PM

1.1 Subject: The Empathic Divide

1.2 Reading: Chapter 9 in Haney

1.3 Assignment: Write a brief reaction paper in which you analyze the “empathic divide” Haney describes in this chapter. What challenges does this divide present to you as an advocate? (Consider these questions in light of your primary clinic case.) As you prepare for class, think about how you would structure a direct examination of Haney if he were testifying about areas covered in different sections of the chapter (such as “the empathic divide,” “biographical racism,” and “structural mitigation”).

12.2 Joint class, Wednesday, November 12, 2008: 4:00 - 5:30 PM

2.1 Subject: Case rounds

13. Week Thirteen –

13.1 Tuesday, November 18, 2008: 4:00 - 5:30 PM

1.1 Subject: The Role of the Media

1.2 Readings: Chapter 2 in Haney and *New York Times* article:

<http://query.nytimes.com/gst/fullpage.html?res=9E03E6DD173FF934A15754C0A9659C8B63>

1.3 Assignment: Write a brief reaction paper in which you discuss, in light of the reading, your assessment of the various ways in which the media affects the public's perception of capital punishment.

- 13.2 Joint class, Wednesday, November 19, 2008, 4:00 - 5:30 PM
 - 2.1 Subject: Final transition memos due. Remember you are responsible for making sure you have returned all files and finished all projects. Write a transition memo on your case. Be sure to include all actions completed, those that need to be completed, and relevant phone numbers or addresses. Remember other students (not to mention your teachers) will be relying on this summary to know what to do with your case assignments. Also complete class evaluations.
 - 2.2 Final Wrap-Up

14. Week Fourteen -

- 14.1 Tuesday, November 25, 2008: 4:00 - 5:30 PM
 - 1.1 Subject: To Be Announced
- 14.2 Joint class, Wednesday, November 26, 2008: 4:00 - 5:30 PM
 - 2.1 Subject: To Be Announced.