

Center for Justice in Capital Cases
Death Penalty Clinic
Semester One Syllabus
Spring 2008

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This is the first 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 Mondays 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 Lyon, Hughes, and Richards' Illinois Death Penalty Law and Practice Manual. In addition, you should purchase the Mitigation Manual, Motions Manual, and Investigation Manual published by Andrea Lyon *et al.* (The four manuals published by CJCC cost a total of \$50. 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 one-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 Monday, January 14, 2008: 4:00 - 5:30 PM
 - 1.1 Subject: Discussion of the Supreme Court's seminal cases
 - 1.2 Readings: Chapter 2 in Rivkind and pp. 19-27 in Rivkind
 - 1.3 Assignment: Come to class prepared to discuss the split in these cases and your view of the political forces at work in these cases.

- 1.2 Joint class, Wednesday, January 16, 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 Monday, January 21, 2008:
 - 1.1 Subject: Begin discussing Illinois death penalty law
 - 1.2 Readings: "The Law of Homicide in Illinois" and "Overview of Illinois Death Penalty Law" (Chapters 1 & 2 from Illinois Death Penalty Law and Practice Manual, hereinafter Manual); Appendix A and Appendix B in the Manual; and also People v. Bull, 185 Ill.2d 179; 705 N.E.2d 824 (1998).
 - 1.3 Come to class prepared to discuss what distinguishes an Illinois capital case from a non-capital homicide, and your take on the wisdom of those distinctions.

- 2.2 Joint class, Wednesday, January 23, 2008: 4:00 - 5:30 PM
 - 2.1 Readings: Begin reading case files to get up-to-speed on clinic cases
 - 2.2 Assignment: Case assignments. Sign up for weekly meetings with an instructor and sign up for your primary clinic case.

3. Week Three –

- 3.1 Monday, January 28, 2008
 - 1.1 Subject: Aggravating factors
 - 1.2 Readings: Chapter 3 in Rivkind
 - 1.3 Assignment: Write a brief reaction paper assessing the Supreme Court's role of limiting aggravating factors. What is the danger in trying to regulate this? In not trying to? Also, come to class prepared to discuss specific aggravating circumstances in your primary clinic case.

- 3.2 Joint class, Wednesday, January 30, 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 Monday, February 4, 2008: 4:00 - 5:30 PM
 - 1.1 Subject: Introduction to motions practice
 - 1.2 Readings: Chapter 3 in the Manual; also read the introduction in the Motions Manual and generally familiarize yourself with the contents of the Motions Manual
 - 1.3 Assignment: Work on constructing a motion; brainstorm motions for cases. (A final version of the motion you choose to write, at the conclusion of class, will be due Wednesday February 20, 2008, so that the second semester students can read it in order to prepare for arguments on February 27 and March 5.)
- 4.2 Joint class, Wednesday, February 6, 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.

5. Week Five –

- 5.1 Monday, February 11, 2008: 4:00 - 5:30 PM
 - 1.1 Subject: Mitigation and individualized consideration
 - 1.2 Readings: Chapter 4 in Rivkind, except read Ring v. Arizona, 536 U.S. 584 (2002) instead of Walton v. Arizona; also read pages 263-279 in the Mitigation Manual (How Jurors Decide on Death.)
 - 1.3 Assignment: Write a brief paper discussing how the Supreme Court attempted to find a way to allow for individualized consideration of the defendant and still have a system of “guided discretion.” Did they succeed? Why or why not?
- 5.2 Joint class, Wednesday, February 13, 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 Monday, February 18, 2008: 4:00 - 5:30 PM
- 1.1 Subject: Jury Instructions
 - 1.2 Readings: Chapter 5 in the Manual
 - 1.3 Assignment: Come to class prepared to discuss jury instructions for your primary clinic case. During class, you will divide into teams to work on drafting portions of jury instructions.
- 6.2 Joint class, Wednesday, February 20, 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.

7. Week Seven –

- 7.1 Monday, February 25, 2008: 4:00 - 5:30 PM
- 1.1 Subject: Who You Can Execute...and For What
 - 1.2 Readings: Chapter 5 in Rivkind. Also read "The Executioner's IQ Test" (it is accessible on Lexis or Westlaw: New York Times Magazine, June 29, 2003, at 30).
 - 1.3 Assignment: Come to class prepared to discuss the concept of proportionality, both to the offense and the offender
- 7.2 Joint class, Wednesday, February 27, 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.

8. Week Eight –

- 8.1 Monday, March 3, 2008: 4:00 - 5:30 PM
- 1.1 Subject: Ethical Considerations in Mitigation - Genetic Evidence
 - 1.2 Readings: "Revisiting the Legal Link Between Genetics and Crime," Deborah Denno, Duke University School of Law's Law and Contemporary Problems, Volume 69, Numbers 1 and 2, Winter/Spring 2006 pp. 209-257

- 1.3 Assignment: Come to class prepared to discuss the implications, both positive and negative, of using genetic “predisposition” evidence as mitigation.
- 8.2 Joint class, Wednesday, March 5, 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.

MARCH 6-7, 2008:
The Law Review RACE TO EXECUTION SYMPOSIUM
will take place in the DePaul Center,
1 East Jackson Blvd, Room 8005.
Your attendance is required at this event.

9. Week Nine –

- 9.1 Monday, March 10, 2008: 4:00 - 5:30 PM
 - 1.1 Subject: Race and the death penalty (Part I)
 - 1.2 Readings: Chapter 6 in Rivkind; also read selected articles from the Race to Execution Symposium Issue of the DePaul Law Review (Susan Bandes’ introduction and Bryan Stephenson’s keynote address)
 - 1.3 Assignment: Write a brief reaction paper in which you address the propriety of the consideration of race issues in the death penalty, and how, as a public policy matter, the court can reach this issue.
- 9.2 Joint class, Wednesday, March 12, 2008: 4:00 - 5:30 PM
 - 2.1 Subject: Case rounds – Calendar Class (report on progress and plan what to do during the next month)

10. Week Ten –

- 10.1 Monday, March 17, 2008: 4:00 - 5:30 PM
 - 1.1 Subject: Pleading for life
 - 1.2 Readings: Craig Haney, “The Social Context of Capital Murder: Social Histories and the Logic of Mitigation.” (Available on Lexis or Westlaw) From the Mitigation Manual, read: pages 1-22 (Overview of Mitigation); pages 281-293 (Damned if You Do; Damned if You Don’t, Jury Instructions).

- 1.3 Assignment: Write a brief reaction paper discussing the special challenges that face a capital defense attorney in terms of making a case for life

10.2 Joint class, Wednesday, March 19, 2008: 4:00 - 5:30 PM

- 2.1 Subject: Working Together as a Team

11. Week Eleven –

11.1 Monday, March 24 – **Spring Break – no class.**

11.2 Wednesday, March 26 – **Spring Break – no class.**

12. Week Twelve –

12.1 Monday, March 31, 2008: 4:00 - 5:30 PM

- 1.1 Subject: Preparing to try a capital case
- 1.2 Readings: pp. 307 through 319 in Rivkind; and Handout: Andrea D. Lyon "Defending the Death Penalty Case: What Makes Death Different?" Mercer Law Review, Volume 42, Number 2, Winter 1991.
- 1.3 Assignment (To be determined)

12.2 Joint class, Wednesday, April 2, 2008: 4:00 - 5:30 PM

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

13. Week Thirteen –

13.1 Monday, April 7, 2008 : 4:00 - 5:30 PM

- 1.1 Subject: Innocence and the death penalty
- 1.2 Readings: Selection from Chapter 16 (pp. 425-461) from Lyon, Hughes, and Prosser's Federal Habeas Corpus: Cases and Materials (available as a PDF from the administrative assistant at CJCC).
- 1.3 Assignment: Come to class prepared to discuss the tension between the criminal justice system's need for finality and the fear of executing an innocent person. How much process is enough?

13.2 Joint class, Wednesday, April 9, 2008, 4:00 - 5:30 PM

- 2.1 Subject: Case rounds

14. Week Fourteen –

14.1 Monday, April 14, 2008: 4:00 - 5:30 PM

- 1.1 Subject: Reflecting on the death penalty

- 1.2 Reading: Pages 2-18 of Chapter 1 in Rivkind
- 1.3 Assignment: Write a brief reaction paper on how this semester of working on cases as well as learning some of the substantive law has caused your opinion on the death penalty to change (if at all). If it hasn't changed, explain why.

14.2 Joint class, Wednesday, April 16, 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

15. Week Fifteen –

- 15.1 Monday, April 21, 2008: 4:00 - 5:30 PM
 - 1.1. Subject: To Be Announced