

MILITARY JUSTICE CLINIC: SYLLABUS

FALL 2020

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Class schedule: Tues 8-9am; Wed 11-12pm (noon)

COURSE INFORMATION

The Military Justice Clinic introduces students to criminal justice under the Uniform Code of Military Justice (UCMJ). Students will receive classroom instruction on the applicable substantive law, case investigation techniques, witness identification and preparation, pretrial motions practice, case strategy and trial practice.

In addition to classroom lecture, students will be assigned to defense teams representing military clients facing courts-martial, administrative hearings, non-judicial punishment, other adverse administrative actions, as well as former service members appealing adverse actions stemming from their military service. As members of the defense team, students will conduct case investigations, witness interviews, draft pretrial motions, and assist in all aspects of trial preparation. With client consent and instructor supervision, students may represent clients before administrative hearings.

LEARNING OBJECTIVES

Through in-class instruction and practical experience with real clients in judicial and administrative proceedings, students will:

1. Demonstrate understanding of substantive and procedural law under the UCMJ and applicable administrative regulations;
2. Analyze a military client's case and prepare an investigation strategy/roadmap of the case;
3. Understand the process of investigation and witness preparation;
4. Engage in legal analysis and reasoning, legal research, written and oral advocacy before military tribunals and administrative hearings;
5. Prepare the client's case for trial/hearing;
6. Evaluate and internalize the ethical and professional considerations of defense counsel and officers of the court.

CLASS MATERIALS

Materials will be provided to students at least one week prior to scheduled classes via Blackboard and/or via e-mail. Supplemental material may be provided less than one week prior to scheduled classes accounting for client needs.

ATTENDANCE

In accordance with UHLC policy, students must attend at least 80% of regularly scheduled classes. Class time and day will be formulated after students and instructor collaborate on an optimal schedule. Classes will be held at UHLC, Clinic Program Office.

OFFICE HOURS

Office hours will be available Monday-Friday by appointment. To allow the course instructor time for flexibility in scheduling, please request appointments at least 24 hours in advance.

CLASS REQUIREMENTS & UHLC GRADE POLICIES

As a graded course, students will be evaluated on a variety of factors, including attendance, participation during class instruction, three 10 question quizzes throughout the semester, journal entries, and quality of work representing clients.

Students are expected to complete a two-page journal entry every three weeks. Journal entries are due beginning on the first class day of the third week of instruction. Journal entries should focus on case preparation notes, potential avenues of investigation and trial strategy, and any topics related to the UCMJ or the military criminal justice system. Journal entries are due at the start of classroom instruction and will be returned to students by the beginning of the next class.

50 hours of clinic instruction and work are required for each credit hour. A minimum of 3 credit hours are required for this course, with a maximum of 4 credit hours. Hours are awarded for classroom instruction, legal research, case investigation, trial/hearing preparation, time spent in trial or hearing proceedings, and administrative tasks associated with the course. Students with questions regarding additional duties not listed above should discuss the matter with the instructor prior to undertaking the task.

Please refer to UHLC Clinic Student Manual for additional guidance.

COUNSELING AND PSYCHOLOGICAL SERVICES (CAPS)

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus.

http://www.uh.edu/caps/outreach/lets_talk.html

FACE COVERING POLICY

To reduce the spread of COVID-19, the University [requires face coverings](#) on campus including classrooms for both faculty and students. Face coverings must cover your mouth and nose and be worn throughout the class session. A mask with a valve is not considered an adequate face covering and should not be used, as it can expel exhaled air, increasing the risk to others. Eating or drinking during class is discouraged and is not an excuse for removing the face covering for any extended length of time. For additional information on the use of face coverings, please see [Face Covering FAQs](#). Failure to comply with the requirement to wear a face covering in class will result in your being asked to leave the classroom immediately and a disciplinary referral through the Dean of Students Office. Requests for accommodations relating to the face covering policy may be directed to the [Center for Students with DisABILITIES \(CSD\)](#).

REQUIRED DAILY HEALTH SELF-ASSESSMENT

Your presence in class each session means that you have completed a daily self-assessment of your health/exposure and you:

- Are NOT exhibiting any Coronavirus Symptoms
- Have NOT tested positive for COVID-19
- Have NOT knowingly been exposed to someone with COVID-19 or suspected/presumed COVID-19

If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see [COVID-19 Diagnosis/Symptoms Protocols](#) for what to do if you experience symptoms and [Potential Exposure to Coronavirus](#) for what to do if you have potentially been exposed to COVID-19.

RECORDING OF CLASS

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Center for Students with DisABILITIES](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

SYLLABUS CHANGES

Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible via email from the course instructor.

PREFERRED NAME(S)/PRONOUN(S)/PREFIX STATEMENT

If you have preferred name(s)/pronoun(s) and/or would favor a particular prefix, I will gladly honor your request. Please advise me early in the semester, so I may make appropriate changes to my records. Any lapses should be attributed to failings of memory, as your preferences are respected in this class.

SENSITIVITY TO CULTURAL ISSUES AND/OR DIVERSITY

The University of Houston does not tolerate any behavior by administrators, faculty, staff, or students, which constitutes unlawful harassment of students on the basis of race, color, sex, religion, national origin, disabled veteran status, age, sexual orientation, or physical or mental disability whether or not the level of conduct rises to unlawful harassment or discrimination. Such forms of harassment have been recognized as discriminatory and as such violate University policy as well as state and federal statutes. Exposure to discrimination, harassment (including sexual and/or religious harassment), and/or insensitivity to cultural issues impairs UH's goals of transmitting and creating knowledge and enhancing student education.

If you feel that you have been exposed to discriminatory practices and/or insensitivity to cultural issues in this or any other setting affiliated with UH, you have the right to have your concerns addressed. One way

to address these concerns would be to meet with me, either privately after class or outside of class - by appointment.

ATTORNEY-CLIENT COMMUNICATIONS AND ATTORNEY WORK-PRODUCT

During class instruction, case investigation and representation, students will serve as members of the defense team in cases where maturity and professional discretion are paramount to effective and ethical advocacy. Students may not share privileged information regarding assigned cases without written consent of both Professor Marquez and the affected client.

COURSE SCHEDULE (see attached Appendix)

Week/Date	Reading Assignments	Topics	Assignments
Week 1 Day 1: Instruction Day 2: Case Work	See Appendix.	Intro to Military Justice Clinic Policies and Procedures.	Case assignments.
Week 2 Day 1: Instruction Day 2: Case Work	See Appendix.	Investigations.	Initial case breakdown.
Week 3 Day 1: Instruction Day 2: Case Work	See Appendix.	Nonjudicial Punishment and Adverse Administrative Action.	*Journal entry due; Case Strategies.
Week 4 Day 1: Instruction Day 2: Case Work	See Appendix.	Adverse Administrative Separations.	Quiz 1; Case Update.
Week 5 Day 1: Instruction Day 2: Case Work	See Appendix.	The UCMJ in Constitutional Context. The Court-Martial Process.	Case Update.
Week 6 Day 1: Instruction Day 2: Case Work	See Appendix.	Discovery, Witnesses and Expert Witnesses I.	*Journal entry due; Case Update.
Week 7 Day 1: Instruction Day 2: Case Work	See Appendix.	Discovery, Witnesses and Expert Witnesses II.	Case Update.
Week 8 Day 1: Instruction Day 2: Case Work	See Appendix.	<i>Voir Dire</i> and Jury Selection.	Quiz 2; Case Update.
Week 9 Day 1: Instruction Day 2: Case Work	See Appendix.	Presentation on Merits and Presentencing Procedure/ Sentence Determination.	*Journal entry due; Case Update.
Week 10 Day 1: Instruction Day 2: Case Work	See Appendix.	UCMJ Punitive Article 77 (Principals) through Article 109 (Destroying or Damaging Nonmilitary Property)	Case Update.
Week 11 Day 1: Instruction Day 2: Case Work	See Appendix.	UCMJ Punitive Article 109a (Mail-Taking) through 120c (Indecent Exposure)	Case Update.
Week 12 Day 1: Instruction Day 2: Case Work	See Appendix.	UCMJ Punitive Article 121 (Larceny) through 134 – (Straggling)	*Final journal entry due; Case Update.

Week 13 Day 1: Instruction Day 2: Case Work	See Appendix.	Representing Military Clients.	Client closeout/transfer meeting.
Week 14 Day 1: Instruction Day 2: Case Work	See Appendix.	Professional Conduct and Case Closeout.	Final Quiz (3)

CLIENT AND CASE LOCATION

Cases will be drawn from three U.S. Army Trial Defense Service Field Offices located at Fort Hood, Fort Sam Houston, and Fort Polk. Each military installation is approximately 200 miles from the University of Houston's central campus. As the MJC continues to expand, cases may be drawn from other branches of service and locations. Except for trials and administrative board hearings, all casework can be accomplished locally at the UHLC. Students will not be required to travel to any military installation during the semester, but accommodations will be made available if students wish to be present for board hearings or trials. Students should expect that board hearings and trials could take-up 3-4 days (total) during the semester. These days may be replaced with trips to observe Courts-Martial, administrative separation hearings, and Article 15 proceedings.

APPENDIX

Week 1: Introduction, syllabus review, and reviewee/client assignments

Week 2: Investigations

Army Regulation (AR) 15-6, Chapter 1 - pg. 1-3; Chapter 2 - pg. 4-5, 13-19; Chapter 3 – pg. 20-25; Chapter 4 – pg. 31; Chapter 5 – pg. 33; Chapter 6 – pg. 34; Chapter 7 – pg. 35-39.

Army Regulation (AR) 195-2, Chapter 3 - Para 3-20 through Para 3-31, pg. 13-16; Chapter 6 – Para 6-1 through Para 6-6, pg. 23-24.

Army Regulation (AR) 20-1, Chapter 6 – pg. 44-54; Chapter 7 – pg. 55-64.

Manual for Courts-Martial (MCM), 2019 – UCMJ Article 31, MCM Appendix 2, A2-11; Mil R. Evid. (MRE) 304, Pg. III-4 through III-6; MRE 305, pg. III-6 through III-8.

Week 3: Nonjudicial Punishment and Adverse Administrative Action

Manual for Courts-Martial (MCM), 2019 - UCMJ Article 15, MCM Part V, V-1 through V-9; MCM Appendix 2, A2-5 through A2-6; MCM Appendix 18, A18-1 through A18-2.

Interim Army Regulation (AR) 27-10, January 2019 – Chapter 3, Nonjudicial Punishment, pg.3 through pg.24.

Army Regulation (AR) 600-37, April 2018 - Chapter 3, pg. 3 thorough pg. 7; Chapter 6, pg. 9 through pg. 10; Chapter 7, pg. 11 through 14.

Week 4: Adverse Administrative Separations

Army Regulation (AR) 635-200, December 2016 – Chapter 2, Section I and Section II, pg. 21 through 30; Chapter 3, Section II, pg. 45 through 49; Chapter 13, Section I and Section II, pg. 98 though 100; Chapter 14, Section 1, Section II, and Section III, pg. 100 through 105.

Army Regulation (AR) 600-8-24, February 2020 – Chapter 4, Section I, Section II, and Section III, pg. 60 through pg. 75.

Week 5:

The Uniform Code of Military Justice in Constitutional Context:

Military Criminal Justice, Seventh Edition, Excerpt, pg. 3-12.

The Court-Martial Process:

Manual for Courts-Martial (MCM), 2019 – Rule for Courts-Martial (RCM) 307, pg. II-29 through II-33; RCM 309, pg. II-33 through II-34; RCM 401, pg. II-35; RCM 404, pg. II-37; RCM 404A, pg. II-38; RCM 405, pg. II-39 through II-47; RCM 406, pg. II-47; RCM 406A, pg. II-48; RCM 407, pg. II-48; UCMJ Article 32, MCM Appendix 2, A2-12.

Week 6: Discovery, Witnesses and Expert Witnesses I

Manual for Courts-Martial (MCM), 2019 – UCMJ Article 46, MCM Appendix 2, A2-16 through A2-17.

Manual for Courts-Martial (MCM), 2019 – Rule for Courts-Martial (RCM) 701, pg. II-67 through II-70; RCM 703, pg. II-74 through II-76.

Manual for Courts-Martial (MCM), 2019 – Mil. R. Evid. (MRE) 702, pg. III-43; MRE 703, pg. III-43; MRE 704, pg. III-43; MRE 705, pg. III-43; MRE 706, pg. III-43 through III-44; MRE 707, pg. III-44.

Week 7: Discovery, Witnesses and Expert Witnesses II

United States v. Walker, 66 M.J. 721 (N-M. Ct. Crim. App. 2008); *United States v. Jackson*, 59 M.J. 330 (C.A.A.F. 2004); *United States v. King*, 32 M.J. 709 (A.C.M.R. 1991); *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Behenna*, 71 M.J. 228 (C.A.A.F. 2012); *Giglio v. United States*, 405 U.S. 150 (1972); *United States v. Mahoney*, 58 M.J. 346 (C.A.A.F. 2003); *United States v. Houser*, 36 M.J. 392 (C.A.A.F. 1993); *United States v. McElhaney*, 54 M.J. 120 (C.A.A.F. 2000); *United States v. Katso*, 74 M.J. 273 (C.A.A.F. 2015); *United States v. Blazier*, 69 M.J. 218 (C.A.A.F. 2010); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

Week 8: Voir Dire and Impaneling Members

Manual for Courts-Martial (MCM), 2019 - Rule for Courts-Martial (RCM) 912, pg. II-120 through II-123; RCM 912A, pg. II-123 through II-125; RCM 912B, pg. II-125; Article 41, UCMJ, pg. A2-15.

United States v. Bragg, 66 M.J. 325 (C.A.A.F. 2008); *United States v. James*, 61 M.J. 132 (C.A.A.F. 2005); *United States v. Terry*, 64 M.J. 295 (C.A.A.F. 2007); *United States v. Napolitano*, 53 M.J. 162 (C.A.A.F. 2000); *United States v. Clay*, 64 M.J. 274 (C.A.A.F. 2007); *United States v. Elfayoumi*, 66 M.J. 354 (C.A.A.F. 2008); *United States v. Schlamer*, 52 M.J. 80 (C.A.A.F. 1999).

Week 9: Presentation on Merits and Presentencing Procedure/Sentence Determination

Manual for Courts-Martial (MCM), 2019 - Rule for Courts-Martial (RCM) 913, pg. II-125 through II-126; RCM 1001, pg. II-140 through II-144; RCM 1002, pg. II-145 through II-147; RCM 1003, pg. II-147 through II-151.

Week 10: UCMJ Punitive Article 77 (Principals) through Article 109 (Destroying or Damaging Nonmilitary Property)

DA Pamphlet 27-9, Military Judges' Benchbook, Feb 2020 – pg. 997 through 1235.

Week 11: UCMJ Punitive Article 109a (Mail-Taking) through Article 120c – (Indecent Exposure)

DA Pamphlet 27-9, Military Judges' Benchbook, Feb 2020 – pg. 1236 through 1431.

Week 12: UCMJ Punitive Article 121 (Larceny) through Article 134 – (Straggling)

DA Pamphlet 27-9, Military Judges' Benchbook, Feb 2020 – pg. 1432 through 1647.

Week 13: Representing Military Clients

Readings to be provided.

Week 14: Professional Conduct

Army Regulation (AR) 27-26, June 2018 – Rule 1.1 through Rule 1.18; Rule 2.1 through 2.4; Rule 3.1 through 3.9; Rule 4.1 through 4.4.

United States v. Stellato, 74 M.J. 473 (C.A.A.F. 2015); *United States v. Short* (including dissent), 77 M.J. 148 (C.A.A.F. 2018)