

DEATH PENALTY CLINIC: SYLLABUS FALL 2021

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The Texas Innocence Network (TIN) office is located at Krost Hall 203. As long as students are permitted to work on-campus, they may work in the office and use the phone/copier/scanner/fax machine located in the office lobby at their convenience. Any student working at the TIN office must adhere to all UH guidelines regarding Covid-19 (*e.g.* – wearing a mask, social distancing, etc.). A key to the TIN office lobby can be found outside the Krost Hall office door, and lockbox code will be given to enrolled class members after classes begin. Students using the lockbox key to open the door must immediately return the key to the lockbox.

With respect to office hours, clinic instructors are always available by email. Voice messages will be returned as soon as possible. Zoom meetings can also be scheduled at a mutually amenable time. With respect to in-person meetings, unless students have scheduled a specific appointment, we reserve the right to be out of the office at any time. Scheduled in-person meetings with TIN staff will follow UH Covid-19 guidelines. Moreover, the TIN office may be closed at any time if directed by UH

LEARNING OUTCOMES

Through and as a result of this course, students will: (1) demonstrate understanding of substantive and procedural law regulating lawyers' conduct in death penalty trials and appeals; (2) analyze fact-based investigations that led to criminal convictions and perform fact-based investigations to further post-conviction claims; (3) engage in legal analysis and reasoning, legal research, problem-solving, and written and oral communication related to death penalty appeals; (4) evaluate proper professional and ethical responsibilities to clients and the legal system; (5) reflect upon conceptions of professionalism and the lawyer's role in the criminal justice system and society; and (6) recognize trends that will influence the future of criminal lawyers' work and the delivery of legal services.

TEXT/SUPPLEMENTAL MATERIALS

Class and case materials will be made available online via email and Dropbox.

COURSE INFORMATION

Death Penalty Clinic explores the substantive law, appellate procedure, investigative techniques, and post-conviction appellate remedies applicable in criminal cases. Lectures will cover topics such as: Texas criminal statutes, state/federal habeas law and procedure, clemency proceedings, investigative techniques, mitigation evidence, and trial strategy.

In addition to attending lectures, students work on actual death penalty cases. Students investigate claims related to the guilt-innocence and punishment phases of capital murder trials and assist attorneys in researching and drafting appellate legal claims. Death Penalty Clinic students work solely on cases where a criminal defendant has been convicted of capital murder and sentenced to death. Students' work in this class becomes a part of defendants' court filings. These filing deadlines are strictly set by rules and statutes. Consequently, it is vital that students in this class adhere to deadlines set by the course instructor. *In the event a student has an issue that might interfere with an assignment deadline (e.g. – personal illness, family issues, computer problems, etc.), the student should inform Professor Newberry as soon as possible so that the work can be reassigned, if needed.*

CLASS MEETINGS AND ATTENDANCE (GENERAL POLICIES)

Death Penalty Clinic will be held on Tuesdays from 4:00pm – 6:00pm. At this time, UHLC cannot determine whether this course will be distance education, or will have physical rooms assigned, and if so the extent to which the instructors might use the rooms during the semester. In other words, this class may be an entirely in-person class or it might be a distance education class taking place via Zoom with no use of a physical classroom. Class meeting and attendance general policies for both types of modalities are listed below.

If Death Penalty Clinic is an in-person class: Death Penalty Clinic will be held on Tuesdays from 4:00–6:00 in a classroom TBA, with breakout sessions occurring in a classroom TBA. Pursuant to UHLC policy, you must attend at least eleven (11) of the fourteen (14) regularly scheduled classes (80%). In the highly unlikely event further a further make-up class is necessary, it will be scheduled in accordance with UHLC policy.

If Death Penalty Clinic is a synchronous distance learning class: Death Penalty Clinic will be held via Zoom on Tuesdays from 4:00–6:00. Immediately following the weekly Zoom lecture, students must log into to a Zoom weekly case meeting with Professor Newberry. Students who are unable to attend the weekly case meeting via Zoom must contact Professor Newberry (jrnewber@central.uh.edu) in order to set up a separate, individual case meeting to take place at a mutually amenable time. Pursuant to UHLC policy, you must attend at least eleven (11) of the fourteen (14) regularly scheduled classes (80%). Although class lectures will be recorded and made available to students for later viewing, watching recorded Zoom lectures after the regularly scheduled class time does not towards attendance.

ATTENDANCE VIA ZOOM/WEBCAMS (ONLY IF DEATH PENALTY CLINIC IS A DISTANCE LEARNING CLASS)

If Death Penalty Clinic is a synchronous distance learning class, it will be taught via Zoom. There will be a Zoom link for the lecture portion of the class and a separate Zoom link for the case meeting portion of the class. The links will be emailed to the students prior to the first class meeting. Students must adhere to the following policies:

- Access to a webcam is required for students participating remotely in this course.
- You must be logged in with a computer with your video camera turned on and microphone muted, unless you are speaking (note: the class will be set up to mute you automatically upon entry).
- Webcams must be turned on for the duration of every class in order to ensure that students are present and engaged in the class.
- You must take whatever action is necessary to ensure that no other individuals are able to overhear the case meeting (*e.g.* – listening to case meetings on headphones so that only the student can hear the meeting discussion).
- You must identify yourself with your first and last name in the Zoom videoconferencing software.
- You must present yourself professionally in the video stream, both in attire and in conduct.

CONFIDENTIALITY AND ATTORNEY/CLIENT PRIVILEGE

As a reminder, students work on actual legal cases in Death Penalty Clinic. Consequently, all case discussions and all work performed during the course of the semester are confidential and covered by Attorney/Client Privilege. Students are absolutely forbidden from: talking about cases with anyone who is not associated with the case or who is currently taking the class; posting anything about their work/the cases on social media; allowing people outside the class to view case materials; etc. To ensure confidentiality while attending case meetings via Zoom, students must take whatever action is necessary to ensure that no other individuals are able to overhear the case meeting (*e.g.* – listening to case meetings on headphones so that only the student can hear the meeting discussion). *If there are any questions regarding confidentiality and/or Attorney/Client Privilege, please contact Professor Newberry immediately.*

CLASS REQUIREMENTS

A total of 120 hours (including class time, meetings, etc.) must be spent on work performed for Death Penalty Clinic. As part of the required 120 hours, students must watch class lectures, complete case assignments/work, submit a timesheet in Excel format that specifically details the work performed during the semester and the amount of time worked, pass a quiz (70% or above) based on the information covered in class lectures, and return all case files/materials. “Billing” takes place in .25/hour increments.

At any point in the semester, if a student foresees having difficulty reaching 120 hours, the student must contact Professor Jeu immediately. She and Professor Newberry will work with students and UHLC Student Services on reaching a mutually amenable solution that adheres to university requirements. Failure to complete the 120 hours will result in an incomplete or failing grade.

Student timesheets and all assignments are due by 12:00 pm on Monday, December 20, 2021.

GRADING AND ASSESSMENT

Grades in Death Penalty Clinic will be based entirely on the quality of student work performed during the semester. Although students must pass a quiz (70% or above) covering the information covered in class lectures in order to complete the course, the quiz grade will not count towards students' final grades. Death Penalty Clinic contains a Pass/Fail option. Grading will take place in accordance with UH and UHLC policies. For additional information regarding UHLC's official policies with respect to grading in general, please refer to the UHLC student handbook and/or official announcements that may occur throughout the semester.

This course offers formative assessment during the semester during the weekly breakout sessions in order to provide feedback on student performance and competence. Upon request, individual feedback is available upon request at any time.

COUNSELING AND PSYCHOLOGICAL SERVICES ("CAPS")

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 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).

The Texas Lawyers' Assistance Program ("TLAP") also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP's website includes a page with links to sources about mental health that are of interest to law students: <https://www.tlaphelps.org/law-students>.

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

Chosen names and preferred pronouns (including non-binary ones such as they/them/their) must be respected in our classroom. Please feel free to reach out to Professor Jeu at any time if you want to make us aware of your chosen name, preferred pronoun, and/or a favored prefix; or if you have concerns about how we or your classmates address you. Any lapses should be attributed to failings of memory and/or honest mistake, as your preferences are respected in this class.

CENTER FOR STUDENTS WITH DISABILITIES

The University of Houston, when possible and in accordance with 504/ADA Guidelines, will attempt to provide reasonable academic assistance to students who request and require it. Please contact the Center for Students with Disabilities at 713-743-5400 for more information.

UH ANTIDISCRIMINATION AND SEXUAL MISCONDUCT POLICIES

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf> (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

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 (<https://uh.edu/csd/>). 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. Such modifications may include changes to the mode(s) of assessment for the course. Notice of such changes will be announced as quickly as possible through email and through the UHLC course catalog website.

CLASS DISCUSSION AND ASSIGNMENT SCHEDULE

<i>Class Date</i>	<i>Class Discussion *</i>	<i>Assignment Due</i>
August 24, 2021	<ul style="list-style-type: none"> • Class introduction • Confidentiality / TDCJ forms • Case meeting 	<ul style="list-style-type: none"> • n/a
August 31, 2021	<ul style="list-style-type: none"> • AEDPA • Investigation presentations 	<ul style="list-style-type: none"> • Case assignments TBA
September 7, 2021	<ul style="list-style-type: none"> • State Habeas – drafting & claims • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
September 14, 2021	<ul style="list-style-type: none"> • Clemency • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
September 21, 2021	<ul style="list-style-type: none"> • Physical Evidence – Part I • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
September 28, 2021	<ul style="list-style-type: none"> • Chapter 64 Motions • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
October 5, 2021	<ul style="list-style-type: none"> • Physical Evidence – Part II • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
October 12, 2021	<ul style="list-style-type: none"> • 5th, 6th, and 8th Amendment Overview • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
October 19, 2021	<ul style="list-style-type: none"> • 4th Amendment Overview • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
October 26, 2021	<ul style="list-style-type: none"> • Appellate Advocacy – Part I • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
November 2, 2021	<ul style="list-style-type: none"> • Appellate Advocacy – Part II • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
November 9, 2021	<ul style="list-style-type: none"> • Criminal procedure: Arrest to trial • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
November 16, 2021	<ul style="list-style-type: none"> • Capital vs. Non-Capital Trials • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
November 23, 2021	<ul style="list-style-type: none"> • End of Semester Procedures • Quiz • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA

December 20, 2021

All Class Assignments and Case Files are due by 12pm

* - Class lectures subject to change