

DEATH PENALTY & CRIMINAL APPEALS CLINIC: SYLLABUS SPRING 2023

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The Texas Innocence Network (TIN) office is located in the UHLC Clinics, on the first floor of the John O'Quinn Law Building. 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 at their convenience. Any student working at the TIN office must adhere to all UH guidelines regarding Covid-19 (see *infra* for a link to UH's Guidelines and Procedures).

With respect to office hours, clinic instructors are always available by email. Voice messages will be returned as soon as possible. Phone calls, Zoom meetings, and/or in-person meetings can be scheduled at a mutually amenable time. With respect to in-person meetings, unless students have scheduled a specific appointment, clinic instructors reserve the right to be out of the office at any time. Scheduled in-person meetings with TIN staff will follow UH's Covid-19 Guidelines and Protocols.

CONFIDENTIALITY AND ATTORNEY/CLIENT PRIVILEGE

As a reminder, students work on actual legal cases in Death Penalty & Criminal Appeals 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, students must take whatever action is necessary to ensure that no other individuals are able to overhear the case meeting or any case-related discussions (e.g. – making case-related phone calls in private, so that nobody can overhear the conversation). *If there are any questions regarding confidentiality and/or Attorney/Client Privilege, please contact Professor Newberry immediately.*

LEARNING OUTCOMES

Through and as a result of this course, students will: (1) demonstrate understanding of substantive and procedural law regulating lawyers' conduct in criminal 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 criminal 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 & Criminal Appeals 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 cases. Students investigate claims related to the guilt-innocence and punishment aspects of death-penalty cases; and research/draft direct appeals, post-conviction appeals, and/or clemency petitions.

Death Penalty & Criminal Appeals Clinic students work on claims related to both actual and legal innocence. Students' work in this class becomes a part of defendants' court filings. Given the fact that criminal appeals have strict filing deadlines, it is vital that Death Penalty & Criminal Appeals Clinic students 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.*

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 made by your instructors should be attributed to failings of memory and/or honest mistake, as your chosen names and preferred pronouns are respected in this class.

GRADING AND ASSESSMENT

Grades in Death Penalty & Criminal Appeals Clinic will be based entirely on the quality of student work performed during the semester. Death Penalty & Criminal Appeals 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.

CLASS MEETINGS AND ATTENDANCE (GENERAL POLICIES)

Death Penalty & Criminal Appeals Clinic is a face-to-face class that will be held on Tuesdays from 4:00pm – 6:00pm. The class lecture will be held in person at Law Building room 207, followed by a case meeting held in a breakout room at Law Building room 200. Pursuant to UHLC policy, students must attend at least 80% of all classes. Attendance will be kept and enforced in accordance with UHLC policy. Any needed make-up classes will be scheduled in accordance with UHLC policy.

Students who are unable to attend the weekly case meeting 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.

RECORDING OF CLASSES

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 [Justin Dart, Jr. Student Accessibility Center](#). 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.

CLASS REQUIREMENTS

A total of 120 hours (including class time, meetings, etc.) must be spent on work performed for Death Penalty & Criminal Appeals Clinic. “Billing” takes place in .25/hour increments. As part of the required 120 hours, students must attend 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, and return all case files/materials.

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 3:00 pm on Monday, May 15, 2023.***

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>.

REASONABLE ACADEMIC ADJUSTMENTS/AUXILIARY AIDS

The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact [the Justin Dart Jr. Student Accessibility Center](#) (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

SYLLABUS CHANGES

Please note that the instructor may need to make modifications to the course syllabus. Notice of such changes will be announced as quickly as possible through email.

UH ANTIDISCRIMINATION AND SEXUAL MISCONDUCT POLICIES

UHLC and the University are committed to maintaining and strengthening an educational, working, and living environment in which students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, a confidential reporting process is available to you. For more information, please refer to the University system's [Anti-Discrimination Policy webpage](#), [Anti-Discrimination Policy](#), [Sexual Misconduct Policy webpage](#), and [Sexual Misconduct Policy](#).

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

UNIVERSITY OF HOUSTON’S COVID-19 GUIDELINES AND PROTOCOLS

Face Covering Policy

To reduce the spread of COVID-19, the University strongly encourages everyone (vaccinated or not) to wear face coverings indoors on campus including classrooms for both faculty and students.

Presence in Class

Your presence in class each session means that you:

- Are NOT exhibiting any [Symptoms](#) that makes you think that you may have COVID-19
- Have NOT tested positive or been diagnosed 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 [Student 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.

COVID-19 Information

Students are encouraged to visit the University’s [COVID-19](#) website for important information including diagnosis and symptom protocols, testing, vaccine information, and post-exposure guidance. Please check the website throughout the semester for updates.

Vaccinations

Data suggests that vaccination remains the best intervention for reliable protection against COVID-19. Students are asked to familiarize themselves with pertinent [vaccine information](#) and to consult with their health care provider. The University strongly encourages all students, faculty and staff to be vaccinated.

CLASS DISCUSSION AND ASSIGNMENT SCHEDULE

<i>Class Date</i>	<i>Class Discussion (subject to change)</i>	<i>Assignment Due</i>
January 17, 2023	<ul style="list-style-type: none"> • Class introduction • AEDPA – Part I • Case meeting 	<ul style="list-style-type: none"> • n/a
January 24, 2023	<ul style="list-style-type: none"> • Direct Appeals Procedure – Part I • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
January 31, 2023	<ul style="list-style-type: none"> • Direct Appeals Procedure – Part II • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
February 7, 2023	<ul style="list-style-type: none"> • AEDPA – Part II • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
February 14, 2023	<ul style="list-style-type: none"> • Clemency • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
February 21, 2023	<ul style="list-style-type: none"> • DNA & Chapter 64 • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
February 28, 2023	<ul style="list-style-type: none"> • Physical Evidence & Polygraphs • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
March 7, 2023	<ul style="list-style-type: none"> • Fourth Amendment • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
March 14, 2023	<ul style="list-style-type: none"> • n/a – Spring Break 	<ul style="list-style-type: none"> • Case assignments TBA
March 21, 2023	<ul style="list-style-type: none"> • Fifth & Sixth Amendments • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
March 28, 2023	<ul style="list-style-type: none"> • Eighth Amendment – Sentencing • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
April 4, 2023	<ul style="list-style-type: none"> • Eighth Amendment – Death Penalty • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
April 11, 2023	<ul style="list-style-type: none"> • Capital versus Non-Capital Trials • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
April 18, 2023	<ul style="list-style-type: none"> • Criminal procedure: Arrest to Trial • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA
April 25, 2023	<ul style="list-style-type: none"> • End of semester procedures • Case meeting 	<ul style="list-style-type: none"> • Case assignments TBA