

Death Penalty § 615 A

Fall Semester 2015 Course Syllabus

Professor David Macher
951-259-3789 [cellular]
951-955-5208 [office]
dmacher@wsulaw.edu
davidjmacher@gmail.com

Textbook: Capital Punishment and the Judicial Process (4th Ed. 2012) by Randall Coyne and Lyn Entzeroth.

The class covers all aspects of capital punishment in the United States, from limitations on the crimes for which capital punishment is an available penalty, the class of offenders eligible for the death penalty, the capital case trial, sentencing hearing, appellate review, habeas corpus, and clemency proceedings.

The class is concerned with legal issues; it is not a forum to debate whether capital punishment is a social good or a stain on society. All students are welcome, whether they favor the death penalty, oppose capital punishment, or have no position on the subject.

This course does not have either a midterm or a final examination. In place of exams, student grades are based upon class participation and a research paper on a current issue in capital punishment litigation. The paper must comply with the standards established for the Upper Level Writing Requirement [ULRW].¹ Students are encouraged to select a topic of personal interest.

Examples of present-day issues include lethal injection as a means of execution, the admissibility and scope of victim-impact evidence in the sentencing phase, and the applicability, if any, of international law to capital punishment in the United States. The subject of the research project must be approved in advance. A draft of the written paper must be submitted for review and comment. The

¹ For further information on the ULWR, please see the Student Handbook, § IV(A)(8), page IV-12.

paper must include citations to legal authorities, such as published cases, and secondary authorities, such as law reviews and other scholarly writings. The written paper should be a minimum of 20 double-spaced pages in length. Additional requirements for the research paper will be detailed in a separate handout.

Students are expected to be prepared for each class meeting and ready to take part in discussion and analysis of the week's assigned reading. Class participation is essential to the learning experience, and accounts for 25% of each student's final grade.

Writing Requirements

Please review the Student Handbook. In my edition of the Handbook, the Upper Level Writing Requirement is located at IV(A)(8)(a).

The contents of the paper must be as follows:

(1) **Cover page.** The cover needs to have your name and student identification number, as well as the title of your paper.

(2) **Table of contents.** This table should list the various divisions of the paper.

(3) **Table of authorities.** This table should list all of the cases, statutes, law review articles, websites, and so forth cited in the paper. The table should be divided into categories.

(4) **Introduction.** The introduction tells the reader in summary fashion what he or she is about to read. It can be as brief as a few sentences, or as long as a page or two.

(5) **The body of the paper.** This section can be divided into as few or as many sections or headings as needed in order to provide an organized, logical order to the discussion.

(6) **Conclusion.** Briefly summarize the subject and conclusions of the research paper.

Law students train to become advocates. It is therefore important the paper present a point of view. A dry recitation of cases without a thesis is not acceptable. At the same time, do not ignore cases and other authorities contrary to the writer's perspective. Instead, describe them and show how they are inapplicable or should not be controlling.

Grading is based upon three overarching criteria: legal research, style and grammar, and legal reasoning. The most important of these benchmarks is legal reasoning. Students should demonstrate an understanding of the materials, ability to analyze the subject, and to write persuasively on the topic.

The authorities cited in the paper should be primary legal authorities, such as statutes, cases, constitutions, and secondary legal materials, such as law review articles, treatises, and websites. Non-legal authorities are acceptable, but should not be the principal sources for your presentation. Please note: **Wikipedia is not an acceptable authority. Do not cite Wikipedia.**

Weekly Reading Assignments

Week 1. August 20, 2015.

Chapter 1: The Great Debate Over Capital Punishment

Week 2. August 27, 2015.

Chapter 2: Eighth Amendment Prohibition of Cruel and Unusual Punishment

Week 3. September 3, 2015.

Chapter 3: Constitutional Challenges to the Death Penalty

Week 4. September 10, 2015.

Chapter 4: Race, Gender, and Sexual Orientation

Week 5. September 17, 2015.

Chapter 5: Constitutional Limits on Death Eligibility

Week 6. September 24, 2015.

Chapter 6: Selecting the Capital Jury

Week 7. October 1, 2015.

Chapter 7: The Role of Aggravating Circumstances

Writing requirement research topics due.

Week 8. October 8, 2015.

Chapter 8: The Role of Mitigating Circumstances

Week 9. October 15, 2015.

Chapter 9: The Sentencing Phase of Capital Cases

Week 10. October 22, 2015.

Chapter 10: Use of Psychiatric Experts in Capital Cases

Chapter 11: Assistance of Counsel

§ A: Introduction

§ B: The Constitutional Standard of Effective Assistance of Counsel

Week 11. October 29, 2015.

Chapter 11: Assistance of Counsel

§C: Effective Assistance of Counsel in Capital Sentencing Proceedings

§D: Failure to Investigate

§E: Conflict of Interest

§F: Direct Appeal

§G: Fatal Consequences of Attorney Error

Draft papers due.

Week 12. November 5, 2015.

Chapter 12: Stays of Execution and State Post-Conviction Relief Proceedings

Week 13. November 12, 2015.

Chapter 13: Introduction to Federal Habeas Corpus Review

Week 14. November 19, 2015.

Chapter 18: International Law and the Death Penalty

November 30, 2015.

Completed writing requirement papers due.

Disability Services Statement

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Second Floor Students Services Suite. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."