

Death Penalty § 615 A

Fall Semester 2021 Course Syllabus

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Textbook: Cases and Materials on the Death Penalty (4th Ed. 2016)
by Rivkind, Shatz, Kamin, and Marceau.

This class examines capital punishment in the United States, with a focus on the so-called modern period beginning with the United States Supreme Court's decision in *Furman v. Georgia* (1972) 408 U.S. 239 [92 S.Ct. 2726, 33 L.Ed.2d 346]. Students will be introduced to the panoply of Fifth, Sixth, Eighth, and Fourteenth Amendment issues posed by the death penalty and the United States Supreme Court's treatment of these questions in cases from *Furman* to the present.

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 and other methods of execution given the general unavailability of recognized, effective lethal injection drugs, victim-impact evidence, its scope and the forms it can take in the sentencing phase, the legal significance, if any, of lengthy delays between imposition of judgment and execution, and whether “evolving standards of decency” have reached a point where the death penalty no longer comports with the Eighth Amendment.

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 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 must be a minimum of 20 double-spaced pages in length.

All submissions are to be made in writing by student number rather than name. The paper topic, draft paper and final paper are to be sent to Sierra Douglas by email.

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.

It is estimated that, on average, the assigned reading and other classroom preparation should require six or more hours outside of class each week.

Writing Requirements

Please review the Student Handbook. I

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

The contents of the paper must be as follows:

(1) **Cover page.** The cover needs to have your student identification number and the title of your paper. Do not include your name.

(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 of the paper 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.**

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal

controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

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 Students Services. 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 Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

Weekly Reading Assignments

It is estimated that, on average, the assigned reading and other classroom preparation should require six or more hours outside of class each week.

Week 1. August 19, 2021.

Chapter 1. Introduction. [pages 3-53.]

Week 2. August 26, 2021.

Chapter 2. The Supreme Court's Seminal Cases. [pages 55-134]

Week 3. September 2, 2021.

Chapter 3. Limiting the Risk of Arbitrariness. [pages 137-220]

Week 4. September 9, 2021.

Chapter 4. Individualized Penalty Determination. [pages 221-265]

Chapter 5. Proportionality: *Coker v. Georgia*, *Tison v. Arizona* and *Atkins v. Virginia*. [pages 267-303]

Week 5. September 16, 2021.

Chapter 5: Proportionality: *Hall v. Florida*, *Roper v. Simmons* and *Kennedy v. Louisiana*. [pages 304-357]

The Death Squad. [pages 360-372]

Week 6. September 23, 2021.

Chapter 6. The Defendant and Defense Counsel. [pages 373-470]

Writing requirement research topics due.

A written one-page summary of the selected subject should be submitted by student number.

Week 7. September 30, 2021.

Chapter 7. The Prosecutor. [pages 471-507]

Week 8. October 7, 2021.

Chapter 8. Selecting the Jury. [pages 509-569]

Week 9. October 14, 2021.

Chapter 9. The Penalty Hearing. [pages 571-670]

Week 10. October 21, 2021.

Chapter 10. Guiding the Sentencer. [pages 671-741]

Draft papers due.

The draft should be a minimum of ten pages. It must conform to the Writing Requirements detailed above. Submit by student number.

Week 11. October 28, 2021.

Chapter 11. Federal Habeas Corpus Review of State Judgments.

Overview of Federal Habeas Corpus [pages 745-757]

11A. Substantive Limits. [pages 758-843]

Week 12. November 4, 2021.

Chapter 11. Federal Habeas Corpus Review [cont.]

11B. Procedural Limits. [pages 843-898]

11C. AEDPA's Additional Procedural Bars [pages 898-928]

Week 13. November 11, 2021.

Chapter 12. Execution. [pages 929-1005]

Week 14. November 18, 2021.

Chapter 13. Perspectives on the Death Penalty. [pages 1009-1034]

December 13, 2021.

Completed writing requirement papers due.