COURSE DESCRIPTION  
This course examines constitutional law issues in the context of death penalty litigation. Among the provisions the course will cover are the Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution. The course focuses on the substantive law of capital punishment and on the procedural aspects of death penalty and post-conviction proceedings. The course will include an examination of the death penalty’s history, the abolition movement, U.S. Supreme Court cases, habeas corpus, public policy issues, and state and federal death penalty statutes. The American criminal justice system and the concepts of punishment and proportionality will be explored, with a focus on the role of prosecutors, defense counsel, victims, judges and juries. The use of experts and issues pertaining to innocence, international law, and mental illness will also be examined. The course has a writing-for-publication component and meets the scholarly upper-level writing requirement. Students will present a work-in-progress to the class, will consult individually with the professor throughout the course, and will produce a publishable-quality law review article by the end of the term. The paper requirement for the course offers students the opportunity to write on a topic of their choice pertaining to the death penalty.

FIRST CLASS READING ASSIGNMENT:

Monday, May 18, 2015


REQUIRED TEXTS:


Note: The book is available in hardcopy, paperback or as an e-book.
I may also periodically assign other readings. These will either be available online or be distributed in the form of handouts. Because no reading assignments are required for the last several class sessions, reading assignments are front-loaded for the beginning of the semester.

**OTHER COURSE-RELATED INFORMATION:**

**Appointments:** Please feel free to contact me at any time during the semester if you have questions or would like to discuss paper topics or your paper. In addition to the Casebook, one particularly useful source for researching paper topics or locating recent information on topics pertaining to capital punishment is the website of the Washington, D.C.-based Death Penalty Information Center (“DPIC”). See [http://www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org). Also, please feel free to make an appointment (either by phone or e-mail) to see me. My contact information is listed above.

**TWEN:** I will set up a TWEN site for the course. Please be sure to sign-up for the TWEN page as I may communicate with students in the class through the TWEN site.

**Attendance:** Class attendance is mandatory and your contribution to the course is considered an important part of the course. Consequently, students are expected to be present for every class and to actively participate. After one absence from class, any additional missed classes may impact your grade. If you have any special circumstances warranting an exception to this policy, please speak with me first. A student who fails to attend and participate in class may receive a lowered grade in the course.

**COURSE EVALUATION:**

Each student must write a paper of not less than 25 pages to satisfy the course requirements. Deadlines for submitting initial drafts are set forth below. After reviewing each draft, I will hold a conference with each student individually to give comments and suggestions on the draft, along with any additional ideas for consideration. First drafts should be as complete as possible to facilitate meaningful discussion at the conference. To satisfy the upper-level writing requirement the paper must earn a grade of C or higher.

At the end of the course, each student will also make an informal in-class presentation (approximately 20-25 minutes) on his or her chosen paper topic. On the day that you make your presentation, you will be expected to have prepared a set of three or four questions about your topic to facilitate a discussion of that topic. Students will sign up for class presentation dates at the beginning of the semester. If you need to reschedule your class presentation, please feel free to trade with another student, but let me know of the change. The presentation will constitute one aspect of each student’s participation in the course.
Course evaluation will be based on the student’s final paper as well as the student’s in-class presentation and classroom participation.

**CLASS SCHEDULE:**

**CLASS ONE: INTRODUCTIONS AND COURSE OVERVIEW; THE HISTORY OF CAPITAL PUNISHMENT, LYNCHING AND THE ABOLITION MOVEMENT**

**Monday, May 18, 2015**

Assigned reading: Casebook, pp. 3-7, 54-62, 729-31; Cruel and Unusual, pp. 1-30

Topics: The history of capital punishment, lynching and the abolition movement; overview of course and background information pertaining to capital punishment; review of all stages of a death penalty case from charging decisions to jury selection to the penalty phase of a capital trial and from state and federal post-conviction proceedings to executions


**Wednesday, May 20, 2015**

Assigned Reading: Casebook, pp. 83-113, 719-22; Cruel and Unusual, pp. 31-65

Topics: Methods of execution; the concepts of punishment and proportionality; the U.S. Supreme Court’s review of Kentucky’s lethal injection protocol in *Baze v. Rees*; stays of execution

**Monday, May 25, 2015 – NO CLASS - MEMORIAL DAY**

**Wednesday, May 27, 2015 – NO CLASS/INDEPENDENT RESEARCH - STUDENTS SHOULD WORK ON OUTLINES/DRAFTS OF PAPERS**

Assignment: Develop and refine paper topic; independent research on chosen topic; delve into topic more fully at DPIC website and through other sources; watch course module of your choice at http://campuspress.yale.edu/capitalpunishment/
Monday, June 1, 2015 - NO CLASS/INDEPENDENT RESEARCH - STUDENTS SHOULD WORK ON OUTLINES/DRAFTS OF PAPERS

Assignment: Develop and refine paper topic; independent research on chosen topic; delve into topic more fully at DPIC website and through other sources; watch second course module of your choice at http://campuspress.yale.edu/capitalpunishment/

CLASS THREE: THE EIGHTH AMENDMENT AND CONSTITUTIONAL CHALLENGES TO THE DEATH PENALTY

Wednesday, June 3, 2015


Topics: Historical origins and application of the Eighth Amendment; proportionality; constitutional challenges to the death penalty; retroactivity/nonretroactivity; an examination of the U.S. Supreme Court’s decision in *Kennedy v. Louisiana*

CLASS FOUR: CONSTITUTIONAL LIMITATIONS ON DEATH ELIGIBILITY, SELECTING THE CAPITAL JURY, AND THE FEDERAL AND MILITARY DEATH PENALTY

Monday, June 8, 2015

Assigned reading: Casebook, pp. 256-68, 285-300, 304-316, 325-34, 339, 343-51, 358-63, 367-73, 947, 964-75, 1010-23; Cruel and Unusual, pp. 97-161

Topics: Eighth Amendment and felony murder; juvenile offenders; insanity; criminal defendants with intellectual disabilities, including mental retardation; death-qualification; jury selection in capital cases; federal and military death penalty statutes

CLASS FIVE: RACE, GENDER, INTERNATIONAL LAW, AND THE DEATH PENALTY

Wednesday, June 10, 2015

Assigned reading: Casebook, pp. 185-217, 219-235, 239-40, 277-83, 1025-1032, 1037-42, 1048-51, 1070-72, 1081-96; Cruel and Unusual, pp. 162-221
Topics: International law restrictions on capital punishment; extradition issues; race and gender; the “death row phenomenon”; the U.S. Supreme Court’s decision in Medellin v. Texas

CLASS SIX: HABEAS CORPUS, INNOCENCE CLAIMS, CAPITAL SENTENCING, VICTIM IMPACT EVIDENCE, AND “AGGRAVATING”/“MITIGATING” FACTORS

Monday, June 15, 2015


Topics: Habeas corpus; death penalty statutes; the Antiterrorism and Effective Death Penalty Act of 1996; exhaustion of state remedies; procedural bars; innocence claims; sentencing phase of capital trials; victim impact evidence; expert witnesses

CLASS SEVEN: ASSISTANCE OF COUNSEL, THE ROLE AND RESPONSIBILITIES OF LAWYERS IN DEATH PENALTY CASES

Wednesday, June 17, 2015


***FIRST DRAFTS OF PAPERS DUE ON JUNE 17, 2015. AN INDIVIDUAL MEETING WITH EACH STUDENT WILL BE SCHEDULED AFTER REVIEW OF EACH FIRST DRAFT.***
CLASS EIGHT: THE DEATH PENALTY DEBATE; EXECUTIVE CLEMENCY

Monday, June 22, 2015:

Assigned reading: Casebook, pp. 7-40, 45-62, 933-40; Cruel and Unusual, pp. 339-48

Topics: The death penalty as public policy; deterrence vs. brutalization; retribution; public vs. private executions; executive clemency

CLASS NINE (Wednesday, June 24, 2015): STUDENTS PRESENT PAPERS

CLASS TEN (Monday, June 29, 2015): STUDENTS PRESENT PAPERS

CLASS ELEVEN (Wednesday, July 1, 2015): STUDENTS PRESENT PAPERS

CLASS TWELVE (Monday, July 6, 2015): STUDENTS PRESENT PAPERS

DEADLINE FOR FINAL PAPER: FINAL VERSION OF PUBLISHABLE-QUALITY PAPER DUE NO LATER THAN WEDNESDAY, JULY 8, 2015. FINAL PAPERS SHOULD BE SENT TO JBESSLER@UBALT.EDU.