TEXAS SOUTHERN UNIVERSITY

Course Name Death Penalty Seminar	Course 830		Term and Year: Spring 2021
CRN			
Class Time	Tuesday, 3:00 pm - 4:40pm		
Class Location	Room #210		
Professor	Ana M. Otero		
Office Hours	Tuesday 11:00 am - 1:00 pm and 1:00 -3:00; Thursday – 11:00- 1:00 pm. Additionally, I will be available for Zoom meetings.		
Professor Email	ana.otero@tmslaw.tsu.edu	Phone	713.313.1025 Please contact me via email
Preferred Methods of Contact	Email /TWEN		
Blackboard Help	For Blackboard troubleshoots, contact TSU OIT department.		

Course Description	
Course Purpose	At least one report on capital punishment has stated the public policy objectives underlying the death penalty to be as follows: 1) to punish particularly heinous and shocking crimes; 2) to incapacitate persons with a demonstrated propensity to murder again; to meaningfully punish persons serving a life sentence; and 4) to disburse the most serious punishment in circumstances of paramount state interest, such as in the case of murder of law enforcement. *(See Report on the Governor's Commission on Capital Punishment, April 2002,* http://www.idoc.state.il.us/ccp/ccp/reports/commission_report/preamble.pdf). This course examines the specific legal issues inherent in capital punishment within the general area of criminal law and procedure. There will be extensive coverage of both substantive and procedural law. Specifically, the course will cover landmark U.S. Supreme Court cases, and examine the Court's interpretation and application of the Constitution, particularly the Eighth Amendment, to regulate the use of capital punishment in the United States. As the Court's interpretation raises interrelated questions of substance and process, the course will also explore philosophical questions and consider the impact of many factors such as racism, poverty, and shoddy lawyering on capital punishment. In addition, the course will examine many aspects of death penalty litigation such as jury selection, the role of the prosecutor, defendant and defense counsel, the penalty hearing, and the process of habeas corpus. It is my goal in this class to create an atmosphere conducive to critical thinking, rather than to provide a forum for unenlightened beliefs or the expression of rhetorical dramaturgy. The course will explore all aspects of the death penalty and will encourage your full participation and the sharing of your views and ideas. It is critical to this class that you pay close attention to current events dealing with this area. I believe that real learning comes from what happens in the real world. The purpose of the classroom is to

	focus on key issues, to assist in the synthesis of knowledge, to engage in constructive criticism, and to interject material not found in the reading assignments. I encourage everyone during the period of this class to be acutely aware of any relevant news, and to share relevant articles, reports, international news, or internet material. **The importance of this syllabus:** Beyond ground rules, my contact information, reading assignments, office hours, and grading, this syllabus contains particular items that constitute an integral part of the course. These items include the objective of the course, student learning outcomes, specific competencies, and probing questions on all assigned material. It is your responsibility to read these items carefully every week. This syllabus is a teaching tool, and you should use it in planning your reading and ensuring that you are well prepared for class. You should use this syllabus: ➢ to glean class policies, ground rules, and contact information; ➢ to understand my expectations; ➢ as a roadmap for your studies and to prepare for the class; ➢ to self-reflect about your understanding and knowledge of the legal principles and governing rules.
Learning Objectives	As a survey of issues involving the death penalty, this course seeks to: 1. provide information about the application of the death penalty in the U.S.; 2. assist in developing an informed position on capital punishment; 3. enhance critical thinking, writing, and other communication skills; 4. facilitate critical consumption of published research; 5. stimulate intellectual curiosity not only about crime, criminals, and the criminal justice system, but about the world around you; 6. produce a better understanding of society via the study of capital punishment.
Material	
Assigned Readings	No casebook is required. Cases will be assigned per individual topics. Cases will be sent via TWEN. Additional materials will be provided for class discussion.

Grading	
The final letter grade is based on the following.	
Term paper	70%
Quizzes	10%
Final Exam (Cumulative)	15%
Participation Points	5%

Term Paper

For the requirements of the term paper, please review the handout that I have disseminated. This handout explains the format and contents of the drafts of the seminar paper, as well as pertinent deadlines. There will be at least three one-on-one conversations with Professor Otero regarding the progress of the paper. Students will be required to present their work-in-progress to the full class.

Quizzes
Quizzes are composed of multiple choice and true/false questions. Most of the quizzes will be open-book, meaning you may use all the materials provided in this class, including your casebook. That said, because these quizzes are time-sensitive, they require you to be fully familiar with handouts and cases so that you can answer most of the questions unaided by your materials. All quizzes will be **averaged** to calculate the 10% of the class.

Final Exam
The final exam is cumulative and may include a take-home essay. The in-class portion of the exam is composed of 100 multiple choice questions. You may use all your materials, **EXCEPT** your case book, including any materials, summaries, briefs, or charts that you have prepared for this class. Thus, I would suggest –strongly suggest – that you make a brief chart of all the cases to allow you to remember key facts, issues, and holdings.

Participation points
Participation points are earned through the recital of assigned cases, as well as your class participation. Also, there will be a number of in-class essays that will count towards these points.

It is my goal in this class to awaken your mind so that it becomes keen and inquiring; to give you an opportunity to become not just a good legal writer, but a skillful writer. Like any other craft, legal writing requires practice, love, and attention. Perfecting this craft is a life-long pursuit, but it is my hope that through various exercises we will do in this class, you will begin the process.

Course Outline	
Overview / Course Responsibilities	All announcements will be sent through TWEN. Checking your email is an integral part of this class, and it's my key method of communication. Please act accordingly.

Reading Assignments

"It is tempting to pretend that [those] on death row share a fate in no way connected to our own, that our treatment of them sounds no echoes beyond the chambers in which they die. Such an illusion is ultimately corrosive, for the reverberations of injustice are not so easily confined…[T]he way in which we choose those who will die reveals the depth of moral commitment among the living." McCleskey v. Kemp, Justice Brennan, dissenting.

Week 1
January 10

Introduction to the death penalty.

- Diagnostic questions:
- What crimes are death eligible?
- Do all states have a death penalty?
- Are all states' death penalty statutes implemented uniformly?

Understanding legal terminology pertinent to criminal procedure. Review handout.

- Discuss Term paper requirements.

Week 2
January 17

Understanding criminal litigation: from criminal charge to post-conviction remedies. Presentation via PPT.

Week 3
January 24

Overview of the death penalty: Nationwide and Texas. Presentation via PPT.

- Fact Sheet of the Death Penalty Information Center

Assigned Reading: ***Furman v. Georgia***

Focus questions- *Furman v. Georgia*.

1. What year was Furman decided?
2. Who was on the bench?
3. How many cases were heard by the court in Furman?
4. Was there a majority opinion in Furman?
5. What is the impact of the Court's plurality opinion on subsequent cases?
6. Certiorari was granted limited to what issue?
7. What were the key points made by Douglas?
8. What is Douglas's interpretation of cruel and unusual punishment?
9. Why did Douglas opine that the discretionary statutes were unconstitutional?
10. Would Douglas have held the death penalty to be unconstitutional?

Justice Brennan

11. Brennan made a number of good points about the death penalty. Please summarize and explain each briefly.
12. Would Brennan have held the death penalty to be unconstitutional?

Justice Stewart

13. Why does he say that the penalty of death differs from all others?
14. Does he believe that retribution is a constitutionally permissible ingredient? Explain.
15. Why does he believe that the death penalty is being imposed by the different states in a wanton and freakish manner?

Justice White

16. What narrow question did White address?
17. What key points did he make?

Justice Marshall

18. What is the most important principle in analyzing cruel and unusual punishment?
19. According to Marshall, under what circumstances is punishment deemed cruel and unusual. Hint: he pointed to four factors.
20. Explain briefly the six purposes capital punishment serves? Make sure to first list the six, and then explain each.
21. What was Marshall's conclusion?

Dissenters

Justice Burger

22. Why does he take issue with the majority's interpretation of the 8th Amendment?
23. What is his belief as to why the 8th Amendment was included in the Bill of Rights? What was it designed to accomplish?
24. Why does he believe McGautha should be regarded as stare decisis?
25. Explain his issue with strapping jurors with standards?

Justice Blackmun

26 Justice Blackmun makes a very pointed and emotionally charged statement?
27. Despite his antipathy for the death penalty, why does Justice Blackmun believe that the decision does not make "judicial expedient."

Justice Powell

28. What key points were made by Powell regarding the court's decision?
29. What crucial principles does he believe the opinion "brushes aside" and disregards?
30. Why does he believe the majority's ruling encroach upon the legislative branch?
31. Justice Powell discusses in great detail the "indicia of contemporary standards of decency" upon which the majority relies.

Justice Rehnquist

Remember that Justice Rehnquist has just joined the bench. He was not present in McGautha. Here, he takes a very strong view of things, which sets the tone for his future opinions.

32. What exactly does he say about the role of judicial review, and the impact of Furman on that concept?

Note: When you read these U.S. Supreme Court cases, always identify the procedural history: What happened after the trial court? What happened on appeal? What was the ruling of the highest court of the state?

Week 4 - January 31

Assigned Reading: ***Gregg v. Georgia***

Focus questions:

1. What year was *Gregg* decided?
2. Who was on the bench?
3. What are the facts in *Gregg*?
4. What was *Gregg* charged with?
5. Was the trial bifurcated?
6. What happened at the penalty stage of the trial?
7. What were the aggravating circumstances that the jury had to find?
8. Was *Gregg* sentenced to death?
9. On appeal, what was the ruling of the Supreme Court of Georgia?

10. The *Gregg* opinion painstakingly explains the death penalty scheme in Georgia, detailing all its procedures, including what Georgia considers appellate safety net. Briefly explain the death penalty statute in Georgia.
11. What was the first issued reviewed by the Supreme Court?
12. Justice Stewart reviewed the history of the 8th Amendment. Briefly summarize the points he made.
13. What arguments did Justice Stewart make regarding legislative judgment?

- Note: Keep in mind that throughout these cases, the justices express their concerns with what they view as a conflict between judicial and legislative power.

14. What was the second question reviewed by the Court?
15. Briefly summarize the points made by the Court.
16. According to this case, what two principal social purposes does the death penalty serve?
17. Did the Court agree with the judgment of the Georgia legislature that capital punishment may be necessary in some cases?
18. On pages 85-92, the Court considers whether Georgia may impose the death penalty on the petitioner in this case. Briefly summarize the points made by the Court. They are divided as follows: guidelines for jury sentencing; constitutionality of Georgia's statute; and, safety nets.
19. Petitioner argued that the changes made in Georgia were cosmetic and argued that endemic problems remained. What were the problems Gregg pointed out?

The Requirement of an Individualized Penalty Determination

The following case develops the second theme of the seminal cases: the principle, derived from Woodson and Roberts, that a death penalty scheme must permit the defendant to introduce, and must require the factfinder to consider relevant mitigating evidence. The principal question raised in this case is whether there should be such a constitutional requirement. Unlike the Furman requirement that a scheme limit the risk of arbitrariness, the requirement of an individualized penalty determination never has commanded unanimous support on the Court. In *Lockett,* the state statute required the imposition of a death sentence unless the judge found one of three listed mitigating factors.

Assigned Reading: ***Lockett v. Ohio***

Focus questions:

1. What are the facts of the case?
2. What was Locket charged with?
3. What offers did the prosecutor make?
4. What was the jury's verdict?
5. What is the issue posed the U.S. Supreme Court?
6. What did the Ohio statute require for the penalty hearing?
7. What did the judge request during the sentencing hearing?
8. What was Lockett's sentence?
9. What does the opinion state regarding the plurality in Furman?

10. Explain the reasoning of the Supreme Court in reversing the opinion.
11. Are there other grounds on which the Court could have overturned the death sentence?
12. What does the Court's use of the term "independent mitigating weight" with regard to the defendant's character, record, and the circumstances mean?

 *"It's been 40 Years Since the Supreme Court Fixed the Death Penalty: Here's How it Failed,"* Evan J. Mandery.

Arbitrariness

The high service rendered by the 'cruel and unusual' punishment clause of the Eighth Amendment is to require legislatures to write penal laws that are evenhanded, nonselective, and nonarbitrary, and to require judges to see to it that general laws are not applied sparsely, selectively, and spottily to unpopular groups." Justice William Douglas, concurring, *Furman v. Georgia*

Overview
A punishment that is administered in an arbitrary way — that is, imposed on some individuals but not on others, with no valid justification for the difference — is unconstitutionally cruel, just as an excessively harsh punishment is cruel. Arbitrary punishments also open the door to racial and other discrimination: if the sentencing authority has inadequate guidelines, prejudice can lead to harsher penalties for disfavored minorities.

If speeders who drove yellow cars were consistently ticketed but speeders who drove other colored cars were not, the application of the speeding law would be considered unfair, even if there were no mention of a car's color in the law. In a death penalty system in which less than 2% of known murderers are sentenced to death, fairness requires that those few who are so sentenced should be guilty of the most horrific crimes or have worse criminal records than those who are not. A system in which the likelihood of a death sentence depends more on the race of the victim or the county in which the crime was committed, rather than on the severity of the offense, is also arbitrary.

The Supreme Court struck down all death penalty laws in 1972 because their application was arbitrary. In 1976, constitutional guidelines were instituted in an attempt to prevent such capriciousness in the future.

At Issue
More than forty years of evidence strongly suggests that the Court's guidelines have been ineffective. Irrelevant factors such as race, poverty, and geography still seem to determine who is sentenced to death. Short of applying the death penalty in all murder cases (a path condemned by the Supreme Court), it may be impossible to devise rules that clearly delineate which crimes and which defendants merit death and that juries and judges are able to consistently apply.

(Borrowed directly from https://deathpenaltyinfo.org/policy-issues/arbitrariness).

Week 5

February 7 **Categorical bans on the death penalty**

Capital defendants with intellectual disability or mental illness. PPT presentation.

Mental Illness - Overview

The U.S. Supreme Court has said a defendant's mental illness makes him or her less morally culpability and must be taken into consideration as an important reason to spare his or her life. However, as was initially the case with intellectual disability and young age, the Court has not barred the death penalty for those with serious mental illness. When the Court prohibited the death penalty for the intellectually disabled and for juveniles, it found that they were members of identifiable groups who have diminished responsibility for their actions and hence should not be considered the worst and most culpable defendants. Many mental health experts believe that people with severe mental illness such as schizophrenia and bipolar disorder may have similar cognitive impairments that interfere with their decision-making. The American Psychiatric Association and the American Bar Association, among others, have called for a ban on the death penalty for those with severe mental illness.

Some defendants are so mentally ill as to lack all understanding of their crime and its consequences and may be considered mentally incompetent. Such individuals may be unfit to stand trial or be found not guilty by reason of insanity. If they are convicted and become incompetent while on death row, they cannot be executed, under earlier Supreme Court precedent. However, most people with mental illness — including many with severe mental illness — are not mentally incompetent.

Mental health issues have broad impact in death-penalty cases. One in ten prisoners executed in the United States are "volunteers" — defendants or prisoners who have waived key trial or appeal rights to facilitate their execution. Mental illness also affects defendants' decisions to represent themselves, their ability to work with counsel, and jury's perceptions of their motives and whether they pose a future danger to society if they are sentenced to life in prison.

At Issue

There are at least three hurdles to excluding the severely mentally ill:

1. Unlike age and intellectual ability, it is difficult to define the class of mentally ill defendants who should be exempted and to determine whether their illness affected their judgment when they offended.
2. States have so far been reluctant to adopt such bans, though society continues to evolve in terms of its understanding of mental illness.
3. The membership of the Supreme Court has shifted since some of the earlier exemptions were decided. Nevertheless, the prior decisions could serve as important precedents, capable of being extended to the mentally ill.

(Borrowed directly from DPIC https://deathpenaltyinfo.org/policy-issues/mental-illness)

Assigned case: ***Ford v. Wainwright***

Focus questions:

1. What were the facts in the case?
2. What happened in the trial court?
3. What was the verdict?
4. What was the issue on appeal?
5. What findings were made by the various justices?
6. What is the holding in the case?

- **The case of Scott Panetti. Video.**

Week 6

February 14 

Intellectual disability - Overview

While stopping short of abolishing the death penalty, the U.S. Supreme Court has taken measures to limit its applicability so that it is used primarily in cases where the defendant had the most culpability. People with intellectual disability are not in that group. Occasionally, states, too, determined that the death penalty could be too harsh as applied to some defendants, and many passed laws exempting people with limited intellectual ability from the death penalty.
The mental health community has provided clear criteria for a finding of intellectual disability: significant limitation in intellectual ability and adaptive behavior, manifesting itself prior to the age of 18.

Although the question of a national ban on the use of capital punishment for those with intellectual disability was rejected by the Supreme Court in 1989 because so few states had taken action on their own, the issue re-emerged in 2002 with a new consensus. Thirty states had either ended the use of the death penalty entirely, or at least for those with intellectual disabilities. In *Atkins v. Virginia*, the Court held that the nation's standards of decency had evolved to the point where no such executions should occur. It also concluded that there was little if any deterrent or retributive effect from executing such defendants.

At Issue
The *Atkins* case was a seminal moment in the history of the death penalty, not only because it spared the lives of a vulnerable class of defendants, but it also provided a blueprint for achieving other limitations on the practice, or even for eliminating it altogether. Even after the Court's decision in 2002, some states continued to use arcane practices in the determination of intellectual disability, so further supervision has been required.

(https://deathpenaltyinfo.org/policy-issues/intellectual-disability).

 **Assigned reading:**

- ***Atkins v. Virginia***
- ***Hall v. Florida***

Focus questions: *Atkins*:

1. Who is on the bench?
2. Briefly, what are the facts?
3. What is the procedural history?
4. What was the essence of Justices Hassell and Koontz, the dissenters in the Supreme Court of Virginia? What did Atkins argue to that court?
5. What is the issue posed to the U.S. Supreme Court?
6. Why does the Court begin with Trop v. Dulles?
7. According to the Court, what does the judgment of the legislature reveal? What does the Court mean by "it is not so much the number of these States that is significant, but the consistency of the direction of change."
8. Who is Jerome Bowden, and why does the Court discuss his case?

9. Explain what specific points the Court made about the culpability of mentally retarded offenders?
10. In light of the differences stated in the opinion, what two reasons consistent, with the legislative consensus did it state that indicates that the mentally retarded should be excluded from execution?
11. Please explain the court's reasoning regarding these two reasons.
12. Ultimately, what did the Court decide?

Dissenting opinions:

13. Who dissented?
14. Please read the dissenting opinion carefully. Justice Scalia expresses some very strong views regarding the majority's decision. Summarize these points. For example, how does he refute the "consensus" referenced by the majority?
    How does he say the majority attempts to "bolster its embarrassingly feeble evidence of "consensus"?
15. The Court in *Atkins* leaves to the states "*the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences."* How has this affected states' decisions on whether to execute the mentally retarded?

Focus questions: *Hall v. Florida*

1. Who was on the bench?
2. What is the issue posed to the Supreme Court?
3. Briefly, what are the facts?
4. What is the procedural history?
5. Describe the Florida statute, and explain why the Court found it disregarded medical practice. In what ways does the statute disregard medical practice?
6. What other considerations did the statute bar?
7. Did the Florida statute comply with Atkins's mandate?
8. What arguments did the dissenters made?

The case of Booby Moore: Presentation by Professor Otero

Week 7
February 21

<u>Categorical bans on the death penalty</u>.

Assigned Readings:

- ***Coker v. Georgia***
- ***Kennedy v. Louisiana***

As you read Coker – the case that abolished the death penalty for the rape of an adult woman, consider how many women sat on the bench at this time? Coker is decided shortly after the Supreme Court's decision in Gregg. The Supreme Court here continues to struggle with whether to uphold the death penalty for a non-murder case.

Focus questions:

1. Who is on the bench?
2. Briefly, what are the facts?
3. What did Georgia's statute provide regarding rape?
4. What was *Coker* charged with?
5. What is the procedural history?
6. What is the issue posed to the Supreme Court?
7. What was the ruling of the court? Is death an appropriate punishment for the crime of rape on an adult woman?
8. Please expand on some of the key points the Court made in its reasoning.
9. At the time of the decision were all the states' statutes unanimous regarding the punishment of death as a suitable penalty for raping an adult woman?
10. The court reviewed factual statistics regarding the review of rape cases since 1973. What did the Court conclude?
11. Please read the paragraph under IV. What does the Court mean by this statement?
12. What points did the Court make regarding the seriousness of rape? Would these statements have been tapered by the presence of a woman on the Court? Rape is primarily a crime of violence against women. Are men capable of fully understanding its emotional impact? Notice what the opinion states: "*The murderer kills; the rapist, of no more than that, does not. Life is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair."*
    Do you think all rape victims would agree with this assessment?
13. The court struggles with the punishment of rape: *"But even where the killing is deliberate, it is not punishable by death absent proof of aggravating circumstances. It is difficult to accept the notion, and we do not, that the rapist, with or without aggravating circumstances, should be punished more heavily than the deliberate killer as long as the rapist does not himself take the life of his victim."*

A year later, in 1978, the Court struggled with the death sentence of Sandra Lockett who also had not committed deliberate murder, and for different reasons (the lack of meaningful mitigation evidence) struck down the death sentence. But consider the felony rule, which allows the death sentence to be imposed on someone like Lockett who did not commit murder.

14. Do you agree with the *Coker* decision?

Focus questions – *Kennedy*:

1. Who was on the bench?
2. What is the issue posed to the Supreme Court?
3. Briefly, what are the facts?
4. What is the procedural history?
5. Please summarize the points made by the Court on pp. 292-296 regarding Eighth Amendment jurisprudence and principles derived from the amendment as applicable to capital punishment.
6. The Court alludes to the "evolving standards of decency which must embrace express respect for the dignity of the person, and the punishment of criminals. Citing to Roper (quoting Atkins), the Court explains that capital punishment must "be limited to those offenders who commit a 'narrow category of the most serious

crimes and whose extreme culpability makes them 'the most deserving of execution.'" How does this principle apply in *Roper, Atkins, Coker, and Kennedy*?

7. Here, as in *Coker*, the Court summarized the history of rape statutes. What are its findings?
8. Why does the Court hold that the death penalty is not commensurate for the rape of a child?
9. The Court makes a distinction between intentional first-degree murder on the one hand, and nonhomicide crimes against individual persons, even including child rape, on the other. We saw the same language in Coker, but how can we reconcile the distinction between intentional first-degree murders and cases like *Lockett* and *Tison*, where the defendants lacked the intention to kill, and did not kill.
10. Does the death penalty balance the wrong to the victim?
11. In a lengthy dissent, Justices Alito, Thomas, and Scalia make potent arguments against the majority's opinion. Please summarize the key points made by the dissenters.

Week 8

February 28

<u>Juvenile Death Penalty</u>

Children are not as culpable as adults for their actions. In the death penalty context, that principle has caused debate about what age is too young for someone to be subject to execution. International human rights law has long prohibited the use of the death penalty against people who were younger than age 18 at the time of the offense. In 2005, the U.S. Supreme Court brought the U.S. into compliance with that international norm, ruling that the U.S. Constitution also protects people from being sentenced to death for crimes committed when they were under 18. (Roper v. Simmons)

The Court had earlier (1987) held that the proper cutoff should be the age of 16, but states gradually applied more stringent standards to avoid conflict with other areas of the law where children were treated differently. By 2005, thirty states had either abolished the death penalty for all offenders or at least for those under the age of 18. As with its earlier ruling exempting defendants with intellectual disabilities, the Court found that a national consensus had formed around excluding those under 18, and that there was little to be gained in terms of deterrence or retribution by executing younger offenders. Some Justices pointed to the fact that the U.S. was virtually alone in the world in allowing juvenile offenders to be executed. The emerging science of brain development also contributed to this decision.

Before 2002, the federal constitutionality of the American juvenile death penalty was a reasonably well-settled issue. In *Thompson v. Oklahoma*, 487 U.S. 815 (1988), the United States Supreme Court held that imposing the death penalty for murders committed by a person who was younger than age 16 at the time of the offense constituted cruel and unusual punishment, in violation of the Eighth Amendment to the United States Constitution.

The next year, in 5-4 votes in the consolidated cases of *Wilkins v. Missouri* and *Stanford v. Kentucky*, 492 U.S. 361 (1989), the Court held that the Eighth Amendment does not prohibit the death penalty for murders committed at ages 16 or 17, respectively. Two state supreme courts subsequently interpreted their own state constitutions as setting higher minimum age requirements for imposing the death penalty. Using this state constitutional approach, the Washington Supreme Court set the minimum age at 18 (*State v. Furman*, 858 P.2d 1092 (Wash. 1993)), and the Florida Supreme Court

set the minimum age at 17 (*Brennan v. State*, 754 So.2d 1 (Fla., 1999)).

In *Atkins v. Virginia*, 536 U.S. 304 (2002), the United States Supreme Court held that the United States Constitution prohibits the death penalty for mentally retarded offenders (now referred to as intellectually disabled), based upon reasoning closely analogous to the Court's reasoning concerning juvenile offenders.

In *In re Stanford*, 537 U.S. 968 (2002), the United States Supreme Court decided not to reconsider the issue, over a strong dissent by Justice Stevens (joined by Justices Breyer, Ginsburg, and Souter). These four Justices not only wanted to revisit the juvenile death penalty issue but were ready to "put an end to this shameful practice" by declaring it unconstitutional. On December 8, 2003, the Kentucky Governor granted clemency to Kevin Stanford, changing his death sentence to life in prison without parole.

One year later, in *Simmons v. Roper*, 112 S.W.3d 397 (Mo. 2003), the Supreme Court of Missouri interpreted contemporary national data and held that the death penalty for juvenile offenders violates the United States Constitution's prohibition against Cruel and Unusual Punishment, but it did not reach the issue under the Missouri State Constitution. On January 26, 2004, the United States Supreme Court granted certiorari (540 U.S. 1160), agreeing to hear the Simmons case, now styled as *Roper v. Simmons*. The U.S. Supreme Court (5-4) upheld the Missouri Supreme Court and banned the death penalty for juvenile offenders, *Roper v. Simmons*, 543 U.S. 551 (2005).

(Borrowed directly from https://deathpenaltyinfo.org/policy-issues/juveniles/prior-to-roper-v-simmons).


Introduction to landmark Supreme Court decisions and key facts. PPT presentation.


Assigned cases:

- ***Roper v. Simmons***
- ***Miller v. Alabama***

Focus questions: *Roper*

1. Who was on the bench?
2. What is the issue posed to the Supreme Court?
3. Briefly, what are the facts?
4. What is the procedural history?
5. As in Atkins, the Court here also referenced "evidence of national consensus." What exactly did it say about that?
6. Why does the Court cite to Stanford?
7. Pursuant to the Court, what was the change from Penry to Atkins?
8. According to this case, what are the three differences between juveniles under 18 and adults? Please be prepared to discuss each of these differences.
9. Does Stanford v. Kentucky control after Roper?
10. Upon what "stark reality" does the judgment of the Court find confirmation?
11. Ultimately, what is the ruling of the Court?
12. Please summarize the arguments of the dissenters.

Focus questions: ***Miller v. Alabama***

1. What are the facts in the case?
2. Who is on the bench?
3. What is the question posed to the U.S. Supreme Court.
4. What arguments did the State make?
5. What arguments did the petitioner make?
6. According to the opinion, what did Roper and Graham emphasize?
7. What was the Court's holding?
8. What arguments did the dissenters make?

Week 9

March 7

The Defendant and Defense Counsel

The quality of representation a defendant receives in a capital case can make the difference between life and death. Almost all defendants cannot afford to pay for a lawyer, and states differ widely on the standards—if any—for death penalty representation. Accounts of lawyers sleeping or drinking alcohol during the trial, lawyers with racial bias toward their client, lawyers who conduct no investigation or fail to obtain necessary experts, or lawyers simply having no experience with capital cases have been rampant throughout the history of the death penalty.

The right to an attorney is a hallmark of the American judicial system. It is essential that the lawyer be experienced in capital cases, be adequately compensated, and have access to the resources needed to fulfill his or her obligations to the client and the court.
As abuses in the system have been exposed, most states have raised the standards for representation. However, most death-penalty states do not have statewide capital defense organizations, and many counties who are responsible for assigning and compensating lawyers have small budgets and cannot afford the kind of representation a capital case requires.

At Issue
Despite the poor quality of representation in many capital cases, courts have often upheld the convictions and death sentences imposed because of low expectations and the belief that better representation would not have made a difference in the case. Where higher quality counsel and adequate resources have been provided, death sentences have declined dramatically.

(Borrowed directly from https://deathpenaltyinfo.org/policy-issues/death-penalty-representation).

Consider the following questions from Rivkind and Shatz, Death Penalty casebook:

"The roles of the defendant and defense counsel in a capital case raise compelling legal, and at times complicated ethical, issues. When a person's life is at stake who controls the key decisions – the defendant or the lawyer? Should a defendant be permitted to become a "volunteer" for execution by pleading guilty, refusing to present a defense or waiving appeal. Should the court allow an incompetent defendant to represent himself over "appointed" counsel's objection? The questions point to a tension between a defendant's right to autonomy and control of his or her fate and the interest of the state in reliable death judgments. Given the tremendous responsibility of representing a defendant in a capital case, what should be the standards for defense counsel and what bearing do they have on Furman's goal of reducing the risk of arbitrary and capricious death sentence?"

The crisis in the quality of defense representation in capital cases is a central part of the current debate over the death penalty in the United States. In some states, capital defendants, by and large, receive fairly good legal assistance, while in many other states they generally receive mediocre or abysmal representations. Horror stories abound. For a collection of examples of incompetent representation, see S. Bright, *Counsel for the Poor: The Death Sentence not for the Worst Crime but for the Worst Lawyer*, 103 Yale L.J. 1835 (1994).

Also, consider reading some of the publications of the Texas Defender Service available at http://texasdefender.org/tds-publications/. In particular, read *Lethal Indifference: The Fatal Combination of Incompetent Attorneys and Unaccountable Courts.*

Assigned cases:

- ***Strickland v. Washington***
- ***Andrus v. Texas***

Focus questions: *Strickland*:

1. What were the facts in Strickland?
2. What was Strickland charged with?
3. What is a plea colloquy?
4. What is a unique feature of the death penalty statute of Florida?
5. What did the defense counsel present in the penalty phase of the trial?
6. With respect to mitigating circumstances, what findings did the trial judge make?
7. What duties of defense counsel does the opinion outline?
8. What pivotal two-prong test did the Court enunciate?

Focus questions: *Andrus v. Texas*

1. What are the facts of the case?
2. What are the facts of Andrus's childhood?
3. What happened at trial?
4. How was Andrus's attorney ineffective?
5. What was the ruling of the Court?
6. What was the reasoning of the Court?
7. What argument did the dissenters make?

➢ **Here's an excerpt from the Innocence Project in Louisiana: Bad lawyering**

Errors, negligence and deliberate misconduct by prosecutors and criminal defense lawyers are the most pervasive cause of wrongful convictions in Louisiana. Bad lawyering caused, at least in part, 77% of the convictions of Louisiana and Mississippi exonerees.

Many of IPNO's clients were represented either by incompetent and unprofessional lawyers or by overworked and under-resourced public defenders. In many cases, the lawyers represented a client at trial without investigating the State's case or preparing a defense. Often defense lawyers have failed in the most basic of investigation tasks—interviewing alibi witnesses. The behavior of some has verged on criminally reckless, such as the public defender who arrived in court drunk in 1995 to represent Dan Bright, a man who was facing the death penalty for first degree murder. Unsurprisingly, his drunk lawyer failed to save his client from the death penalty in spite of the fact

that Dan was completely innocent. Dan was exonerated in 2004 after spending nine years in prison (including four on death row).

Real life stories such as Dan's serve as a reminder that well-funded and properly-trained defense lawyers are one of the best protections against wrongful convictions.

On the other side, prosecutors also cause wrongful convictions by a variety of misconduct. They too often—either deliberately or inadvertently—withhold key evidence from the defense, they pursue charges in cases where evidence is flimsy or objective evidence suggests the defendant is not guilty and they inject inadmissible and irrelevant evidence into trials. Blatant and deliberate prosecutorial misconduct nearly killed John Thompson. John sat on Louisiana's death row for 14 years before investigators found microfilm containing the results of blood type tests that excluded him as being the perpetrator of one of the two crimes he was convicted of. John had been convicted of armed robbery before his murder conviction and prosecutors successfully used that conviction against him at the penalty phase of his capital murder trial to get a death sentence. The blood typing excluded John as the perpetrator of the armed robbery and so, when the reports were discovered (a few weeks from John's scheduled execution), that conviction was vacated, the armed robbery case dismissed and his death sentence reduced to a life sentence. Prosecutors had hidden that evidence since before his trial. They had also hidden police reports on the murder case that contained eyewitness accounts describing a perpetrator who physically could not have been John Thompson, as well as information regarding financial rewards that the main witness expected to get for testifying against John. His murder conviction was later reversed and, at a new trial in 2003, a jury heard all the evidence that prosecutors had hidden at the first trial and took only 35 minutes to acquit him.

The site includes the names of thirty exonerees from Louisiana and Mississippi who were convicted, at least in part, by bad lawyering. http://ip-no.org/bad-lawyering

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❖ **SPRING BREAK – MARCH 13-17**

Week 10

March 21

Official Misconduct

A new report by the National Registry of Exonerations has found that police or prosecutorial misconduct is rampant in death-row exoneration cases and occurs even more frequently when the wrongfully death-sentenced exoneree is Black.

The report, *Government Misconduct and Convicting the Innocent*, released September 15, 2020, examined the factors contributing to 2,400 exonerations since 1989. It found that misconduct was present in more than half of all exonerations and nearly three-quarters of death-penalty cases, and misconduct tended to increase in frequency as the crimes charged became more severe. The Registry found misconduct in 54% of all exonerations, rising to 72% in cases in which exonerees had been sentenced to death.

The Registry also found that government misconduct was more likely to occur in cases involving Black defendants, particularly in drug or murder cases. Overall, 57% of Black exonerees and 52% of white exonerees were victims of police or prosecutorial misconduct, but, the report found, "this gap is much larger among exonerations for murder (78% to 64%)—especially those with death sentences (87% to 68%)." The rate at which misconduct occurred was lower, in general, for drug crimes, but the racial disparity was much greater (47% for Black exonerees, versus 22% for white exonerees).

The study classified misconduct into five main categories: witness tampering, misconduct in interrogations, fabricating evidence, concealing exculpatory evidence, and misconduct at trial. Police misconduct occurred in 35% of cases, while prosecutors committed misconduct in 30% of the exonerations. Police "were responsible for most of the witness tampering, misconduct in interrogation, and fabricating evidence—and a great deal of concealing exculpatory evidence and perjury at trial," the report said. "Prosecutors were responsible for most of the concealing of exculpatory evidence and misconduct at trial, and a substantial amount of witness tampering."

Samuel Gross, the lead editor of the report, said the report understates the problem of official misconduct. "The great majority of wrongful convictions are never discovered, so the scope of the problem is much greater than these numbers show," he said. The problem is exacerbated, the report suggested, by the systemic failure to hold wrongdoers accountable. Joel Feinman, the chief public defender in Pima County, Ariz., commented that "I've never heard of any prosecutor being arrested for misconduct, and almost no prosecutors are fired or disbarred for misconduct."

(Borrowed directly from DPIC https://deathpenaltyinfo.org/news/report-finds-rampant-government-misconduct-in-death-row-exonerations-especially-in-cases-with-black-defendants.)

 **Assigned case:**

- **Kyles v. Whitley**

Focus questions: *Kyles*

1. Who is on the bench?
2. What are the facts of the case?
6. What evidence was gathered by the New Orleans police department?
7. Who was Beany, and how was he involved in Kyles's case?
8. What evidence did Beany supply to the police?
9. What motion did Kyle's attorney file before trial?
10. What happened during the trial? How many times was he tried? Why?
11. What is exculpatory evidence? Why does the Court discuss Brady?
11. Why does the court discuss Bagley? What are the four aspects of Bagley?
12. What was the Court's ruling?

- Assigned pages from the National Registry of Exonerations' report "*Government Misconduct and Convicting the Innocent."*

Week 11
March 28

Race and the death penalty

The death penalty has long come under scrutiny for being racially biased. Earlier in the twentieth century when it was applied for the crime of rape, 89 percent of the executions involved black defendants, most for the rape of a white woman. In the modern era, when executions have been carried out exclusively for murder, 75 percent of the cases involve the murder of white victims, even though blacks and whites are about equally likely to be victims of murder.

A bias towards white-victim cases has been found in almost all of the sophisticated studies exploring this area over many years. These studies typically control for other variables in the cases studied, such as the number of victims or the brutality of the crime, and still found that defendants were more likely to be sentenced to death if they killed a white person.

The issue of racial disparities in the use of the death penalty was considered by the Supreme Court in 1987. In a close vote, the Court held that studies alone could not provide the required proof of racial discrimination in a particular defendant's case. This decision appeared to close the door to broad challenges to the death penalty. However, the Court has found racial discrimination in the selection of the jury in individual capital cases.

(Borrowed directly from https://deathpenaltyinfo.org/policy-issues/race).

 **Assigned reading: *McCleskey v. Kemp***

Focus questions:

1. What are the facts in McCleskey?
2. What happened at trial?
3. What arguments did he raise on appeal?
4. Does the Baldus study prove the very concerns about racial discrimination voiced by some justices in Furman?
5. Was the Court justified in rejecting McCleskey's claim, in part, because of its concerns with the consequences of granting relief, i.e. a possible disruption of criminal sentencing in general?
6. Why should the holding of the court in this case resonate with us? What does its conclusion reveal?

- Assigned excerpts from the DPIC report *"Enduring Injustice: The persistence of racial discrimination in the U.S. Death Penalty*." Released in May 2020.

(https://files.deathpenaltyinfo.org/documents/reports/Enduring-Injustice-Race-and-the-Death-Penalty-2020.pdf.)

Week 12
April 4

Selecting the jury

Blind Justice: Juries Deciding Life and Death with only half the truth: How Death Penalty Jurors are Unfairly Selected, Manipulated, and Kept in the Dark
To read the full report, please visit

https://deathpenaltyinfo.org/files/pdf/BlindJusticeReport.pdf

Blind Justice, the most recent report to be released by the Death Penalty Information Center (DPIC), is the first to focus on the problems of the death penalty from the perspective of jurors. While jurors have always occupied an esteemed position in the broader criminal justice system in the United States, in capital cases the responsibility of jurors is even more critical as they decide whether defendants should live or die. Even with this unique authority in capital cases, they are treated less than respectfully. Frequently, they are kept in the dark regarding key information about the case and are often barred from serving based on their beliefs or their race.

Deciding guilt beyond a reasonable doubt is not easy. But there is clarity in that task and 225 years of tradition to support it. Judging whether a person should be condemned to die is far more daunting and the difficulty is compounded by a complex formula that even many lawyers and judges do not understand. The modern death sentencing system was adopted by the Supreme Court in 1976, and the results have been disturbing.

This report examines the ways in which the death penalty fails jurors and, in turn, fails as a system of justice. It looks at the distorted way jurors are selected in capital cases. It describes how critical information is often withheld from jurors, and how the evidence they do hear is often unreliable. It describes how the complex rules of death sentencing procedures ensure a sense of frustration and emotional pain as jurors are asked to make one of the most difficult choices of their lives.

As Blind Justice discusses in detail, jurors are manipulated in capital cases in many ways:

¬ Their deeply held personal views on capital punishment are picked apart and used as a litmus test of their ability to serve as member of the jury. Those adhering to beliefs preventing a death sentence will be rejected, even though those beliefs are well within the mainstream of public opinion.

¬ Jurors' color and gender will often play a key role in whether they are chosen for a death penalty trial. In recent Gallup Polls, far more blacks and women oppose the death penalty than white males, making it more likely that they will be excluded from capital juries. Similar considerations work against those with certain religious beliefs.

¬ Jurors in capital cases are not representative of the population as a whole. Those allowed to serve will be more pro-prosecution and conviction-prone than those who are excluded.

¬ Those jurors who are selected might expect a high-quality pursuit of justice on a level playing field, but the truth will often be hidden from them: prosecutors may withhold critical evidence and defense attorneys may fail to investigate basic facts. Junk science, jailhouse informants and overly confident eyewitnesses will be offered as if they reliably established the defendant's guilt.

¬ Since 2000, 37 people have been freed from death row after they were exonerated. In 62 percent (23) of these cases, state misconduct in misinforming the juries played a significant role in the wrongful convictions. ¬ Far beyond their traditional role of determining guilt and innocence, jurors are instructed to weigh the terrible aspects of the crime against any redeeming qualities of the defendant. From such an abstract comparison they are expected to arrive at a decision with life and death consequences.

¬ Jurors' emotions will be acutely played upon as the most gruesome aspects of the crime are displayed in graphic detail, and as the victim's family is pitted against the defendant and his family. They will be

told nothing about more heinous cases in the same jurisdiction where the death penalty was not even sought, much less imposed.

¬ Once their decision is made, jurors will be largely ignored. If they have second thoughts after learning new facts, it will be too late. In many cases, their work will be for nothing – their decisions overturned because of errors by others beyond their control.

Slowly, jurors are beginning to react to the flagrant flaws in this system. Some have offered affidavits to judges and governors about what they would have done had they known the whole truth. In increasing numbers, they are voting for life sentences, given what they have seen and heard about abuses in the system.

As one juror in Louisiana said after sentencing someone to death who was later exonerated, "I don't think many jurors feel comfortable playing Russian Roulette with people's lives. Jurors are recognizing that life in prison is perhaps the only responsible way to vote." Death sentences have dropped by over 50 percent in the past five years in the wake of so many inmates being exonerated of their crimes. The fundamental questions of whether the death penalty can be made to fit within our principles of equality, the protection of the innocent, and the appropriate limitation of governmental power are being openly raised by many judges, legislators, and the broader public.

Yet, the system continues with many of the same problems that have plagued it in the past. Those most likely to see the flaws in this system are the least likely to be chosen for the next capital case. Death sentences are handed down in isolation with little chance to explore the larger issues. Once imposed, the presumptions in favor of death become even stronger and harder to reverse.

The costs in terms of mistakes, the conviction and even execution of innocent people, are exceedingly great. But there is also a cost to the respect afforded our system of justice. Jurors are not the problem—rather the problem is in the failed attempt to twist a system designed to identify the clearly guilty into a system for weighing life and death. The stakes in these cases encourage bending the truth and the elimination of jurors who might question the process. There is much to emulate in our tradition of citizen participation in the criminal justice system, but its application to the death penalty has not served us well.

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 **Assigned case: Miller-El v. Dretke**

The following excerpt from the Death Penalty Information Center will help you understand Miller El's procedural history.

On June 28, 2004 the U.S. Supreme Court granted Thomas Miller-El certiorari a second time (**MILLER-EL v. DRETKE, No. 03-9659)**, in order to address whether the U.S. Court of Appeals for the 5th Circuit again erred in reviewing Miller-El's claim that the prosecution purposefully excluded African Americans from his capital jury, in violation of *Batson v. Kentucky*.

Arguments were heard in November 2004 and the case was **decided on June 13, 2005 in Miller-El's favor. Prosecutors announced in July 2005 that they would seek a new trial. A summary of the Court's opinion follows:**

In a 6-3 decision, the Supreme Court ruled that Thomas Miller-El, a Texas death row inmate, is entitled to a new trial in light of strong evidence of racial bias during jury selection at his original trial. In

choosing a jury to try Miller-El, a black defendant, prosecutors struck 10 of the 11 qualified black panelists. The Supreme Court said the prosecutors' chosen race-neutral reasons for the strikes do not hold up and are so far at odds with the evidence that pretext is the fair conclusion. The selection process was replete with evidence that prosecutors were selecting and rejecting potential jurors because of race. And the prosecutors took their cues from a manual on jury selection with an emphasis on race.

Justice Souter, writing for the majority, set out the evidence that race governed who was allowed on the jury, including: disparate questioning of white and black jurors, jury shuffling, a culture of bias within the prosecutor's office, and the fact that the prosecutor's race-neutral explanations for the strikes were so far at odds with the evidence that the explanations themselves indicate discriminatory intent.

In 2002, Miller-El had previously petitioned the federal courts to enforce the rule of *Batson v. Kentucky*, which prohibits racial discrimination in the exercise of peremptory challenges in jury selection. The federal District Court denied him habeas relief and the Fifth Circuit ruled that there were no appealable issues, and denied a certificate of appealability.

In 2003, the Supreme Court reversed, finding that reasonable jurists could differ on whether Miller-El had appealable issues and ordered that the Fifth Circuit to grant a certificate of appealability to further review the case (*Miller-El v. Cockrell*, 537 U. S. 322 (2003)). The Court, in an 8-1 opinion, criticized the Fifth Circuit's "dismissive and strained interpretation" of critical facts and ruled that the lower court's refusal to consider Miller-El's Batson claim was based upon a standard of review that was too demanding. On remand, the Fifth Circuit held that Miller-El failed to show by clear and convincing evidence that the state court's finding of no discrimination was wrong, whether his evidence was viewed collectively or separately.

The Supreme Court reversed again. Because this was a habeas corpus proceeding, the Court needed to find that the state court's interpretation of the facts was unreasonable under the Anti-Terrorism and Effective Death Penalty Act of 1996. The Court stated that the Texas courts finding of no discrimination "blinks reality," and was both unreasonable and erroneous, reversing the Fifth Circuit, and granting Miller-El habeas relief and a new trial. (See Associated Press, June 13, 2005).

Earlier *Miller-El* Case

On February 25, 2003, the U.S. Supreme Court issued an 8-1 decision in favor of Thomas Miller-El, a Texas death row inmate who claimed that Dallas County prosecutors engaged in racially biased jury selection at the time of his trial in 1986. The Court ruled in *Miller-El v. Cockrell* that Miller-El should have been given an opportunity to present evidence of racial bias during his federal appeal. The Court sent the case back to a lower court, where Miller-El could be granted a new hearing on his claims. "Irrespective of whether the evidence could prove sufficient to support a charge of systematic exclusion of African-Americans, it reveals that the culture of the district attorney's office in the past was suffused with bias against African-Americans in jury selections," Justice Anthony M. Kennedy wrote. (Associated Press, February 25, 2003) .

Miller-El asserts that Dallas County prosecutors systematically excluded African-American jurors during his trial. Ten of the 11 potential black jurors were eliminated by the prosecution. In their final analysis, the lower courts discounted evidence that, until at least the mid-1980s, prosecutors employed a policy of removing as many black jurors as possible from trials of black defendants.

In its 1986 ruling in *Batson v. Kentucky*, the U.S. Supreme Court reaffirmed that it is unconstitutional to strike jurors solely on the basis of race and put a greater burden on the state to show that it was not engaging in such behavior. Prior to this decision, prosecutors did not have to provide a reason for

striking potential jurors. This opinion was issued one month after Thomas Miller-El was convicted and sentenced to death, but applied retroactively to his case because his sentence was still on direct appeal. In *Miller-El v. Cockrell*, the Justices will examine whether the lower courts' failure to examine Dallas County's history of racial discrimination in conjunction with the prosecutorial strikes in Miller-El's case was proper.

Focus questions:

1. When did the Supreme Court decide *Miller-El*?
2. What is a certificate of appealability?
3. Why does the Court cite to Batson?
4. What is the Antiterrorism and Effective Death Penalty Act of 1996?
5. What must he show under this act to prevail?
6. How did the prosecutors abuse the process during voir dire?
7. What types of discriminatory procedures did the prosecutors utilize?
8. What was the decision of the Court?
9. What was its reasoning?
10. Are peremptory challenges effective? What does Justice Breyer say about that?

❖ **Student Presentation – Work-in-progress.**

Week 13

April 11

The penalty hearing

Assigned reading: *Barefoot v. Estelle*

Focus questions:

1. Who is on the bench? Notice that Barefoot comes to SCOTUS shortly after Jurek.
2. What are the facts of the case?
3. What is the procedural history?
4. What is the issue posed to the Supreme Court?
5. Who are James Holbrook and James Grigson?
6. On what basis did they find that the petitioner was a continuing threat to society?
7. What testimony did the psychiatrists give?
8. What arguments did Barefoot raise regarding the psychiatrist's competency?
9. What entity submitted an amicus curiae brief in this case? What arguments did it make?
10. What key points were made by the dissenters?
    a. Why is unreliable scientific evidence prejudicial?
    b. Are predictions of future dangerousness accurate?

➢ **Excerpt from the Death Penalty Information Center**

The Texas Court of Criminal Appeals recently held that the methodology used by Dr. Richard Coons to predict the "future dangerousness" of capital defendants was unreliable. Whether a convicted defendant would be a future danger to society is a crucial question for juries in Texas in choosing between life without parole or a death sentence. Dr. Coons has testified in over 150 death penalty trials

across the state. He admitted in a recent hearing that he had developed his own methodology for assessing future dangerousness, one in which he considers the defendant's conscience, attitudes toward violence and criminal history. "These factors," according to the court opinion, "sound like common sense ones that the jury would consider on its own." Capital defense experts consider this a significant ruling pertaining to expert testimony in death penalty cases. Russ Hunt Jr., who represented the defendant in the case where this ruling was made, said, "If you are going to be an expert, you should have some scientific basis of what you are testifying about." Hunt continued, "[Coons] basically just says, 'Trust me. I'm a doctor. I know it when I see it.'" Dr. Coons, a forensic psychiatrist, has recently stopped taking death penalty cases.
The Texas court nevertheless upheld the defendant's (Billy Wayne Coble) death sentence in the case leading to this ruling. (S. Kreytak, "*Longtime expert witness unreliable, court says*," Austin American-Statesman, October 19, 2010).

See also an excerpt from another Texas Defender Service publication:
Future Dangerousness Predictions Wrong 95% of the Time
New Study on Capital Trials Exposes Widespread Unreliable Testimony

- **Students' Presentations: Work in Progress**

Week 14

April 18

Botched executions

- **Students' Presentations: Work in Progress**

Last day of class: Tuesday, April 25

- **Students' Presentations: Work in Progress**

Essential Policies:	
My Teaching Philosophy	My teaching philosophy has evolved during my thirty years of teaching in the legal profession. It is partly grounded on the words of the Lebanese poet, Khalil Gibran: "*The teacher who is indeed wise does not bid you to enter the house of his wisdom but rather leads you to the threshold of your mind."* I am thoughtful and passionate about my teaching. I teach by example, so I strive to be diligently prepared and to challenge students to excel. I am mindful that each student learns differently, so my teaching style evolves to meet the needs of my students. I believe that repetition and reinforcement of the legal concepts are pivotal in learning the law, so I provide different teaching tools to accomplish this goal. Above all, I strive to ensure that students fully understand the foundational principles so that their learning is meaningful and effective.

	As I reflect on my years of teaching, I find that my mission is rooted on three principles: to spark enthusiasm for learning; to create a positive learning environment; and, to infuse professionalism and compassion in my students. Through the years, I have learned much from my students. I am humbled by their determination to succeed and their dedication to the task. I care about my students, and I believe that all of them can become successful lawyers. But being a lawyer is a huge responsibility and I strive to ensure that my students will be ethical and competent practitioners.
Attendance Policy	Students are required to attend classes consistent with the format of the enrolled course. For 100% online courses, both the American Bar Association and the Law School rules obligate the professor to obtain assurance that the person who logs into the course online participates in class, takes quizzes and exams, and engages fully in class. Class attendance will be taken via ROLL CALL at the start of class. If you are not present by the end of the ROLL CALL, then you will be considered ABSENT. Extenuating circumstances can be submitted to me via email within 24 hours of the event.
Professionalism	**Students are expected to demonstrate professionalism by adhering to the course policies and procedures explained in this syllabus.** In keeping with the professional school environment, students should remember to respect their fellow classmates and the Professor at all times.
Accommodations Policy	**Accommodations/Excused from Graded Quizzes or Tests, etc.** An "accommodation" is defined for these purposes as any student request for deviation from the time, date, or circumstances under which scheduled graded assignments are administered. Students must apply to and be granted WRITTEN accommodation by the DEAN'S OFFICE if he/she will not be in attendance for any graded assignment or test (e.g., graded quiz and midterm/final exams). Once granted, the professor must receive official confirmation from the DEAN'S OFFICE of any ALTERNATIVE DATES or accommodated changes that have been granted to the student. All requests for ACCOMMODATIONS must be handled by the Dean's office rather than by the professor. ORAL CONVERSATIONS made with EITHER the professor or the DEAN's OFFICE, ARE NOT BINDING. • Students requesting accommodations may do so through the Office of Student Affairs.
Calendar	**THURGOOD MARSHALL SCHOOL OF LAW** **SPRING SEMESTER 2023** **(SEVENTY DAYS OF CLASSES)** School Opens — Monday — January 2, 2023 First Day of Class — Monday — January 9, 2023 Last Day to ADD/DROP — Wednesday — January 11, 2023 M L K Holiday (No Classes) — Monday — January 16, 2023 Purge of all unpaid course selections — Monday — February 2, 2023 Mid Term Examinations — Mon – Fri — March 6 - 10, 2023

	Spring Break	Mon – Fri	March 13 – 17, 2023
	Good Friday (No Classes)	Friday	April 7, 2023
	Last Day to Drop a Class	Monday	April 10, 2023
	Last Day of Classes	Wednesday	April 26, 2023
	First Year Professors' Grades Due	Wednesday	April 26, 2023
	Reading Period (No Classes)	Thur – Sun	April 27 – April 30, 2023
	Final Examinations	Mon- Fri	May 1 – May 12, 2023
	Hooding Ceremony	Friday	May 12, 2023
	Commencement Exercises	Saturday	May 13, 2023