ALABAMALAW
THE UNIVERSITY OF ALABAMA

Criminal Defense Clinic
Syllabus
Fall 2020

Welcome to the Criminal Defense Clinic! Below is a summary of the information you will need for this semester.

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Goals

Some of the goals we have for the semester are that clinic students will:

(1) zealously, competently, and ethically represent clients in criminal cases;
(2) effectively interview and counsel clients;
(3) be able to develop a cohesive theory of the case and litigation strategy;
(4) become familiar with criminal procedure and substantive criminal law;
(5) engage in effective written and oral advocacy; and
(6) think critically about the criminal legal system and their own practice.

Regular Class Schedule

Tuesday & Thursday – 2:00pm-3:25pm (Room A232)

Other class times may be scheduled on an as-needed basis, especially early in the semester, and the location may change for certain classes. Our classes involve discussion and active participation so it is important that you arrive on time so that we can begin and end on time. Classes will be conducted in-person as a default, though some sessions will be conducted remotely by Zoom. The classes are intended to convey information you will need to enable you to represent your clients. If you cannot attend a class, let us know in advance. PLEASE NOTE: We are aware that students often want to use their computers during class time. Computer use in the clinic seminar is generally **not permitted** for students attending class in-person.

We expect that you will attend **all** classes (either in-person or synchronously by Zoom with advance permission from the Director or Dean Lee) and meet other staffing and office assignments as set out in this Syllabus and the Orientation materials. If, for some unavoidable reason, you have to miss class, you should make every effort to let the Director know in advance so that recording can be arranged. It will be your responsibility to make up class work and to obtain the information from any missed class.

Seminar Topics Schedule

	Week 1	Week 2	Week 3 *Intakes begin*	Week 4	Week 5
Tuesday	8/18: Class #1 Introduction to Criminal Practice	8/25: Class # 4 Client Interviews & Holistic Defense	9/1: Class # 6 Storytelling, Theory of the Case	9/8: Class # 8 Collateral consequences	9/15: Class # 10 Cross Examination
Thursday	8/20: Class # 2 Racism in the Legal System [Joint Session]	8/27: Class # 5 Client Interviews [Practical Session ("PS")]	9/3: Class # 7 Opening Statements (PS)	9/10: Class # 9 Plea negotiations & client counseling (PS)	9/17: Class # 11 Cross Examination (PS)
Friday	8/21: Class # 3 **Orientation**				9/18: Class #12 EJI Memorial Field Trip

	Week 6	Week 7	Week 8	Week 9	Week 10
Tuesday	9/22: Class # 13 Race and Criminal Justice / Legacy Museum Debrief	9/29: Class # 14 4th Amendment Part I: Doctrine	10/6: Class # 16 Fact Investigation & Evidence (PS)	10/13: Class # 18 Direct Examination (PS)	10/20: Class # 20 Mental Health & Trauma
Thursday	9/24: **No class due to 8/21 and 9/18 classes**	10/1: Class # 15 4th Amendment Part II: Practice	10/8: Class #17 Direct Examination	10/15: Class # 19 Crimmigration 101 for PDs	10/22: Class # 21 Statements Suppression

	Week 11 *Last week of intakes*	Week 12	Week 13	Week 14
Tuesday	10/27: Class #22 The Defund & Abolition Movements	11/3 **No class due to 8/21 and 9/18 classes – go vote!**	11/10: Class # 25 Closing Arguments (PS)	11/17: Class # 27 Conclusions
Thursday	10/29: Class #23 Public Defender Speaker Panel	11/5: Class # 24 Prosecution Speaker Panel	11/12: Class # 26 Work life balance & Resilience	11/19: Class # 29 **No class due to 8/21 and 9/18 classes**

Schedule subject to change:
Because of the unpredictable nature of litigation, this schedule may change depending upon the court's calendar and/or the substantive challenges posed by clinic cases. Modifications may also be made in the event the University or courts close to in-person interaction due to COVID-19.

Impact of Covid-19 on the Clinic

As we learned last semester, covid-19 may significantly impact the operation of the University and the court system. The stated preference of the students in the clinic this semester was to continue to take trial-level misdemeanor cases with an in-person courtroom component. I will do my best to accommodate that preference to the extent that I am able to do so while appropriately weighing the public safety risks and interests of clinic clients. For this reason, I am frontloading a lot of the material to be able to start intakes as soon as possible. I have also tried, to the extent that I am able, to plan the clinic activities that would be most difficult to perform remotely towards the start of the semester so that if we go remote mid-way through the semester we do not lose the opportunity to do these activities in-person (e.g. client interviewing, plea negotiations, cross-examination).

Mask Policy

Consistent with Law School policy, you must wear a mask at all times while within the Law School, including within the classroom and clinic workroom. Masks are also required for in-person court appearances and client meetings (to protect the health of clients, other students, the Director, and the public at large). Anyone who attends class in-person without a mask will be ejected from the classroom, considered absent for the day, and reported to the Associate Dean of Academic Affairs. Persistent refusal to comply with the mask policy may lead to disciplinary action, including receiving an F in this course.

Remote Participation

Though the default for class attendance is in-person, some students will attend class remotely. We will be using Zoom for remote participation. Some students are attending all classes remotely with permission from Dean Lee. Others may need to temporarily attend class remotely due a quarantine related to an exposure to the virus. Please let me know in advance (as soon as you know) if you need to participate by Zoom. Please use the remote participation option if it is necessary to reduce health risks, not just as a matter of convenience.

If you are attending class via Zoom, please do your best to avoid the distractions of attending class from a remote location. That means turning off email and phone notifications. Remember that we discuss confidential material in clinic, so if you are unable to be alone while participating in class via zoom you will need to wear headphones to avoid others having access to confidential case information. Also, you are expected to behave in ways that are consistent with acceptable classroom behavior (that means wearing classroom appropriate attire and not engaging in activities that would not be permitted during an in-person class). I do understand that pets and children sometimes show up in Zoom feeds—as long as you are able to focus on the class material that isn't a problem (and you'll probably see my son and daughter on Zoom at some point during the semester). If you are using Zoom, you are required to have your video on unless you obtain a prior written excuse from the Associate Dean of Academic Affairs. No student is permitted to record class sessions (whether attending remotely or in-person) without the written permission of the Director. This policy is to protect confidential client information which is shared during clinic seminar sessions.

Zoom Recordings and Asynchronous Attendance
I will enable a Zoom session for every class session where a student has obtained advance permission to attend remotely. If students alert me ahead of time that they will need to attend class asynchronously and receive written permission to do so, I will record the class session and post the recording on Box. Those recordings will be used as a means of attendance for those who have written permission to attend asynchronously. Any student in the course may view the recordings, if doing so would be helpful for review or in preparing for the next class session. Using class recordings for any purpose not related to our course objectives and/or sharing recordings with anyone not enrolled in the course are violations of the Honor Code and will be reported to the Associate Dean for Academic Affairs.

Online Contingency
In the event we are unable to hold class in person (because the University announces a period of "Limited Business Operations"; because the city, state, or federal government imposes a shelter-at-home order; or because I am unable to teach in person), we will continue to meet during our regularly scheduled time via Zoom. As long as the Law School building is accessible, you are free to use our assigned classroom or the clinic workroom as your physical location while on a Zoom class session. I will distribute additional materials that provide guidance on how class will proceed online. I ask for your understanding in the event a transition to online learning becomes necessary.

If court is still in operation and you have appearances scheduled, you and your cinic partner will continue to be responsible for those court appearances unless you have received permission from the Director to not attend. Clinic partners are being assigned with a goal of having at least one person in each partnership who indicated that they will be staying in the Tuscaloosa area even if classes go remote as they did in the Spring.

For more information about Law School operations relating to covid-19, visit https://www.law.ua.edu/students-academic-continuity/

Intake Interviews

Each student will be required to staff intake interviews for a block of **1.5 hours each week** from **September 1 until October 30.** During this time students will conduct intake interviews in pairs. Even when you do not have interviews scheduled, you are expected to be present in the clinic suite during your intake hours and should use this time for other clinic case work. Students will also all be required to attend a session of night court in a nearby municipal court (past students have attended court and been assigned cases in Brent, Centreville, and Vance). This semester it is anticipated that the bulk of client intakes will take place remotely via Zoom.

Readings

There is no textbook required for the Criminal Defense Clinic. All assignments will be distributed by email or posted on Box or Blackboard one week before the relevant class session. You are expected to do all assigned reading in advance of each class, and I will assume that you are familiar with the content of the readings. Our work in the seminar is often based on the readings, though we may not discuss all of them specifically. The class work is designed to assist you in your case work and in your development as a lawyer and is a critical component of the course.

Under ABA Standard 310, you are expected to devote **4 hours per week** outside of class preparing for seminar and assignments will be prepared accordingly. This is an average, and since the course is being frontloaded, readings in the first few weeks will exceed this 4 hour per week average.

Case Work

Each Criminal Defense Clinic student will maintain primary responsibility for a number of clinic cases. In past years, students have been assigned to cases individually but given the uncertainties of this semester given the covid-19 situation, cases will be worked on in pairs with a clinic partner.

You will be representing real people who depend on you to represent them when their liberty is at stake. Students assigned to a case will be responsible for all aspects of case management, including: meeting with and interviewing clients, client and adverse party communications, investigating witnesses and facts, development of case theory, legal research, legal drafting, conducting discovery, internal office filing (paper and electronic database), case scheduling, and representation of the client in negotiations, hearings, or trials as needed.

Because the Criminal Defense Clinic is limited to 3L student, all students are expected to become certified by the Alabama state bar. Our very strong preference is that this process is complete by the time clinic begins. If you have not completed it by the second week of the semester, you must actively endeavor to complete the process as soon as possible. It is also incumbent upon you to stay on top of all communications with and requests from the Alabama Bar and advocate for yourself when necessary. **Failure to become certified in a timely manner may impact your casework grade.**

You will be responsible for your open cases until at least December 1, 2020. After December 1, 2020 you are responsible for your cases until you have received approval from the Director to transfer the case upon submission of a transfer memo. With regards to cases that close during the semester, you are responsible for the case until it has been closed with a client letter and closing memo and approval from the Director.

Under ABA Standard 310, you are expected to spend no less than **170 hours** working on cases this semester. You will have to track all of your hours in CLIO.

Prison Letters

Part of the case work of the clinic is responding to letters we receive from individuals who are incarcerated—we call these "prison letter cases." You need to draft a response to the letter within one week of being assigned the letter. For more information, see prison letter protocols. Time spent responding to prison letters should be logged on Clio under the case titled "Prison letters" rather than under the name of the individual letter writer. This is because we do not often take on full representation of individuals who write us letters and it is administratively easier to log the time under this one matter.

Clinic Projects

Aside from work on individual cases and prison letters, the clinic takes on clinic projects. In the past these have included immigration detention habeas petitions with Adelante Alabama, research for legislative advocacy with Alabama Appleseed, creating template bail motions addressing covid-19 risk in the jails, and the development on materials for pro se litigants in Alabama post-conviction cases. We will discuss and decide on a clinic project or projects during the semester. Your work on clinic projects should be logged on Clio and will be considered in your case work grade.

Supervision Meetings

Each week students will meet in pairs with the clinic director to discuss cases and work for one hour. These meetings will occur via Zoom. Students will be expected to update the director on case progress and proactively identify issues and questions with which you're grappling in the case. In advance of each meeting, you will upload an agenda to Box (using the Criminal Defense Supervision Agenda Template) and notify the clinic director via email with the agenda Box Link 48 hours before the meeting. You will also upload a pdf copy of a report of the past week's time from Clio just prior to the start of the meeting. Each meeting will last an hour. We will discuss the status and progress of each case to which you have been assigned. Supervision meeting time should be logged in Clio under the cases discussed during the session (e.g. if a student discusses 2 cases in a 60 minute meeting, 30 minutes should be counted towards each case).

Remember, you do not have to wait until the weekly meeting to discuss a case with the Clinic Director—in fact, please bring any issues or problems to my attention as soon as possible. I am accessible by email, phone, and text. You can also schedule times to meet via Zoom. I will be in my office, though not as often as in a typical semester. My office has tape marks on the floor to designate 6 feet and if you are outside that boundary, I can discuss cases in my office while masked. Just make sure to knock so I have time to put my mask on before you enter the office. Depending on student interest, I am also open to scheduling Zoom office hours or clinic workroom hours so students can congregate online to discuss cases.

Case Rounds

Other clinics use the entire Thursday seminar session to do "case rounds" and decide what cases to take as a clinic. This has not been the practice in the Criminal Defense Clinic where the legal needs of the client are often clearer due to the nature of the subject matter. Case rounds will occur once a week at the start of class during the seminar time, depending on which seminar topic is shorter. Case rounds will typically take the first 30 minutes of the seminar time or less and then we will move onto the seminar topic scheduled for that class session.

Time

Your work in the Criminal Defense Clinic will take a significant amount of time. This includes all your work: class, client intake, reading assignments, casework, projects, meeting with supervisor, office hours at the clinic, court, discussions with classmates about cases, etc. We want the work to **average about 12-14 hours per week**, but the nature of practicing law makes it difficult to achieve that precisely—and certainly not each week. You will need to work in the clinic more some weeks and less other weeks.

You are expected to devote as much time as you need to professionally represent your clients and thoroughly participate in class. In some instances this may involve working during breaks or exam time; however, we will work together to minimize these instances. You are expected to check in with the Clinic at least once every day to get messages and stay current with activities. Let us know if you will be out of town for a number of days or if you are having problems with the demands of the clinic.

You are also expected to attend to the administrative necessities of professional practice, including: compliance with Alabama student practice rules, completing confidentiality and conflicts forms, maintaining internal office paper and electronic database files, and keeping complete and detailed time sheets and phone logs.

You will need to learn to manage your time professionally, which includes consulting with us BEFORE a major problem arises. Please look at your schedules NOW and discuss with us any special needs you might have this semester, including time away for job searching and the like.

Clinic Protocols and Templates on Box

The protocols and templates for the clinic can be found in Box in the folder labeled "Protocols, Forms & Templates." Familiarize yourself with the following key protocols:

- Supervision Protocols
- Case Opening Protocols
- Prison Letter Protocols
- Case Transfer Protocols
- Case Closing Protocols
- Document Formatting Checklist

Basic Policies

1. Students must not mail a letter, transmit a substantive e-mail, or submit to a court or agency any document without first providing it to one of the supervisors for review and receiving prior approval. Any substantive communication (even phone calls) should be discussed with a supervisor in advance.
   a. If you are sending material to the Director by email for review and approval, please include the material as a Box link rather than as an attachment;
   b. Include "To review:" as the start of the subject line of the email along with the case name and item to be reviewed (e.g. "To review: Smith Court Plan").

2. Please do not remove case files from the clinic workroom without prior approval from a supervisor. Permission is usually granted, upon request. Make sure to "sign out" the case using the case sign-out sheet available in the clinic workroom.

3. Students are expected to maintain case files (internal and electronic), record their time spent on clinic work, complete confidentiality forms, and other records as needed. These records will be reviewed and factor into evaluations of student performance.

4. Each and every contact with a client, potential client, adverse party or his lawyer must be recorded in Clio. It is very important to be very thorough in recording all communications and events concerning your clients. These files are passed on to other students and they will need to know everything about the case to represent our clients. Emails should be sent to the Clio account for the case and any attachments should be saved on Box.

5. At the end of the semester, students must prepare either a transfer or closing memorandum, depending on the status of the case. Unless the case is closing, this memorandum should include identification of our client, a factual summary of the legal proceedings to date, the type and date of the next hearing, and a "to do list". This memorandum must be approved by the director before a case is deemed transferred or closed.

6. Case work should be saved on Box and Clio, not on your personal computer. Make sure to delete confidential information from your personal computer or any shared computer (e.g. workroom computer).

7. Case-related emails should include a confidential email signature.

8. Please stay in touch! Much of the communication in the clinic happens through e-mail, and students must check their e-mail on a daily basis. If emergencies arise, please feel free to contact your supervisors by e-mail or phone. When it comes to providing updates to your supervisors, please err on the side of over- rather than under-communicating.

Grading / Student Evaluation Criteria

The School of Law Honor Code, Grading Policies, and other policies will be applicable to this class, and are available for review and reference at: http://www.law.ua.edu/students/

Students with disabilities are encouraged to register with the Office of Disability Services, (205) 348-4285, and to meet with Associate Dean Grace Lee, (205) 348-5750 or glee@law.ua.edu. You are invited to see the Director to discuss accommodations and other special needs.

This is a graded course and each student will be evaluated throughout the semester according to her performance in the competency areas described below. Midway through the semester, you will be asked to self-evaluate your performance in each competency area with specific examples from your cases and classwork. This rubric is used both for mid-semester evaluations and at the end of the semester for self-evaluation and grading.

New students will receive two separate grades for the clinic. The 2-credit course component will be graded based on your preparation for and participation in the classroom component of the clinic – the seminar, brainstorms, and mock trial.

The 4-credit component of the clinic is based on your intake interviews and casework. Factors such as growth and competence in law and practice, written and oral performance, professionalism, initiative, ability to work both as a team and independently, and organization are critical factors in the grading process. See below for more details. Know that we do not expect you to come to the clinic with perfect (or even any) litigation skills; rather, expect you to come ready to learn, ask questions, try new things, stretch your comfort zone, recognize both your accomplishments and your mistakes, and reflect on how you can keep improving.

The clinic is graded on a curve. Per the law school policy for a class of this size, no more than half of the grades we give out can be in the A range. Below is an outline of the criteria that we will use to evaluate your performance as a student or legal intern in the clinic. We realize that not all students will have exposure to the different skills listed. Our objective in creating this list is to give you guidelines to help clarify what is expected of you while in the Criminal Defense Clinic and, more importantly, the standards you should use to evaluate your lawyering skills once you become a practicing attorney.

I. Attorney-Client Relationship

- develops relationship and maintains contact with clients
- responds promptly and effectively to client inquiries
- advises client of developments in case through phone calls, meetings, and written correspondence
- develops priorities with clients, identifies and explains alternative legal and non- legal courses of action; as case progresses, understands full range of legal and non- legal issues
- counsels client appropriately; engages in client-centered representation
- demonstrates effective listening skills (including empathy, reflective listening)
- explains applicable law in manner that is understood by clients
- interacts appropriately with clients

II. Professionalism: Professional Responsibility/Ethical Considerations/Collegial Responsibility

- demonstrates understanding of and familiarity with Rules of Professional Conduct
- identifies potential ethical issues in cases & projects, and develops strategies for addressing ethical issues
- zealously represents client
- consults appropriately with supervisor (including reviewing written drafts, discussing case strategy and counseling issues, advising supervisor of delays or potential problems)
- identifies personal views (which could conflict with the client's views or goals) and develops strategies to ensure that such personal views do not compromise the client's objectives; seeks to bridge cultural gaps between one and one's clients
- conducts one's self with candor, honesty and courtesy in relationships with clients, colleagues, courts and the general public
- develops positive working relationships with supervisor, administrative staff and colleagues
- collaborates effectively with colleagues

III. Fact Development

- identifies and develops factual issues of case including comprehensive investigation and fact gathering
- obtains relevant information and evidence through appropriate means (both through internet-based and in-person means)
- conducts effective interviews
- effectively documents investigation keeping in mind reciprocal discovery obligations

IV. Legal Analysis & Problem-solving

- develops a cogent theory of the case
- understands and applies rules of procedure and evidence
- identifies, researches and develops legal issues in cases including interpreting and applying statutes, regulations and case law
- demonstrates creativity, flexibility, innovation in problem-solving and developing case strategy, including non-legal solutions
- recognizes weaknesses in case theory and anticipates adversary's position
- integrates client's concerns and needs into case planning and theory

V. Execution of Strategy and Lawyering Objectives

- pursues options creatively while maintaining awareness of legal framework of case, as well as the impact of choices on the client
- follows a course of action while maintaining the adaptability to adjust the plan when the facts and/or circumstances have changed or evolved
- carries out lawyering tasks underlying the decided upon course of action skillfully and with adequate preparation
- prepares and conducts effective negotiations
- organizes and facilitates effective client meetings, closings and presentations
- helps client reach decisions that best accomplish client's objectives

VI. Oral Advocacy

- prepares thoroughly for all hearings, trials, public speaking opportunities and meetings
- oral communication skills evidenced in case meetings, telephone calls, other meetings and strategy sessions involving cases
- oral presentation during motions arguments, evidentiary hearings, public speaking opportunities and other presentations including style, understanding of substantive issues, incorporation of theory of case
- expresses ideas in clear, persuasive fashion

VII. Written Advocacy

- written work product is clear, precise, and concise
- written work product is free of typographical and formatting errors
- thoroughly organizes correspondence, case file memos, written pleadings
- expresses ideas in clear, persuasive fashion

VIII. Law Practice Management

- ability to manage time, meets time requirements
- timesheet entries thorough, completed on a timely basis
- prepares for supervision meetings, takes initiative in setting agenda
- meets deadlines
- prepares thorough, clear closing memos and transfer memos
- organizes file
- initiates contact with supervisor on a regular basis

IX. Collaboration

- supports classmates in intake sessions and supervision sessions
- gives helpful feedback to classmates when asked, including in brainstorm sessions
- effectively collaborates with clients, colleagues, supervisors, or third parties in pursuit of client or clinic goals

X. Self-Reflection and Evaluation/ Improvement and Effort

- critiques self, accepts constructive suggestions and feedback; applies appropriately
- reflects on own strengths and weaknesses
- takes responsibility for own learning
- seeks to understand the social, economic and political context of the particular legal problems clients present in order to analyze fully and address the various problems
- demonstrates improvement in the above criteria over the course of the academic year
- demonstrates a commitment to providing high-quality legal services and addressing needs of clients
- incorporates self-critique, supervisory feedback and concepts learned in classroom discussion into clinical work

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Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding. *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).