

**Criminal Justice Clinic
Syllabus Fall 2016
Prof. Nevins**

Please also note that all dates are tentative – we generally have a number of guests/joint classes/special events/court emergencies/snow days during the course of the semester, and it’s not uncommon for us to move things around to accommodate these occurrences.

CLASS NUMBER	READING ASSIGNMENT¹	OTHER ASSIGNMENT(S)
Orientation (8/17-8/19)	<i>See Orientation Assignments Memo</i>	<i>See Orientation Assignments Memo</i>
1 Interviewing (8/22)	<ol style="list-style-type: none"> 1. Krieger & Neumann, <i>Essential Lawyering Skills</i>, Ch. 8. 2. Amsterdam, <i>Trial Manual 5 for the Defense of Criminal Cases</i>, Ch. 5 3. Hermann, et al., “Clients in Crisis” (skim) 4. Legal Action Center, <i>Your Rap Sheet</i> (skim) 5. Rap sheet, complaint and supporting deposition provided to prepare for in-class simulated interview. 	Plan, record, and critique simulated client interview.
2 Discovery (8/29)	<ol style="list-style-type: none"> 1. CPL Articles 240 (Discovery) and 250 (Defense Notices); CPL §§ 200.95(Bill of Particulars) and 100.45(4). 2. <i>Discovery Manual</i>. 3. James Yates, <i>Discovery Provision is Misunderstood</i>, NYLJ, Oct. 14, 2003. 4. Rule 3.4 “Fairness to Opposing Party and Counsel” and Rule 3.8 “Special Responsibilities of Prosecutors and Other Government Lawyers.” 5. List of discovery items from Brooklyn Defenders 6. <i>People v. Vilardi</i>, 76 NY2d 67 (1990). 7. <i>People v. Damon</i>, 24 NY2d 256 (1969). 8. <i>People v. Kelly</i>, 478 NY2d 834 (1984). 	Answer discovery questions.

¹ Articles, statutes, rules, videos, and case law should be looked up online through Westlaw, Google, or, (for law review articles) from the library database for heinonline.

<p style="text-align: center;">3 Investigation (9/12)</p>	<ol style="list-style-type: none"> 1. Krieger & Neumann, <i>Essential Lawyering Skills</i>, Ch. 9. 2. C.P.L § 610. 3. Andrea Lyon, <i>Investigation and Development of a Theory</i>. 4. <i>People v. Jesse Armstrong</i>, N.Y.L.J. 11/16/95, p. 30, col. 5 (Sup. Ct. Queens Co., 1995)(Finnegan J.), <i>aff'd</i>, 249 A.D.2d 317 (2d Dept. 1998). 5. John M. Lajoie, <i>Criminal Defense Witness Interviews & Statements</i>. 6. Anthony Amsterdam, “Defense Investigation” in <i>Trial Manual 5 for the Defense of Criminal Cases</i>, pgs. 180-195 and Checklist 7. ABA Criminal Defense Function Standards, Part IV: <i>Investigation and Preparation</i>, pgs. 201-203 8. Michelle Maxian, <i>Subpoena Practice</i> – (Skim this, but pay particular attention to the Introduction and sections I and IV) 	<p>Take and give a witness statement (for rounds on investigation)</p>
<p style="text-align: center;">4 Sentencing (9/19)</p>	<ol style="list-style-type: none"> 1. CPL §§ 380.10-380.50; 390.20-390.50 (focusing on statutory requirements) 2. The Sentencing Project, <i>Twelve Steps to Effective Sentencing Advocacy</i> (found at http://sentencingproject.org/doc/publications/twelvesteps.pdf) 3. The Sentencing Project, <i>The Thinking Advocate’s List of Mitigating Factors</i> (found at http://lobby.la.psu.edu/049_Criminal_Justice_Reform/Organizational_Statements/Sentencing%20Project/SP_Mitigating_frna.pdf). 4. Sentencing Letter for John Doe 5. Sentencing Letter for John Smith 6. Craig S. Cooley, <i>Malvo Closing Argument</i>, 19 CRIMINAL JUSTICE MAGAZINE, 1 (Spring 2004) (found at http://www.americanbar.org/publication/criminal_justice_magazine_home/crimjust_cjmag_19_1_juvenile.html). 	

<p style="text-align: center;">5 Motions (9/26)</p>	<ol style="list-style-type: none"> 1. CPL §§ 170.30-170.45; 255; 710. 2. Gary Muldoon, <i>Handling a Criminal Case in New York</i> (2012-13 ed.), Ch. 7 “Motion and Hearing Practice” 3. <i>People v. Mendoza</i>, 82 N.Y.2d 415 (1993) 4. <i>People v. DeBour</i>, 40 N.Y.2d 210 (1976) 5. Hearing Preparation Handout 	<p>Draft motions facts section; answer questions about motions practice.</p>
<p style="text-align: center;">6 Negotiation & Client Counseling Theory (10/10)</p>	<ol style="list-style-type: none"> 1. Krieger & Neumann, <i>Essential Lawyering Skills</i>, Chapters 24-28. 2. Joel Cohen, “When Defendants are Threatened to Plead Guilty.” http://www.stroock.com/SiteFiles/Pub994.pdf 3. Rule 4.1 (and Comments thereto), “Truthfulness in Statements to Others” http://www.nycla.org/siteFiles/NYRulesofProfessionalConduct4109_362.pdf 4. Review PL 60, 65, 70 and 80 (only those sections applicable to misdemeanors), CPL 160.50, 170.55 and 170.56 – i.e. <i>what are possible pleas?</i> 	<p>Watch <i>The Plea</i> sections 2, 4, and 6 (or the whole thing). Two choices for viewing: http://video.pbs.org/video/2216784391/ http://www.pbs.org/wgbh/pages/frontline/shows/plea/view/</p>
<p style="text-align: center;">7 Plea Negotiation & Client Counseling Simulation (10/17)</p>	<ol style="list-style-type: none"> 1. Discovery files for simulated plea negotiation 	<p>Prepare for simulated negotiation and client counseling session.</p>
<p style="text-align: center;">8 Crimmigration (10/24)</p>	<ol style="list-style-type: none"> 1. Manuel D. Vargas, <i>Representing Noncitizen Criminal Defendants in New York State</i>, Ch. 3 (NYSDA Immigrant Defense Project) 2. Immigrant Defense Project, Practice Advisory: <i>Descamps v. United States</i> and the Modified Categorical Approach (July 17, 2013) 3. Immigration and Naturalization Act §§ 212, 237 (These you should just bring to class) 4. Handout, Nassau County Legal Aid Immigration Presentation (skim, bring to class) 	
<p style="text-align: center;">9 Voir Dire (10/31)</p>	<ol style="list-style-type: none"> 1. Smith, <i>Veteran Litigators Ignore Stereotypes, Knowing that Venire Members Will Weigh the Facts Against a Lifetime of Experiences</i>, ABA Journal, pgs. 35-39 (March 2002) 2. Frederick, <i>Mastering Voir Dire and Jury</i> 	<p>Prepare voir dire questions.</p>

	<p><i>Selection</i>, pgs. 1-12 (2005).</p> <p>3. Kreiger and Richard K. Neumann, Jr., <i>Essential Lawyering Skills</i>, Ch. 13, §13.3.</p>	
<p>10 Storytelling & Case Theory (11/7)</p>	<p>1. Kreiger & Neumann, <i>Essential Lawyering Skills</i>, Ch. 13, “The Story Model of Organizing Facts”</p> <p>2. Alper et. al., <i>Stories Told and Untold: Lawyering Theory Analysis of the First Rodney King Assault Trial</i>, 12 CLIN. L. REV. 1 (2005) (available at http://libweb.hofstra.edu/record=b2428658~S1)</p> <p>3. “Statement of the Case” and “Factual Background” in Respondent Edith Windsor’s Brief before the Supreme Court in <i>United States of America v. Windsor</i>, 2013 WL 701228 (2013).</p> <p>4. Lindsay, <i>Storytelling – Why We Do it and How to Get Better</i> (optional)</p>	<p>Prepare and present a client narrative.</p>
<p>11 Openings (11/14)</p>	<p>1. Daniel Goleman, “Study Finds Jurors Often Hear Evidence with a Closed Mind,” <i>New York Times</i>, Nov. 29, 1994 (http://www.nytimes.com/1994/11/29/science/study-finds-jurors-often-hear-evidence-with-closed-minds.html?pagewanted=all&src=pm).</p> <p>2. Larry Pozner and Richard Dodd, <i>Cross Examination Skills for Law Students</i>, Ch. 7 (2009).</p> <p>3. Steven H. Goldberg & Tracy W. McCormack, <i>The First Trial: Where Do I Sit? What Do I Say?</i> (2d. ed.) (2009), Ch. 8.</p> <p>4.</p>	<p>Prepare and present an opening argument.</p>
<p>12 Cross Examination (and Direct) (11/21)</p>	<p>1. Public Defender Service for the District of Columbia, Criminal Practice Institute Manual, Ch. 26, “Cross-Examination”</p> <p>2. Bergman, “Cross-Examination,” <i>Trial Advocacy in a Nutshell</i></p> <p>3. Pozner & Dodd, “The Only Three Rules of Cross-Examination,” <i>Cross-Examination: Skills for Law Students</i></p> <p>4. Gideon’s Promise, “Cross Examination.”</p>	<p>Prepare a cross witness narrative.</p>
<p>13</p>	<p>1. Murphy & Rosenbaum, “Two Women</p>	

<p>Race/Policy (11/28)</p>	<p>who Used Cocaine too Much: Class, Race, Gender, Crack, and Coke, <i>Crack in America: Demon Drugs and Social Justice</i>, pgs. 98-112 (1997).</p> <p>2. Davis, <i>Racial Fairness in the Criminal Justice System: the Role of the Prosecutor</i>, 39 COLUM. HUM. RIGHTS L. REV. 202 (2007) (available at http://libweb.hofstra.edu/record=b2428661~S1).</p>	
<p>14 How Can You Represent Those People? (12/5)</p>	<p>1. <i>Frontline</i>, “Interview with Viktor Theiss” (available at http://www.pbs.org/wgbh/pages/frontline/shows/bostonda/etc/theiss.html).</p> <p>2. Peter Keane, “Everyone Deserves a Defense,” <i>This I Believe</i>, NPR, Oct. 20, 2008. (available at http://www.npr.org/templates/story/story.php?storyId=95895379).</p> <p>3. Vida Johnson, “Defending Civil Rights” in <i>How Can You Represent Those People</i>, A. Smith & M. Freedman, eds. (2013).</p> <p>4. Mary Halloran, <i>An Ode to Criminal Lawyers</i>, CALIFORNIA LAWYER, June 1998, at 96.</p>	<p>Draft and share personal narrative</p>

LEARNING OUTCOMES AND GRADING RUBRIC

This is a class that seeks, as much as possible, to mirror the best defense practices. This means that my expectations will often exceed what is considered normal practice in Nassau County, or even other misdemeanor courts. I am teaching you not how to process a case as quickly and efficiently as possible, but how to work up a case as if you had all the resources in the world. What would be possible if (as will be the case), you only had a handful of cases? What could a client who had money to pay the best lawyer get? You are students, with typically little or no experience – but we aim to give our clients the best defense possible, notwithstanding that fact.

To that end, you will be given full responsibility for your clients and cases, and, with the guidance of faculty, you will be expected to work harder than you have in your law school career in pursuit of your client's goals. To do so successfully means that you will draw on skills you have developed while in law school, but also many other skills. You will need, for instance, creativity, integrity, collaborativeness, knowledge of substantive law, empathy, analytical abilities, articulateness, poise, doggedness, a good memory, and a quick mind. You will use these skills, and others, in an effort to build a strong relationship with your client, develop and implement a litigation strategy (including extensive and creative use of discovery, motions, negotiation, trial skills, storytelling, and sentencing advocacy), pursue investigative and discovery leads, research effectively, argue persuasively orally and in writing, keep meticulous files, and help your client solve problems holistically. You will also, in practice and in your reflection on it, consider the broader context of the criminal justice system, and how our work fits into that context.

I used to write a more extensive explanation of “course goals” and then attach the grading rubric. But since the grading rubric really reflects what I hope you are learning through your work in the Clinic, I've just modified it somewhat and turned it into the learning outcomes and the grading rubric for the course. By faculty vote in early 2016, the faculty decided that all classes at Hofstra Law School would feature an explicit list of learning outcomes as part of each course's syllabus and that this list would draw at least in part from a centralized, consensus-based list of learning outcomes. The overall law school learning outcomes are available here: http://law.hofstra.edu/site_support/files/pdf/academics/academicresources/learningoutcomes/learning-outcomes.pdf. Accordingly, the learning outcomes for this class cite to the law school's learning outcomes by both category number and subsection. For example, the first outcome listed below, under “Client Advocacy,” is “Development of coherent, creative, and well-reasoned positions with and on behalf of your clients.” It cites to the Law School's Learning Outcome Category 5, which is “Basic legal analysis, fact development and law-finding,” and points specifically to subsection (e), “constructing arguments and identifying flaws in an argument.” Notably, however, the categories – in the learning outcomes and the grading rubric, sometimes overlap and repeat themselves. both on the lists of learning outcomes and within the grading categories. This is because a motion which cites outdated or very limited case law, for instance, may be poorly researched *and* an insufficient articulation of advocacy on behalf of a client, affecting your progress with regard to multiple learning outcomes and multiple aspects of the grading rubric. If you have any questions or concerns with regard to the CJC learning outcomes or their connection to the law school learning outcomes, please see me.

CJC Learning Outcomes and Grading Rubric

Client Advocacy: *Students should learn to become zealous, creative, client-centered advocates, both orally and in writing in a range of judicial and extra-judicial contexts.*

- ❑ Development of coherent, creative, and well-reasoned positions with and on behalf of your clients. 5(e)
- ❑ Zealous representation of your clients, exhausting every avenue to support your clients' expressed goals. 7(d)
- ❑ Identification of opportunities for client advocacy in a range of contexts (including collateral consequences, bond conditions, terms of a plea deal, motions, etc.).
- ❑ Quality of oral advocacy on behalf of your clients, including actual and simulated trial skills, as well as negotiation 5(h), 6(d), 6(g)
- ❑ Quality of written advocacy on behalf of your clients. 4(a)

Client Relationship & Collaboration Skills: *Students should learn to build a strong client relationship, and, in so doing, be able to identify, provide counsel on, and pursue their client's interests. They should also learn to work collaboratively with both attorneys and non-attorneys.*

- ❑ Development of client interviewing, counseling, and observation skills. 6(e), 6(f)
- ❑ Development of empathy and clear understanding of client interests.
- ❑ Maintenance of consistent and timely contact with your clients. 7(c)
- ❑ Excellence in managing collaborative working relationship with client, clinic partner, and any other team members. 6(j)

Law Practice Management and Professionalism: *Students should uphold the highest standards of professionalism based on office policies and procedures, as well as expectations of the local legal community.*

- ❑ Ability to meet case-related deadlines and to make significant progress on your casework each week. 7(a)-(d)
- ❑ Responsiveness to phone messages and written correspondence. 7(a)-(d)
- ❑ Thoroughness, accuracy and neatness of entries in files (electronic and paper). 7(a)-(d)
- ❑ Consistency with which office procedures, as outlined in Clinic Manual, are followed. 7(a)-(d)
- ❑ Development of positive working relationships with clinic supervisors, clinic administrative staff, consultants, and colleagues. 7(a)-(d)

Fact Development and Analysis: *Students should demonstrate a facility with gathering, analyzing, and presenting facts into coherent narratives that take into account both the audience and potential counter-narratives.*

- ❑ Thoroughness of investigation and fact-gathering regarding allegations, sentencing, and other issues (e.g., treatment) affecting your client's criminal case and collateral consequences. 5(b)
- ❑ Understanding of and engagement in discovery process to maximize information disclosed from the government regarding client's case. 6(h)
- ❑ Persuasive analysis and use of facts in negotiation, oral advocacy, and written advocacy, including use of facts to construct an effective narrative. 5(b).

Substantive Legal Knowledge and Analysis: *Students should become familiar with law and rules most commonly applicable to criminal misdemeanor practice, and should be able to identify, analyze, and present both familiar and unfamiliar law as applied to their cases.*

- ❑ Identification and understanding of basic legal rules, cases, statutes, and customs affecting criminal practice in this jurisdiction, as well as relevant collateral proceedings. 1(b)
- ❑ Application of and compliance with basic legal rules, cases, statutes, and customs in casework and hypothetical/simulated exercises from a client-centered perspective. 1(b)
- ❑ Identification of legal issues in facts and inferences based on those facts, including both supportive arguments and counter arguments. 5(c)

Research and Writing: *Students should demonstrate thorough, accurate research skills that draw on the most relevant resources and an ability to draft legal documents that are well-written and persuasive.*

- ❑ Thoroughness of identification, interpretation and application of statutes, regulations, case law, and secondary sources relevant to representation of your clients, when legal issue requires research. 5(f)
- ❑ Ability to find, understand, and respond to “negative” law or counterarguments.
- ❑ Organization, clarity, creativity, persuasiveness, and thoroughness of legal writing on behalf of clients. 4(a), 4(b), 6(h)

Initiative and Reflective Skills: *Students should become reflective about the process of legal work, as they learn to take initiative, identify lawyering decision points, and consider critically the broader context in which their cases arise, both for the individual client and the larger community.*

- ❑ Ability and willingness to take initiative in case planning and in performance of case-related tasks, including creative problem-solving. 6(b)
- ❑ Identification of long and short-term case goals, as well as conceptualization and execution of a strategy to achieve them. 6(a)
- ❑ Ability to critique yourself realistically, accept constructive suggestions, and apply feedback independently and appropriately. 6(k)
- ❑ Thoughtful consideration of broader racial, economic, and political context of legal problems presented in clinic cases and criminal defense practice generally; use of such policy to analyze and persuade where appropriate. 5(i)

Weekly Class Seminar/Rounds: *Students should be engaged, thoughtful participants in group meetings, demonstrating effort, professionalism, and effectiveness in written assignments, simulations, discussions, and presentations.*

- ❑ Consistency, quality and timeliness of preparation for class and out-of-class assignments. 7(a)
- ❑ Class attendance and punctuality. 7(a)
- ❑ Consistency and quality of participation in class, including demonstrated skill in lawyering simulations and understanding of doctrinal, policy, strategic, and ethical issues related to class topic. Categories 4, 5, 6, and 7.
- ❑ Quality of case presentation at rounds. 6(m)

Professional Responsibility: *Students should be able to find, interpret, and comply with the highest standards of ethics and professionalism in the law, and particularly in criminal practice.*

- ❑ Compliance with New York State Disciplinary Rules of the Code of Professional Responsibility. 7(b)
- ❑ Identification and consideration of ethical issues related to your clients' cases and to the criminal justice system generally. 6(c), 7(d)

Each category accounts for 10% of your grade. The final 10% will be yours if you have worked the required number of hours over the course of the semester (300 MINIMUM, a figure which does not include class time). Falling significantly below the requisite hours will result in a deduction from this category.

Grading Scale: 5 = outstanding; 4 = very good; 3 = good; 2 = fair; 1 = poor