

Rutgers School of Law Children's Justice Clinic Syllabus

Professor Simkins Director, Children's Justice Clinic

Assuming the role of a competent juvenile defender requires that students understand the uniqueness of the child-client. As a litigation-based clinic, the Children's Justice Clinic (CJC) will require students to quickly assume the role of lawyer and advocate representing youth who are charged in the New Jersey Juvenile Court. Students will have the opportunity to develop trial strategy, write motions, and argue in front of juvenile court judge/magistrates on behalf of their clients. Students will represent clients involved at all stages of the delinquency system – from initial detention through post-disposition.

CJC students will also have the opportunity to participate in and inform systemic reform. Students will be encouraged to research and develop strategies for programming that will produce positive outcomes for our most at-risk youth. These projects will include: combating the school-to-prison pipeline; post-disposition representation; delivery of special education services to detained youth; and conditions of confinement. Clinic students will be expected to identify an area in need of systemic reform. Through individual or team research and participation in community-based projects, webinars, or symposiums, students will have the opportunity to present their projects throughout the semester.

In addition to developing pre-trial and trial advocacy skills, clinic students will continue to strengthen their lawyering competencies. Every classroom exercise and supervisory session is designed with an emphasis on the development of a at least one of the six core competencies of lawyering (oral communication; written communication; legal analysis; problem solving; professional responsibility; practice management). These are skills that all lawyers are encouraged to continue to improve upon throughout their practice.

Orientation

Goal: Introduce students to the delinquency system. Understand the evolution of juvenile court and what the differences are between representing adult clients and juvenile clients. Define the role of the delinquency defender and the child-client. Discuss the flow of a delinquency case from custody through post-disposition.

I. Introduction to Juvenile Law (Powerpoint)

Readings: Kent v. U.S., 383 U.S. 541(1966)

In re Gault, 387 U.S. 1 (1967)

In re Winship, 397 U.S. 358 (1970)

McKeiver v. Pennsylvania, 403 U.S. 528 (1971)

Roper v. Simmons, 543 U.S. 551 (2005)

Graham v. Florida, 560 U.S. 48 (2010)

Miller v. Alabama, 132 S. Ct. 2455 (2012)

J.D.B. v North Carolina, 131 S.Ct. 2394 (2011)

Schall v. Martin, 467 U.S. 253 (1984)

When Kids Get Arrested (Simkins)

- How Did We Get Here?
- Historical Overview
- Brief Discussion of Early Benchmark Cases

- The Juvenile Client
- How Are Kids Different?
- Family Court v. Criminal Court

II. Understanding the Delinquency Process

Readings: Trial Manual for Defense Attorneys in Juvenile Delinquency Cases (Hertz, Guggenheim, & Amsterdam), Chapter 2.01-2.03, 4.15-4.22, 4.28-4.31
National Juvenile Defense Standards: Parts 1.1-1.4 1.6, 2.1-2.6, 3.1-3.9
TN JuvPro Rule 210

- ***Delinquency Vocabulary*** – terminology used in juvenile justice system

- ***Role of Defender & The Family Court***
- Best Practices: Juvenile Defender
- Best Practices: Family Court
- Shelby County Juvenile Court – DOJ Investigation

- ***The Stages of Delinquency***
- Delinquency Process Timeline – What to Expect When

III. Clinic Nuts & Bolts

- How to Succeed In Clinic
- Review of Handbook – General Questions
 - Expectations – Supervisory Sessions & Seminar
 - Assume you are going to trial from the minute you are assigned your case!!!!
- Clinics as a Law Office
 - Client confidentiality
 - File maintenance (hard files & CLIO)
 - Phones, mailboxes, office hours, etc

Week 1: Your First Case & Meeting Your Client

Goal: Develop skills and techniques needed to effectuate that goal-driven communication with juvenile clients which is imperative for effective representation. Students will start to realize that there is never enough time to gather all information. Must set goals for interviews. Understand that clients might have something they

really want the att’y to ask/hear. There is no standard way to conduct interview – individual clients mean individualized interview.

Readings: Juvenile Defender Delinquency Notebook: Chapter 4.01-4.25

Video: ABA Interviewing the Child Client

https://www.youtube.com/watch?v=6oVk0jw_Xdo

- ***The Initial Interview***
 - Client Interview Simulation Exercises
 - 2 sessions: Students will have opportunity to play the client & the attorney.
 - Difficult conversations
 - Expressed Interest of Client v. Best Interest of Child
 - Parents & Other Interested Parties: What Can Be Said to Whom

Week 2: Initial Appearances & Detention Hearings (Powerpoint)

Goal: Students will understand importance of zealous advocacy at the detention hearing, including challenging probable cause, strategies to challenge probable cause and advocate for alternatives to detention. Develop oral advocacy skills as well as legal reasoning, negotiation with adverse parties, and parents as a partner in the case.

- ***Initial Hearings & Probable Cause***
 - NJ Juvenile Code
 - Simulation Exercises – students will make arguments for against probable cause and detention.
- ***Initial Plea Offers***
 - What should be considered when presenting initial plea offer?
 - What are the options? What does your client want?
 - What is a “good” offer? Negotiation
 - Counseling client (& parent)
- ***Discussion:*** Harms of Detention

Week 3: Discovery & Investigation (Powerpoint)

Goal: Students realize that investigation is not limited to acquiring government’s discovery. Effective communication with prosecutor – preserving discovery issues for appeal. Understanding the importance of the documents that are included in a discovery packet and additional documents to request. Discussion of applicable rules of discovery. Optimizing evidence in a case for dismissal or mitigation of charges.

Readings: NJ Court Rules

Brady v. Maryland, 373 U.S. 83 (1963)

- What is discovery?
 - Exercise: What are all the possibilities? (List – “everything & anything”)
- Who is “the government”? What is the defense entitled to?
- Consider: What do we really want from the prosecutor? Everything, always?

- Documents to consider in early stages of delinquency process:
 - Initial Discovery
 - Court Ordered Evaluations
 - School Records

- Initial Discovery Letters: Why? What should be included in first letter? Second letter?

- Discovery Motions: when, what, why? Relief?

- Evidence blocking thru Discovery (Proof v. Truth)
 - Elements of the offense
 - Need to investigate – go beyond “4 corners” of affidavit

- Developing Case Theory

Week 4: Adolescent Brain Development/Role of Trauma

Goal: Understanding the role trauma plays in brain development and its impact on behavior. Develop techniques for effective client communication concerning traumatic experiences. Exploration of ethical responsibility and potential damage of sharing sensitive information with the juvenile court. Advocating for appropriate services for client who has experienced trauma.

Readings: *Amicus Brief filed on behalf of Christopher Simmons* American Medical Association et al.)
PTSD, Trauma, Comorbid Psychiatric Disorders in Detained Youth (OJJDP Juvenile Justice Bulletin, June 2013), available at:
<http://www.ojjdp.gov/pubs/239603.pdf>
Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency, Available at:
http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf
A Developmental View of Youth in the Juvenile Justice System Marty Beyer, 2011), available at:
http://www.martybeyer.com/sites/default/files/beyer-juvjus_chapter.pdf

- Adolescent Brain Development (Powerpoint)
- What is the role of trauma and propensity towards delinquency?

- Discussion as to ethical duty to disclose potentially damaging information to juvenile court.

Week 5: Pleas & Dispositions

Goal: Using effective negotiation skills to elicit best possible outcome for client. Understanding the importance of effective communication skills when negotiating with prosecutors.

Readings: NJ Juvenile Code

Trial Manual for Defense Attorneys in Juvenile Delinquency Cases (Hertz, Guggenheim, & Amsterdam), Chapter 14.01-14.24

- ***Plea or Trial?***
 - Weighing the options & counseling client
 - Good/Bad? Why
 - Counseling Client revisited: Stated Interests
 - Collateral Consequences
 - Terms of plea
- ***Possible Dispositions***
 - Rule, Hybrid Probation, Community Based Program, JJC, CMO
 - Negotiation strategies: placement? Terms?
- ***Exercise:*** Time in your life you did something you wanted to do but were advised not to? Time in your life you did something that “was best for you” even though you wanted to do something different?
 - Use current case: discuss what’s best possible outcome & why
- ***Alford Pleas & Colloquies***
 - What is an *Alford Plea*? Why does it matter?
 - Colloquy: “That’s not what happened” – can you negotiate with the prosecutor?

Week 6: Telling Your Client’s Story

Goal: Students develop tools to tell their “client’s story” using the mechanics of oral (and written) advocacy including word choice, non-verbal communication, imagery. Developing skills to speak clearly & precisely in an organized manner but with appropriate compassion as the voice for their client. Understanding when and when not to use “cop talk.”

- ***What’s the Story?*** (Powerpoint)
 - Verbal, non-verbal, word choice, imagery
 - Remember: you set the tone for your client’s story
 - Stories are especially important at disposition

- Paint the Picture
 - What are some “bad” facts about your case? Your client?
 - What’s the prosecutor going to say?
 - What can you say (words, etc) to mitigate the bad?
 - What are some “good” facts about your case? Your client?
- Exercise: Telling Each Other’s Story
 - Students interview their “client” (split group into teams)
 - Round 1: there is one spot open in new intensive probation program. Why should your client get the spot? (Need to address the good, the bad, the ugly)
 - Round 2: You are classmates - Only 1 “A” is available. Why does your client/classmate get the A?

Week 7: Motions Practice

Goal: Understanding that motions practice as part of the foundation of effective advocacy. For example: using motions as an opportunity for suppression, dismissal, or to sever counts! (even if you lose). Putting skills learned in legal writing to use (IRAC) – motions are more than just the rule. Understanding how developmental differences between youth and adults influence motions practice.

Readings: Trial Manual for Defense Attorneys in Juvenile Delinquency Cases (Hertz, Guggenheim, & Amsterdam), *skim* Chapters 7, 15, 16, 18-26

- Generally: types of motions
- Oral motion v Written motion
- Anatomy of a motion
 - When is “boilerplate” ok?
 - What needs to be included (heading, cert of service, proposed order) – jurisdiction specific
- Exercise: use individual cases – possible motions, issue at hand, applicable law

Week 8: Using Special Education Law in Delinquency

Goal: Understanding special education law as a juvenile defender. Incorporating special education and disability rights into defense. Understanding use of psychological evaluations and school disciplinary documents throughout the delinquency process.

Readings: 20 U.S.C. §§ 1400(d)(1), 1415(k)(1)(E)(i)(I) (2012)

34 C.F.R. § 300.535(a)-(b)(1)

Statement of the Interest of the United States of America at 7-10, *G.F. v. Contra Costa Cnty.*, No. 3:13-cv-03667-MEJ (N.D. Cal. 2014)

Tennessee v. Lane, 541 U.S. 509 (2004)

Pennsylvania Dep’t of Corrections v. Yeskey, 524 U.S. 206 (1998)

Atkins v. Virginia, 536 U.S. 304, 317-18 (2002)
An IEP for the Juvenile Justice System: Incorporating Special Education Law Throughout the Delinquency Process, 44 U. Mem. L. Rev. 869, 880 (2014)

- Powerpoint: *Classroom to Courtroom*
 - Includes overview of IDEA & ADA, relevant caselaw, discovery & school records
- Discussion of School-to-Prison Pipeline & Zero-Tolerance Policies
- Exercise: Asserting special education & disability rights at all stages of process (Dismissal, mitigation of charges, culpability, continuum of provision of special education services)

Week 9: Post-Disposition & Conditions of Confinement

Goal: Understanding what “meaningful representation at every stage” means. Understanding that post-disposition representation is essential to protection & successful re-entry.

Readings: Trial Manual for Defense Attorneys in Juvenile Delinquency Cases (Hertz, Guggenheim, & Amsterdam), Chapter 39
National Juvenile Defense Standards: Part X, 10.8
John L. v. Adams, 750 F. Supp. 288 (M.D.Tenn. 1990)
Troy D. v. Mickens, 806 F.Supp.2d 758 (2011)
State ex rel. J.J., 427 N.J. Super. 541 (App.Div. 2012)

- Video: NJ Post-Dispo Project
- Why does post-disposition representation matter?
- Best practices
- Hurdles & solutions
- Conditions of confinement: Isolation, institutional abuse, etc
(Weeks 10 & 11 will focus on trial skills)

Week 10: Direct Examination

Goal: Students learn to advance case theory through the use of direct examination. Understand the importance of conducting an effective examination and the difficulty of trying a case before a “jury of 1.”

Readings: Trial Manual for Defense Attorneys in Juvenile Delinquency Cases (Hertz, Guggenheim, & Amsterdam), Chapter 34

- Who are you going to call? Client? Character witnesses? Parent? Experts?
- Benefits & Risks of calling defense witnesses

- Do you allow your client to testify?
- Goals for direct
- Organization
- Technique

- Block Exercise
 - Same blocks for witness & fact-finder
 - Witness constructs “building”; fact-finder cannot see “building”
 - Defense counsel conducts direct of witness as to composition of structure
 - Fact-finder “constructs” based on testimony
 - Objections permitted by classmates

Week 11: Cross-Examinations

Goal: Students will understand the laws and rights governing cross examination as well as the purpose and goals of cross. Students will learn strategies and techniques needed to engage in an effective cross that is consistent with their case theory.

Readings: Trial Manual for Defense Attorneys in Juvenile Delinquency Cases (Hertz, Guggenheim, & Amsterdam), Chapter 31

- Powerpoint: *Conducting Cross-Examinations*

- What is a cross-examination? What’s the purpose?
- 6th Amendment; Due Process; NJ Juv Code ; Caselaw

- Prepping Cross
- Case & Witness Theory
- Attacking testimony
- Goals, Organization & Stipulations
- 5 Commandments

- Exercise: students have opportunity to cross witnesses (direct testimony provided). Objections welcome.

Week 12: Juvenile Justice Policy & Systemic Reform

Goal: Understanding of defender’s role as change agents and systemic reform and the role of lawyers as change agents. Understanding the disparate numbers concerning youth of color involved in the juvenile justice system. Exploring new trends and issues based on cultural differences, particularly as applied to Latino and undocumented immigrant youth.

Readings: National Juvenile Defense Standards: Part X

And Justice for Some: Differential Treatment of Youth of Color in the Juvenile System, Available at: <http://www.njjn.org/uploads/digital->

library/NCCD_justice-for-some-differential-treatment-youth-of-color-Jan-2007.pdf

Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System (Jyoti Nanda, 2012), Available at:

[http://www.njjn.org/uploads/digital-](http://www.njjn.org/uploads/digital-library/Girls_of_Color_and_Delinquency_in_JJ_System_2012.pdf)

[library/Girls_of_Color_and_Delinquency_in_JJ_System_2012.pdf](http://www.njjn.org/uploads/digital-library/Girls_of_Color_and_Delinquency_in_JJ_System_2012.pdf)

(*Students req'd to have read 2: Kids for Cash; Just Mercy; The New Jim Crow*)

- ***DMC, Cultural Differences, Explicit/Implicit Bias, Life on The Registry: Just to Name a Few***

- ***Changing the Face of the Delinquency System***
 - Advocacy Beyond the Courtroom
 - Systemic Reform as a Professional Duty
 - Dismantling the School-to-Prison Pipeline
 - OJJDP Initiatives & DOJ Investigations
 - Isolation; Status Offender Reform; PREA
 - Multi-Agency Lawyering
 - Partnering with Community-based providers & advocates
 - Use of special education law in delinquency matters

Week 13: Current Events & Trends and Course Wrap-Up

Goal: Student system reform presentations (observations & solutions).