To: Second Year Students  
From: Allie Robbins, Assistant Dean for Academic Affairs  
Subject: Choosing a Lawyering Seminar III  
Date: October 12, 2017

The Spring 2018 registration process includes the selection of your Lawyering Seminar III. Lawyering Seminar III is the bridge between your first-year Lawyering Seminars (which focused on the acquisition of basic lawyering skills) and the Clinics you will take in your third or fourth year (which require you to use your lawyering skills to represent clients in a supervised setting or to work in law offices under supervision). This packet contains descriptions of the seminars that will be offered this spring.

As a part-time student, you can take a Lawyering Seminar III in either your fourth or sixth semester. If take a Lawyering Seminar III in your fourth semester, you will be eligible to take a fifth semester clinic. If you do not take Lawyering Seminar III in your fourth semester, you will have to wait until your seventh semester to take a clinic.

Information Session

To assist you in selecting a lawyering seminar we are holding an information session on Monday, October 30 from 5:00 to 6:00 in the Auditorium. Faculty members from the seminar offerings will be present to provide additional information and answer questions. You are also encouraged to contact the seminar faculty individually if you have questions that are not answered during the information session.

Selection Process

The seminar selection process contains two parts. First, you will need to fill out a survey to select your top three choices. The survey can be found at: https://www.surveymonkey.com/r/LawSemIIIPT-2018.

Second, if you are applying for the Defenders Lawyering Seminar you must also complete a separate application. That application is attached and must be returned to V. Hill in the clinic (5-205H). Both parts of the process must be completed by Friday November 2nd, 2017 by 4:00pm.

If a seminar is over-enrolled based on the first choices of all students, enrollment decisions will be made through a modified lottery designed to give as many students as possible their first or second choices. Students who submit preference forms late will be assigned to under-enrolled seminars.

Law in the Service of Human Needs
Advanced Evidence: Expert Witnesses and Forensic Science
Professor N. Chernoff

The New York Law Journal described today’s courtroom as existing in “an era when science is bombarding civil and criminal courts and judges are frequently asked to ponder theories posited by expert witnesses.” This is particularly true in criminal cases, and the American Bar Association has accordingly stated that “No attorney can try criminal cases today without a grounding in scientific evidence.” In 2009 the Supreme Court echoed these concerns and recognized that “[s]erious deficiencies have been found in the forensic evidence used in criminal trials,” and that “[t]he legal community now concedes, with varying degrees of urgency, that our system produces erroneous convictions based on discredited forensics.” Part of the problem, according to the ABA, is that “[u]nfortunately, exposure to forensic science is typically not provided in law school.” (Sources for quotes available in the course syllabus.)

This class provides that exposure to forensic science and will help prepare you to use and challenge expert witnesses. The first part of the course will begin with an in-depth study of the Federal Rules of Evidence that relate to testimony from expert witnesses and the Frye and Daubert standards that govern the admission of forensic evidence in state and federal courts. The second part of the course will focus on recent critiques of the forensic sciences, and consider the role of expert witness in specific areas of forensic science, possibly including bite-mark evidence, arson investigation, eyewitness identification, and fingerprints. The third part of the course will focus on further developing students’ skills in legal research and persuasive legal writing. Students’ grades will be based on (1) a written motion in limine; (2) an exam covering the rules for expert witnesses and forensic evidence; (3) written reflections for every class based on the reading assignments; and (4) participation in class discussions. Please note that class participation and class attendance are required for students who choose to enroll in this course.

Defender Lawyering Seminar and Clinic
Professor Nicole Smith
Professor Steve Zeidman

The Defender Lawyering Seminar, as a prerequisite for the Defender Clinic, prepares students to zealously and knowledgeably assist and represent indigent youth and adults in the New York City Criminal Court and in related prisoners’ rights and criminal justice contexts (e.g., challenges to solitary confinement; parole preparation and revocation hearings; criminal appeals; clemency and pardon applications, etc.). While direct client representation is primarily emphasized in the Clinic, Defenders in the Lawyering Seminar may also have the opportunity to represent young people at school suspension hearings brought by the NYC Department of Education, people facing the loss of their property and belongings at civil forfeiture hearings brought by the New York City Police Department, or incarcerated persons preparing for parole hearings or filing clemency applications.

The Seminar provides intensive instruction in constitutional and statutory analysis of New York Criminal Law and Procedure. Students learn lawyering and trial advocacy skills, including factual and legal investigation, research and writing, interviewing, counseling, and negotiating. An overview of the criminal process is accomplished by examining every phase of a criminal case, from arrest through trial, and examines the rights of those who are incarcerated.
Class trips and readings expose students to critical stages of a criminal case, and highlight the impact of the criminal justice system on poor communities of color. The pedagogical methodology consists of lecture, discussion, observation, and simulation. In addition to simulations and fieldwork, students explore the special ethical issues that arise in the criminal defense context. Students also research and write a memorandum of law that requires rigorous analysis of one or more sections of New York’s Penal Law.

All students who successfully complete the Defender Lawyering Seminar are automatically enrolled in the Defender Clinic. * Please see Defender Clinic Details Memo (attached).

**Trial Practice Seminar**  
Professor Len Kamdang  
The Trial Practice Seminar introduces students to the theory, skills, research, and writing involved in the preparation and presentation of a federal criminal trial -- from the perspective of both the defense and government. The seminar offers an experiential learning environment. Students will plan, prepare and critique each section of a criminal trial during the course of the semester (jury selection, openings, direct and cross-examination, and summations). Both trials will involve significant motions practice: researching and writing on legal and evidentiary issues presented in the cases. The course will involve a significant amount of trial simulation and critique.

The primary goals for the students in the seminar are to facilitate development and application of skills required in litigation: case theory development and implementation, legal analysis and writing, and courtroom advocacy skills.

**Writing from a Judicial Perspective**  
Professor Andrea McArdle  
Imagine a judicial system in which there were no judicial opinions, in which courts heard and decided cases but merely announced outcomes without committing their rationales to writing. What would we lose if we no longer had the benefit of a court’s written analysis of the reasons for its rulings? What would be the effects on the development of legal doctrine? How would litigants and their advocates gain access to the basis for judicial decision making?

This writing-focused Lawyering seminar will address these and other questions implicated in the drafting, analysis, and use of judicial opinions. Its focus and areas of inquiry may be of particular interest and relevance to students considering judicial clerkships and internships and also to students interested in advanced advocacy. Areas of inquiry will include  
*the nature of judicial authorship, and the roles that judicial clerks play in the conceptualization and drafting of opinions;  
*clerking and confidentiality;  
*the audiences that judges write for, and how considerations of audience shape judicial writing;  
*the role of empathy in judging;  
*exposure to the use of narrative and rhetorical analysis in reading and writing judicial texts;  
*learning experientially and through reading and discussion of course materials, how judges respond to, and what they need and expect from, written and oral argument, to gain thereby a deeper understanding of strategies of advocacy;
*gaining an understanding of the status, weight, and precedential value of various judicial writings, including per curiam opinions, plurality opinions, concurrences, and dissents, and the issues created for courts and advocates in interpreting and using separate opinions from a single case;

*identifying a judicial voice, and drafting judicial writing that is accurate, organized, audience appropriate, and responsive to the legal issue presented, with demonstrated understanding of the impact of audience and context;

*the manifestation of social-justice perspectives in judicial writing;

*the relationship between judicial philosophy, including judicial activism from various ideological perspectives, and judicial writing;

*the function of amicus curiae briefs; and

*the use of social science evidence in judicial opinions.

The seminar thus will provide an opportunity to develop legal writing, research, close and critical reading, and analytic skills, an exposure to the workings of the courts, and a deeper analysis of strategies of advocacy drawn from insights into judges’ responses to written and oral argument.

The course will pay close attention to the "practice" of judicial writing with assignments that include drafting a bench memo and an opinion in a pending United States Supreme Court case. Past cases that have been the focus of study include United States v. Windsor, which declared unconstitutional the Defense of Marriage Act. Students hear oral argument on the case and participate in a “bench conference” to discuss the issues, the legal standards, the evidence, and the policy implications of various possible rulings. The seminar will engage in close readings of judicial opinions illustrating key themes of the course (including notably Bush v. Gore, Planned Parenthood of Southeastern Pennsylvania v. Casey, and DeShaney v. Winnebago County Department of Social Services), and will analyze writing by judges and other legal scholars related to the areas of inquiry noted above. We will also consider discourse from recent U.S. Supreme Court confirmation hearings relating to conceptions of judicial role. From time to time during the semester, judges will visit the seminar and discuss their approaches to opinion writing.

In addition to taking up these issues from the perspective of judges, we will approach them from the vantage point of advocates who use judicial opinions in their own written argument, and who must anticipate, and try to influence through written argument, the way judges write opinions in the cases that they argue. Although the course considers judicial writing in a variety of doctrinal areas, the seminar includes close analysis of opinions involving substantive due process claims in the context of family relations. We will also analyze and apply the rhetorical strategies used in “rewritten” opinions of leading cases covered in the text Feminist Judgments: Rewritten Opinions of the United States Supreme Court.

Seminar students will also choose an additional writing project, which, with approval of the instructor and subject to availability, may include a short-term placement with a New York City-area court or administrative tribunal, during which students draft a judicial writing. Alternatively, students may complete a paper/written project related to one of the themes of the seminar after approval by the instructor. Given the substantial time commitment required by the research and writing component of a judicial placement, and the need for students in placements to have greater schedule flexibility/availability, considerations in approving a judicial placement include but are not limited to a student’s course load and academic status.
Over the years, the seminar has offered placements in Queens and Brooklyn Family Courts, the Brooklyn Integrated Domestic Violence Court, and the Manhattan and Brooklyn Surrogate’s Courts, and will continue to seek placements for students interested in these practice-focused courts and in similarly focused courts in other boroughs. In addition, students who have participated in short-term placements have worked with or for judges in the New York Court of Appeals, the Appellate Division, First and Second Departments, Manhattan Supreme Court, New York City Civil and Criminal Courts, Brooklyn Supreme Court, Bronx Supreme Court, Bronx Civil Court, Queens Criminal Court, Queens Supreme Court, Westchester County Court, various federal courts in the Eastern and Southern Districts of New York, the Office of the Staff Attorney for the Second Circuit Court of Appeals, and the New York City Office of Administrative Trials and Hearings. Short-term placements typically span 7-8 weeks and usually start by the third week of the semester.
DEFENDER CLINIC DETAILS

PREREQUISITE: Defender Lawyering Seminar

Overview

The Defender Clinic is preceded by the Defender Lawyering Seminar. The Seminar is a four-credit class offered during the fourth semester. The Defender Lawyering Seminar emphasizes the NY Penal Law, the NY Criminal Procedure Law, practice in the New York City Criminal Courts, and representation of clients in a variety of social justice contexts. Upon successful completion of the Seminar, students will be enrolled in the Clinic. The Defender Clinic is a ten or twelve-credit class offered during the fifth semester. Bear in mind that Defender Clinic classroom hours may be held in the evening in order to maximize fieldwork availability.

The Clinic provides legal representation to indigent teenagers and adults through relationships with the Criminal Defense Practice divisions of the Legal Aid Society and Prisoners’ Legal Services of New York State. Practice areas may include:

* representing clients charged with misdemeanor offenses in the New York City Criminal Court,
* representing clients on appeal of their criminal convictions,
* representing clients placed in solitary confinement for long periods of time as a result of alleged prison disciplinary infractions,
* representing and assisting clients at parole proceedings,
* representing clients seeking clemency or a pardon,
* representing clients at school suspension hearings, and
* representing clients at civil forfeiture hearings

Student Defenders in the Clinic are supervised by Law School faculty who are assisted by the support staff of Main Street Legal Services (the law school’s Clinical program). Student Defenders represent clients pursuant to the Student Practice Order authorized by the Supreme Court, Appellate Division for the Second Department, in effect for both Main Street Legal Services and for the Legal Aid Society. In addition to direct client representation, students will be assigned to work with a community-based organization on a policy or practice issue relevant to the criminal justice system, or may work with outside organizations and practitioners on a trial, a direct appeal or a post-conviction matter. Students are also expected to research and write on an issue of significance to criminal defense practice. Field visits and presentations by guest speakers comprise part of the Clinic.

Objectives and Structure

The specific goals of the Clinic are to provide students with opportunities for: (1) applying and expanding, in a live-client context, skills acquired through prior simulation and in-class learning, especially interviewing and counseling, drafting of motions and memoranda of law, fact investigation, theory development, legal analysis, direct and cross examination and other oral advocacy skills; (2) examining the public interest practice and policy issues raised in a criminal justice system that overwhelmingly and disproportionately impacts poor people of color; and (3) focusing on the special professional responsibility issues arising in the criminal defense role. In order to accomplish these goals, the students will engage in the following activities:

1. **Client Representation**

   Student lawyers handling misdemeanor cases conduct all aspects of the representation of their clients, including arraignment and bail hearings, factual investigation (interviews of client, family and witnesses; visits to the scene), negotiation with prosecutors, preparation of motions and legal memoranda, hearings, trials and sentencing advocacy. Student lawyers who represent incarcerated persons will be
responsible for submitting clemency applications or filing administrative appeals of prison disciplinary hearing determinations (i.e., solitary confinement cases), and may have the additional opportunity to engage in civil litigation in the form of filing an “Article 78” petition. Student lawyers handling school suspension or civil forfeiture hearings will engage in all aspects of representation, from initial client interview through the final hearing. Student lawyers are expected to maintain updated, organized case files, participate in case rounds and regularly meet with Clinic faculty for individual case conferences. Students are accompanied by Clinic faculty at all court appearances.

2. **Classroom Instruction**

The Clinic utilizes a combination of lecture, discussion, observation and simulation methods. Class explores the social and political aspects of the criminal justice system generally, and New York criminal practice in particular, as well as the full panoply of lawyering and trial advocacy skills (e.g., factual and legal investigation, trial preparation and development of a case theory, motion practice, direct and cross-examination, opening and closing statements, and sentencing advocacy). The culmination of the trial advocacy component of the Clinic is a simulated suppression hearing based on a case handled by a former Clinic student. Much attention is devoted to exploring professional responsibility of the criminal defense practitioner. Members of the judiciary, the local bar and other law schools periodically participate as guest lecturers.

3. **Writing Assignment**

Students in the Defender Clinic are also expected to research and write about a subject of relevance to criminal defense or prisoners’ rights. Students work with Clinic faculty to structure their research and to produce rough and final drafts.

4. **Placement**

In addition to in-house client representation for which students act as lead counsel, students will also assist outside counsel in various criminal justice matters. Typical placements include solo practitioners, small law firms, and criminal defense organizations (e.g., Bronx Defenders, Brooklyn Defender Service, Legal Aid Society, Mental Hygiene Legal Services, Neighborhood Defender Service of Harlem, Office of the Appellate Defender, Prisoners’ Legal Services).

**Admission Policy**

Admission to the Clinic is at the discretion of the Clinic faculty, following the completion of a clinic application, and, if necessary, an interview. No student who desires a career as a prosecutor will be automatically rejected. However, because of the potential for a conflict of interest, no student will be admitted to the Clinic who is currently employed, salaried or otherwise (including interning or externing), with a prosecutor's office or with any law enforcement agency. Please note that students who have accepted or applied for a school-year internship or post-graduate position with a prosecutorial and/or law enforcement agency will be limited in their ability to be primarily responsible for direct individual client representation in the Clinic.

Representation of clients requires a working knowledge of the 4th, 5th and 6th Amendments. As a result, Criminal Procedure is a pre- or co-requisite.
Please return the completed application to V.Hill in 5-205H by 4pm on Thursday November 2nd.

Defender Seminar and Clinic Application Form

Name:____________________________________________________________________________________

Address:__________________________________________________________________________________

Phone #: _____________________________________

Email: _____________________________________

You may be required to participate in an interview as part of the Application process. You will be notified in advance if you need to make an appointment for an interview.

Do you have any special background in legal or non-legal employment, which might be relevant to the Defender Seminar and Clinic? If so, describe briefly and specify.

________________________________________________________________________________________

________________________________________________________________________________________

________________________________________________________________________________________

Have you taken Criminal Procedure?

Yes _____ No _____

Will you need to work during your third year (if you know)? Yes _____ No _____

If so, how many hours per week?______________

Languages other than English:

   Oral Level of Fluency _______________________________

   Written Level of Fluency __________________________

What are your learning goals for next semester and your third year?

________________________________________________________________________________________

________________________________________________________________________________________

________________________________________________________________________________________
What are your career goals upon graduating?
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________

Please answer the following questions. You may add any additional comments on separate pages. Incomplete applications will not be considered.

1. Why do you want to defend individuals charged with crimes?

2. In your own words, what is the responsibility of the defense attorney? What is the responsibility of the prosecutor?

Please be advised that students who have accepted or applied for a school-year internship or post-graduate position with a prosecutorial and/or law enforcement agency will be limited in their ability to be primarily responsible for direct individual client representation in the Clinic.
3. At arraignment, you meet your client for the first time. He is able to verify his family and other ties to the community. In fact, family members are present in court. You believe you can persuade the judge to release him without bail. Before going into court for the formal arraignment, you begin to schedule a second interview date with your client. He tells you not to bother, he is skipping town and will not be back. What do you tell your client? What do you say in your bail argument to the judge?

4. What do you expect to learn from the Defender Seminar and Clinic?

5. What past experiences have you had that you feel will assist you in the Defender Seminar and Clinic?