

## CRIMINAL DEFENSE AND PRISONER ADVOCACY

Faculty	Prof. Abbe Smith, Prof. Vida Johnson, and Prettyman Fellow Dara Jackson-Garrett
What do students do	Students represent indigent defendants facing trial in misdemeanor cases in the D.C. Superior Court and in parole and probation revocation hearings. Students also work on a range of prisoner advocacy projects.
Semester or year-long	Year-long
Open to	3Ls (at least 53 credits)
Prerequisite(s)	All first year courses and (as a pre- or co-requisite) Evidence. (P/T students: this includes Criminal Justice or Democracy and Coercion. Transfer students: this includes Criminal Procedure, either at Georgetown or a prior law school. Criminal Law does <u>not</u> satisfy this requirement.)
Credits	14 total (7 in the fall, 7 in the spring)
Requires Student Bar Certification	Yes
How many students	14/year
Conflicts	Students with part-time or full-time jobs with the Federal government are ineligible for this clinic.
Average time commitment	25 hours/week, on average. Work on cases may continue beyond the end of the semester.
Seminar hours	Tues. & Thurs., 3:30-5:30
Orientation	Five-day orientation before classes begin in the fall
Information session(s)	March 31, 2021 5:00PM – 6:00PM - Zoom link will be provided

### THE CRIMINAL DEFENSE & PRISONER ADVOCACY CLINIC EXPERIENCE

The Criminal Defense & Prisoner Advocacy Clinic (CDPAC) offers students an intensive experience in indigent criminal defense in the District of Columbia and prisoner advocacy in DC and other jurisdictions. Through client representation, classroom lectures and discussion, simulations and exercises, small group “case rounds,” and individual supervision meetings, students obtain a rich understanding of the culture and ethics of indigent criminal defense and develop expertise in criminal trial advocacy and prisoner representation.

We live in a time of mass incarceration. This basic fact doesn’t seem to change. The United States incarcerates a greater percentage of its citizens than anywhere else on earth—more than 2 million people. The US has less than 5 percent of the world’s population, but almost a quarter of the world’s prisoners. When you include probation and parole, there are more than 6 million people under the control of our criminal justice system. Moreover, our incarceration practices have a disproportionate impact on black and brown communities. According to recent figures, one in two young African American men is either in jail or prison or on probation or parole in the District of Columbia.

Students in CDPAC represent indigent defendants facing trial in misdemeanor cases in the Superior Court for the District of Columbia and/or convicted of crime in parole and probation hearings. Caseloads are flexible and attuned more to quality of cases than quantity, but the expectation is that students will maintain a caseload of at least two “pretrial” cases, one or two parole revocation cases, and a special ongoing prisoner project at any given time. Students are randomly appointed to cases in the Superior

Court at preliminary arraignment. The most common pretrial charges include assault, threats, drug possession, theft, unlawful entry, destruction of property, and minor weapons offenses. Students “first chair” these cases (act as lead counsel), supervised by Clinic faculty and fellows. Students in the Clinic also represent clients in parole revocation hearings before the U.S. Parole Commission. Parole cases, which include serious felonies, are assigned by the Public Defender Service for the District of Columbia (PDS) and are supervised by attorneys in the agency’s Parole Division. Students first chair these cases as well. Students also act as lead counsel in misdemeanor probation violation (“show cause”) hearings in the Superior Court under the supervision of Clinic faculty and fellows.

CDPAC students take on an additional prisoner project to enrich and broaden their clinical experience and help fill a need in the community. The projects include: working on a parole, clemency, or pardon application for a long-serving prisoner; working on a petition for re-sentencing on behalf of a long-serving prisoner who was convicted of a serious crime as a juvenile; working on a compassionate release petition for older prisoners or those with health problems; working with “returning citizens” on discrete re-entry challenges; and teaching legal research and writing to people serving long-term sentences at two Maryland prisons—the Jessup Correctional Institution (men) and the Maryland Correctional Institution for Women (women). CDPAC students also regularly reply to correspondence from incarcerated people.

The abiding principle of clinical legal education is that students learn best—in the deepest and most productive way—when theory is applied in practice, and students reflect on the lawyer’s role in the broader context of law and society. During the school year, the Clinic meets for class twice each week, on Tuesdays and Thursdays from 3:30-5:30 p.m. Through a wide array of readings—case law, trial advocacy manuals, legal ethics materials, law review articles, magazine and newspaper articles, literature, poetry, and cartoons—coupled with the regular use of movie and television clips, classes focus on topics such as the professional responsibilities of a criminal defense attorney; the broad systemic issues that plague society and our criminal legal system (racism, poverty, violence, drug and alcohol addiction, mental health issues, overreliance on incarceration); pretrial skills (interviewing, counseling, investigation, negotiation, and developing a case theory); trial skills (opening statements, closing arguments, witness examination; making and responding to evidentiary objections); sentencing advocacy (developing a sentencing theory, collecting supporting materials, and drafting and delivering an effective sentencing argument); and the law of evidence, criminal procedure, parole, and probation in the District of Columbia.

Before the year is over, students will have interviewed and counseled clients, investigated cases, drafted and argued motions, examined witnesses, made bail and sentencing arguments, and in some instances conducted complete trials. Because each case is unique, and many factors are beyond our control, we cannot promise that every student will have a trial. However, it is expected that most students will conduct a suppression hearing (challenging police conduct on constitutional grounds), many will have a preliminary/detention hearing (when a client is held in jail after arraignment) or probation violation/show cause hearing (contesting probation officer testimony and engaging in sentencing advocacy), and every student will conduct a parole revocation hearing (examining witnesses and making argument). Moreover, every student will have an opportunity to become immersed in an interesting and challenging prisoner advocacy project.

Criminal Defense & Prisoner Advocacy Clinic students accept full responsibility for their cases. Part of that responsibility is making effective use of the experienced lawyers and teachers whose role is to ensure both that students benefit from an extraordinary educational experience and clients benefit from extraordinary representation. The students will be intensively supervised by Professor Abbe Smith, Professor Vida Johnson, Prettyman Fellow Dara Jackson-Garrett, and attorneys from the PDS Parole Division. Professional investigator Seana Holland oversees all Clinic investigation.

Because of the uniquely challenging nature of the work, preference is given to those with substantial demonstrated commitment to indigent criminal defense, capital defense, prisoners' rights and re-entry/returning citizens, and civil poverty law. However, CDPAC welcomes all students who are genuinely interested in the Clinic. Many students without prior criminal defense experience—even some who enter the Clinic thinking they want to become a prosecutor—will fall in love with indigent defense and go on to public defender careers.

Working with poor people accused or convicted of crime is often exhilarating, sometimes grueling, and never boring. For some, it is life changing.



Tuesday, November 15, 2011

*Joshua Lake, 3L, CDPAC student\**

“How can you defend guilty people?”

I am still in law school, but because I'm applying to work as a public defender I already have to answer that cocktail party question.

And it's a fair question. We watch *Law & Order* not to sympathize with the criminals, but to enjoy catharsis when they're caught. So why would anyone rush to defend guilty people? I can't give an answer for everyone. There are a host of reasons defense attorneys feel called to the work. But here's my own story.

Before I attended my first law school class, Georgetown's financial aid application required me to articulate my post-graduation goals. I was significantly puzzled by the question, and it took me several days to prepare a response. You see, I am the first lawyer on either side of my family; I knew that my liberal arts degree and my love for reading were good preparation for law school, but surely I had more meaningful reasons for enrolling.

I spent several days thinking about the question, trying to give shape to my inchoate motivations for pursuing a career in law. During that process of forging a plan for my life as a lawyer, I first articulated a desire to defend the rights of the accused.

In that essay, I didn't use the words “public defender,” and I didn't even articulate a clear desire to work with the criminal law. What I said was that I hoped to find a career where I could defend the constitutional rights of persons who might, apart from my advocacy, be denied them. I understood that without a lawyer at their side, some citizens would stand helpless as their “inalienable” rights were simply ignored.

Comparing that essay to my experience in criminal defense, I realize that the two are not far apart. This summer at the Nashville Public Defender, I spent every morning in the courtroom and every afternoon in the office. Before lunch, I spoke with clients in lockup, listened to their story, heard their goals, and sought to effectuate them – whether in plea negotiations or in full-blown trial. After a quick break for lunch, I went back to the office to research case law, draft motions to be filed in court, and interview clients out on bail.

Every minute of my day was spent defending the constitutional rights of men and women accused of various crimes. Sometimes it was their First Amendment right to free speech, others it was their Fourth Amendment right to freedom from unlawful searches, and always it was their Sixth Amendment right to counsel.

That internship confirmed my desire to find a public defender job after graduation, but it also opened my eyes to how people view criminal defense attorneys.

Nearly everyone who hears that I want to work in criminal defense will have one of three responses: Some will try to sell me on the benefits of some more respectable and lucrative career choice. Many will look incredulous and try to change the topic. And nearly everyone will ask a variety of the famous question, “You really want to defend murderers and rapists?”

My response to that last question – an answer I can now give almost without thinking, because I’ve repeated it so often – is also three-fold: First, not everyone accused of a crime is guilty. We have all heard stories about DNA exonerations and prisoners walking free after decades in jail following a wrongful conviction. For that reason, I want to make the government jump through every hoop possible and prove each defendant guilty beyond a reasonable doubt before the state incarcerates even one of them.

One defense attorney has written that defending the guilty is easy, but God help you when you have an innocent client. Those are the clients that keep you up at night, fighting with every ounce of your strength, knowing that if you win there’s no joy, just the relief at having prevented a horrific injustice. The defense attorney stands in the breach, fighting to keep those innocent men and women out of prison.

Second, even the defendants who are guilty deserve a zealous and qualified lawyer to advocate on their behalf; that is how our American adversarial system is designed. A good prosecutor puts on his best case and an earnest defense attorney does her best to show reasonable doubt, and we leave it to the judge to split the baby. If qualified attorneys ever decided to stop representing guilty clients, the system would stop working.

Defense attorneys have the privilege of getting to know all of the men and women accused of crimes, whether they be guilty or innocent. And what you find is that each one has a story. As you get to know each client and as you get to know their story, you begin to see their humanity, something that is often lost in the criminal justice system. To the prosecutor – and often to the judge – the defendant is nothing more than a case number and a list of criminal charges, but to the defense attorney, they are a human being and a product of their circumstances. They deserve an advocate.

Finally, but for the grace of God any one of us could be on the other side of the table, accused of a crime, unable to afford a private attorney, and desperately hoping that our public defender isn’t just the dregs of his law school class, the guy who couldn’t get any other job.

That is why I want to defend guilty people.

**\*Note: Joshua Lake was a trial attorney with the Office of the Colorado State Public Defender for several years after law school and is now an Assistant Federal Defender with the Office of the Federal Public Defender, Southern District of Texas.**

## REQUIRED ORIENTATION

Students are required to return to school one week earlier than other students to participate in an intensive orientation program. Participation in Orientation is a requirement of the Clinic, and no exceptions will be made. Orientation gives students the opportunity to become immersed in making the transition from students to lawyers without the usual distractions.

### **TIME COMMITMENT**

The Clinic is demanding and time consuming. As noted above, students are required to return to school a week early for Orientation, with some reading done over the summer. Although the Clinic requires a substantial time commitment, a student with good time management skills can successfully combine the Clinic and part-time employment. Our students generally find that there is a greater overall time commitment during the fall semester than spring, as they are devoting more time to learning the essentials of criminal defense and prisoner advocacy for the first time. Students are encouraged to arrange their schedules so that one day each week (a Monday, Wednesday, or Friday, when we do not have clinic seminar) is completely free from class or employment responsibilities in order to “pick up” cases (be appointed to represent clients) at arraignment. All students are responsible for cases over class breaks and finals, but we can usually schedule around these times.

### **CONFLICTS OF INTEREST**

A strict federal conflict of interest statute precludes students who are employed by the Federal Government from participating in the Clinic because the United States is the prosecuting authority in the District of Columbia.

### **INVESTIGATION**

To be a competent attorney, it is essential to learn how to conduct fact investigation. Seana Holland, our experienced and talented staff investigator, will train students in the fundamentals of investigation, including interviewing witnesses and taking statements. Included in the training are techniques and procedures for minimizing danger. Students investigate in pairs and follow established guidelines designed to ensure safety. However, given the nature of the work and the location of urban crime scenes, investigation carries some risks. We believe that overall, investigation is safe, and supervisors regularly go into the field to investigate their own cases. If, however, you are reluctant to take on the responsibility of investigating your cases, you should not enroll in this clinic.

### **OPEN HOUSE**

On Wednesday, March 31, 2021, the Criminal Defense & Prisoner Advocacy Clinic will have an open house/information session via Zoom. This gathering will give students the opportunity to meet the faculty and supervisors and ask any questions they might have. Attendance at the open house is optional.

### **SELECTION CRITERIA/APPLICATION PROCESS**

1. Each applicant must be eligible for admission to the bar under the D.C. Student Practice Rule (see the general clinic website for more information) and meet all other eligibility requirements noted above.
2. The online application must be filled out completely and submitted by 12:00 pm, noon, on April 12, 2021. **When filling out the online application, you will be asked to write a clinic-specific statement of interest that explains why you wish to enroll in CDPAC and how you see the clinic fitting in with your personal values, past experiences, and future goals. In addition, please briefly explain why it is important to provide high quality representation to people charged with or convicted of serious crimes and why you believe you can do it.**
3. Those students who satisfy the above criteria form the pool for selection. We will then select those students who have substantial prior experience with criminal defense, capital defense, prisoner advocacy, or poverty law practice, or some other experience that, in the judgment of the faculty, will enhance the pedagogical experience of the class. The remaining slots will be filled by lottery.

## FACULTY

**Professor Abbe Smith** is the Director of CDPAC, Co-Director of the E. Barrett Prettyman Fellowship Program, and Professor of Law. She joined the Georgetown faculty in 1996. Prior to coming to Georgetown, Professor Smith was the Deputy Director of the Criminal Justice Institute at Harvard Law School, where she was also a Clinical Instructor and Lecturer on Law. In addition to Georgetown and Harvard, Professor Smith has taught at City University New York Law School, Temple University School of Law, American University Washington College of Law, and the University of Melbourne Law School (Australia), where she was a Senior Fulbright Scholar in 2005-06. Professor Smith teaches and writes in the areas of criminal defense, legal ethics, juvenile justice, and clinical legal education. In addition to numerous law journal articles, she is the author of *GUILTY PEOPLE* (Rutgers University Press, 2020); co-editor of *LAWYERS' ETHICS* (with Monroe Freedman and Alice Woolley, Routledge, 2017); co-editor of *HOW CAN YOU REPRESENT THOSE PEOPLE?* (Palgrave MacMillan, 2013) (with Monroe Freedman); co-author of *UNDERSTANDING LAWYERS' ETHICS* (5th ed., Carolina Academic Press, 2016) (with Monroe Freedman); and author of *CASE OF A LIFETIME: A CRIMINAL DEFENSE LAWYER'S STORY* (Palgrave MacMillan, 2008). Professor Smith began her legal career at the Defender Association of Philadelphia, where she was an Assistant Defender, a member of the Special Defense Unit, and a Senior Trial Attorney. She continues to be actively engaged in indigent defense practice through the Clinic, and as a member of the DC Superior Court Criminal Justice Administration (CJA) panel and frequently presents at public defender and legal aid training programs in the United States and abroad. Professor Smith is on the Board of Directors of The Bronx Defenders Still She Rises and the Second Look Project and is a member of the National Association of Criminal Defense Lawyers, the American Civil Liberties Union, and the National Lawyers Guild. In 2010, Professor Smith was elected to the American Board of Criminal Lawyers. She received the Frank Flegal Award for Outstanding Teaching in 2016. In 2019, she received the Defender Association of Philadelphia's Career Achievement Award. She is also a published cartoonist.

**Professor Vida Johnson** is Co-Director of CDPAC and Co-Director of the E. Barrett Prettyman Fellowship Program, and Associate Professor of Law. She has been teaching in the Clinic since 2010. Prior to coming to Georgetown, she was a supervising attorney in the Trial Division at the Public Defender Service for the District of Columbia (PDS), where she worked for eight years. At PDS, Professor Johnson was assigned to "felony one" cases, the most serious felonies, and her experience included numerous trials in the D.C. Superior Court representing indigent clients facing charges including homicide, sexual assault, and armed offenses. Professor Johnson's responsibilities at PDS also included supervising other trial attorneys and serving as one of the agency's two representatives to the D.C. Superior Court Sentencing Guidelines Commission. Before joining PDS, Professor Johnson was an E.

Barrett Prettyman fellow at Georgetown University Law Center. As a fellow, she represented indigent adults in the D.C. Superior Court and supervised students in the Criminal Justice Clinic. Professor Johnson's recent scholarly work includes: *KKK in the PD: White Supremacists Police and What To Do About It*, 23 Lewis & Clark L. Rev. 205 (2019), *Federal Criminal Defendants Out of the Frying Pan and Into the Fire? Brady and the United States Attorney's Office*, 67 Cath. U. L. Rev. 321-364 (2018); *Prosecutors Who Police the Police Are Good People*, 87 Fordham L. Rev. Online 13-19 (2018); *Bias in Blue: Instructing Jurors to Consider the Testimony of Police Officer Witnesses with Caution*, 44 Pepp. L. Rev. 245-304 (2017); and *Arresting Batson: How Striking Jurors Based on Arrest Records Violates Batson*, 34 Yale L. & Pol'y Rev. 387-424 (2016). She also wrote *Defending Civil Rights* in the compilation *HOW CAN YOU REPRESENT THOSE PEOPLE?* (Smith & Freedman, eds, Palgrave MacMillan, 2013). Professor Johnson regularly presents at academic and professional conferences.

**Teaching Fellow Dara Jackson-Garrett** is the second-year E. Barrett Prettyman Fellow. She received her law degree from Harvard Law School in 2020 and earned her B.A. in International Relations from American University in 2013. She was a Fulbright Scholar in Venezuela from 2013-2014. Dara was a summer law clerk at the Bronx Defenders and ArchCity Defenders, where she worked on indigent criminal defense and prisoner advocacy. She was a student attorney and Practice Area Director at the Harvard Legal Aid Bureau, where she represented indigent clients in housing court and led the Housing Practice. Dara was also a student attorney and Executive Director at Harvard Defenders, where she represented indigent clients in criminal show-cause hearings. Prior to law school, she worked for three years at the Council on Foreign Relations in the David Rockefeller Studies Program.

## 2020 – 2021 CRIMINAL DEFENSE & PRISONER ADVOCACY CLINIC STUDENTS

1. Natalie Bayer
2. Oliver Bok
3. Josh Carson
4. Justin Fitzsimmons
5. DaNia Henry
6. Mary Hill
7. Emma Johnson
8. Larissa Johnson
9. Tess Kilbane Myers
10. Sara Miller
11. Michael Redzich
12. Hugh Rosenberg
13. Holly Travis
14. Benjamin Wessinger