

## **HABEAS CORPUS SEMINAR**

Fall 2009  
Adjunct Professors  
Hon. Jeffrey J. Keyes  
Peter Thompson

“A lawyer who does not know how to preserve the rights guaranteed by the Writ and to invoke them for her clients is not fully educated in the law.”

- John C. Tucker, Foreword to *Federal Habeas Corpus Cases and Materials*

### **Purpose**

In this seminar we will study in depth the evolution of habeas corpus and how the habeas remedy is utilized in the federal court system today. The study of habeas corpus law gives the students an opportunity to observe how constitutional law, criminal law and procedure, civil procedure, and even trial and appellate practice, all bear upon the courts' struggle to apply the body of habeas corpus law to individual cases. We plan to invite federal judges, prosecutors from the U.S. Attorney's office and criminal defense counsel to the seminar to discuss various habeas issues with the students in order to give the students an appreciation of how habeas really operates day to day in our court. We will also give the students an opportunity to observe hearings in Judge Keyes's court and review recent habeas cases from the District of Minnesota for case study. Our goal is that the students not only master the complicated field of habeas law academically, but additionally achieve an appreciation of the difficulties involved in applying habeas law to the very real problems of prisoners and detainees in the judicial system.

### **Course Materials**

The textbook for this course is *Federal Habeas Corpus Cases and Materials* by Lyon,

Hughes and Prosser. A substantial amount of additional reading material will be utilized including excerpts from law review articles, supplemental cases and briefs, and other supplemental materials of court cases, particularly from cases in the United States District Court for the District of Minnesota. Our plan is to post all such materials on the TWEN site for the course.

The following syllabus provides an overview of the course, and generally describes the material we plan to cover. The final syllabus will provide specific class-by-class assignments.

## **SYLLABUS**

### **Course Section 1: The Great Writ and the Historical Development of Federal Habeas**

In this first section of the course students will become familiar with the history of the Great Writ at common law and will study the ongoing expansion and contraction of federal habeas corpus in our federal courts from 1789 to the present. The starting point for this exercise will be the *Boumediene* case, including briefing of the parties and amicus, the oral argument, and the opinion. We will then step back and trace the historical developments which led, ultimately to *Boumediene*. For the historic overview we will utilize several sources including excerpts from the following law review articles: J. Hafetz, *The untold Story of Non-Criminal Habeas Corpus and the 1996 Immigration Acts*, 107 Yale L. J. 2509 (1996), and L. Yackle, *A Primer on the Habeas Corpus Statute*, 44 Buff. L. Rev. 381 (1996), and Chapter 13 of Rivkind & Schatz's *The Death Penalty*. In the historical survey, we will first focus on Lincoln and habeas corpus in the Civil War. We will utilize *Ex parte Merryman* and *Ex parte Milligan* and Chapter 2 from Geoffrey Stone's *Perilous Times*.

We will then review the Judiciary Act of 1867 and the growth of federal habeas review of constitutional claims arising from state courts. Cases will include *Yick Wo v. Hopkins* (1886), *Frank v. Mangum* (1915), *Moore v. Dempsey* (1923), and *Powell v. Alabama* (1932). We will study the World War II case of *Ex Parte Quirin* and then move to the expansion of federal habeas review during the Warren Court in a study of *Brown v. Allen*(1953), *Fay v. Noia* (1963), and *Townsend v. Sain* (1963).

We will then move to the contraction of federal habeas corpus during the Burger and Rehnquist courts, reviewing in particular *Stone v. Powell* (1976), and *McCleskey v. Zant* (1991). We will then study the adoption of the Antiterrorism and Effective Death Penalty Act (AEDPA) in 1996, and this will serve as a foundation for the next part of the course in which we will explore how habeas is actually litigated.

### **Course Section 2: Litigating Habeas**

We will begin our section on litigating habeas with issues about the appointment of counsel. This will include a study of the role of counsel and erosion of the right to counsel with particular attention being paid to the role of defense counsel, and the obstacles they face, in the Guantanamo litigation. In addition we will be reviewing the ethical challenges faced by prosecutors and defense counsel in the Guantanamo cases.

We will then survey the various procedural obstacles to habeas review in federal court, including exhaustion of state remedies (*Fay v. Noia*, *Rose v. Lundy*, *Granberry v. Greer*); retroactivity (*Yates v. Allen*, *Teague v. Lane*); adequate and independent state grounds for decision (*Coleman v. Thompson*); full and fair opportunity to litigate (*Withrow v. Williams*); successive

petitions (*McCleskey*); harmless error (*Brecht*); and obtaining a hearing in federal court (*Michael Williams v. Taylor*).

We will then turn to some of the most common claims raised in habeas petitions and examine typical cases in federal court to see how they are litigated. We will study recent cases before the federal District Court for the District of Minnesota, including a review of the habeas petition record, briefs, and opinions. Amongst other issues we will likely focus on ineffective assistance of counsel claims (*Strickland* and *Wiggins*), and claims of actual innocence (*Herrera v. Collins* and *Schlup v. Delo*).

We will examine the special role habeas has played in death penalty litigation in the United States, focusing on the state and federal habeas proceedings in *Draughon v. Dretke*.

Finally we will discuss the future of the Writ of Habeas Corpus, including the long-term impact of the AEDPA, the effect of the Guantanamo litigation on habeas and the role of habeas in international human rights. In addition to the Guantanamo cases, we will review immigration cases such as *Zadvydas v. Davis* and *Ashcroft v. Kim Ho Ma* dealing with the availability of federal habeas for alien habeas claims.

## Class Schedule

Class	Subject	Readings	Discussion Preparation
Week 1 September 8	Course Introduction; Habeas in Times of Strife	<i>Boumediene v. Bush</i> <i>Merryman</i> <i>Milligan</i>	<i>Boumediene</i> oral argument
Week 2 September 15	Overview of U.S. Habeas history	<i>The Death Penalty</i> : pp. 642-654; <i>Perilous</i> <i>Times</i> .	<i>Fay v. Noia</i> <i>Stone v. Powell</i>
Week 3 September 22	Role of Counsel	Chapters 4 and 5: pp. 93-120	Appointment of counsel
Week 4 September 29	Right to a Hearing	Chapter 6: pp. 121-150	Criteria for hearing
Week 5 October 6	Exhaustion of State Remedies	Chapter 7: pp. 151-170	Standard of review for exhaustion claim
Week 6 October 13	When is a Case Retroactive?	Chapter 8: pp. 171-206	Burden on claim of retroactivity
Week 7 October 20	Adequate and Independent State Grounds	Chapter 9: pp. 207-240; also read <i>May God</i> <i>Have Mercy</i>	Be ready to discuss <i>May God Have</i> <i>Mercy</i> , in addition to other readings
Week 8 October 27	Full and Fair Opportunity to Litigate	Chapter 10: pp. 241-266	Successive Petitions
Week 9 November 3	Harmless Error; Issues in Capital Cases	Chapters 12 and 13: pp. 295-337	Full & fair opportunity to litigate

Class	Subject	Readings	Discussion Preparation
Week 10 November 10	Innocence and the AEDPA	Chapters 16 and 17: pp. 425-496	Release as remedy
Week 11 November 17	Future of Habeas	Selected International human right materials	International human rights issues
Week 12 November 24	GTMO Revisited	Exerpts from <i>Rasul</i> , <i>Hamdi</i> and <i>Hamdan</i>	Present final paper abstracts
Week 13 December 1	Habeas Review	Briefs from Habeas Cases	Present final paper abstracts

The syllabus is subject to change to the extent that guest lecturers have schedule changes, significant habeas cases are decided, or other reading materials become available.

Grades & Attendance:

Grading will be based 90% on a final paper in the form of a scholarly work done in the general “law review article” format, and 10% on class participation. The final paper must be at least 15 pages in length and well-supported by footnotes. The work must reflect a substantial analytical section presenting the student’s *thesis* -- the student’s personal perspective on the chosen topic. In other words, the article cannot simply address the topic and summarize the law without taking a position.

Permissible topics include any of the issues raised during the course, and in addition, other

topics related to the material as approved by the professors. An outline for the paper is due at the midpoint of the course and must be approved by the professors. During the last two classes, each student will give an oral presentation of their paper, in summary form, to the class. The paper is due a week after the last class. An electronic copy is to be sent to the instructors by the deadline and a hard copy shall be mailed on the same date.