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CASES AND MATERIALS ON
THE DEATH PENALTY

Fourth Edition



Nina Rivkind, Steven F. Shatz,
Sam Kamin & Justin Marceau

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This book is dedicated to our parents:

To the memory of Julius Rivkind and to Marsha F. Rivkind

NR

To the memory of Gilbert F. Shatz and Fae C. Shatz

SFS

To Allen and Grita Kamin

SK

To Francis and Mary Marceau

JM

PREFACE

The work on the first edition of this book began twenty-five years ago when Nina Rivkind first put together a set of materials to teach a new course on the death penalty at the University of San Francisco School of Law (U.S.F.). Those materials evolved in subsequent classes taught by Nina at U.S.F. and then at Berkeley Law (Boalt Hall) and by Steve Shatz at U.S.F. and eventually became a casebook. Nina and Steve co-authored the first three editions of this casebook and are excited to welcome Professors Sam Kamin and Justin Marceau of the University of Denver Sturm College of Law as co-authors on this fourth edition. Sam and Justin are experienced law teachers who have written extensively on the death penalty and testified as experts on the death penalty in capital case litigation. Users of the third edition will note that this edition contains seven new cases and a number of updated notes and problems, incorporating changes in death penalty law over the last six years.

The book reflects our conviction that a successful casebook is one that presents students with a clear structure, a context within which to place the cases, and cases that trace the development of legal principles and stimulate critical thinking. Each chapter begins with an introduction to give context to the cases and to outline the issues to be explored. Because we believe that the cases should be the main focus in a casebook, we present the principal cases in relatively full form. We have eschewed encyclopedic notes relating the holdings of other cases and quoting from secondary sources in favor of a limited number of notes and problems raising issues for discussion. We include several extended notes that synthesize the writings and empirical research of other scholars. We also have incorporated some articles from the popular press to connect the Supreme Court doctrines to the real world application of the death penalty. We have eliminated many citations and footnotes from the judicial opinions without so specifying, and we have simplified the citations we include by omitting pinpoint page cites. Within cases, numbered footnotes are the Court's; lettered footnotes are ours.

The issue of the death penalty evokes strong opinions from academics as well as from the public at large. We are no exception. As our experience representing death row prisoners and our other writing in the field would suggest, we are strongly opposed to the use of the death penalty, certainly as it is administered in the United States today. Nonetheless, we believe that it is not appropriate, nor ultimately effective, to use our position as teachers and casebook authors to argue our personal views. Accordingly, we have made every effort to present the

material in the book in a neutral fashion in the hope that the material itself will stimulate a broad and critical discussion of the issues.

Nina and Steve want to express their gratitude to those teachers who have used the previous editions in their classes and have given encouraging feedback and helpful suggestions and to the students, whose positive response to the course and the previous editions helped shape this edition.

NINA RIVKIND
STEVEN F. SHATZ
SAM KAMIN
JUSTIN MARCEAU

January, 2016

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