

CASES AND MATERIALS ON
THE DEATH PENALTY

Second Edition

Nina Rivkind
Steven F. Shatz

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**CASES AND MATERIALS
ON
THE DEATH
PENALTY**

Second Edition

By

Nina Rivkind

*Lecturer, Boalt Hall
School of Law
University of California, Berkeley*

Steven F. Shatz

*Philip and Muriel Barnett
Professor of Law
University of San Francisco*

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610 Opperman Drive

P.O. Box 64526

St. Paul, MN 55164-0526

1-800-328-9352

Printed in the United States of America

ISBN 0-314-15401-9



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



This book is dedicated to our mothers

Marsha F. Rivkind

Fae C. Shatz

and to the memory of our fathers

Julius Rivkind

Gilbert F. Shatz

who, by their example, taught us to pursue justice.

*

Preface

The work on the first edition of this book began fifteen years ago when Nina first put together a set of materials to teach a new course in 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 Boalt Hall and by Steve at U.S.F. and eventually became a casebook. This second edition contains nine new cases decided in the last four years and a number of updated notes and problems, incorporating what we learned teaching from the first edition.

The book reflects our conviction that a successful casebook is one which presents students with a clear structure, a context within which to place the cases and cases that show the development and structure of legal argument 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. Numbered footnotes are from the original materials; 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 and probably under any conceivable circumstances. 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.

We want to express our gratitude to those teachers who used the first edition in their classes and gave us encouraging feedback and helpful suggestions and to the students in our classes at Boalt Hall and U.S.F., whose

positive response to the course and the first edition guided us in shaping this edition.

NINA RIVKIND
STEVEN F. SHATZ

October, 2005

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**CASES AND MATERIALS
ON
THE DEATH
PENALTY**

Second Edition

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