

2:30-3:30 HOT TOPICS IN CRIMINAL LAW AND PROCEDURE

Spring 2014

T, Th 2:30-3:45

Room: 113 BLB

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Office Hours

Mondays 1:00-2:30 (I am also available by appointment and drop-ins are welcome, too.)

Introduction

Welcome to the Hot Topics Seminar! I have planned what I hope will be an exciting semester with guest lecturers and documentaries, as well as some interesting readings. We will also tour a maximum security prison.

If you are nervous about writing a long research paper, just relax. As long as you follow the schedule I have outlined for you below, I assure you that you will get it done. Often the same students who were nervous about writing forty pages will send me emails asking if fifty is too long! I've been supervising paper writers for many years, and I have yet to have a student who could not write a decent seminar paper. Most of the papers are downright superb. Just keep working consistently all semester, and it will get done. Remember, you do not need large blocks of time to work on your paper. You are better served fitting in an hour or two of reading and/or writing each day. I will work closely with each of you throughout the process, so it will be, in a sense, a joint project.

We will not meet every week, and the readings should not be too onerous. My aim is for you to put greater effort into the few class meetings scheduled and spend the rest of the time working on your papers. I will also meet individually with you to discuss your first drafts and get you started on the right track. Please **MARK YOUR CALENDARS** so that you do not miss class by mistake.

Requirements

1. Attendance of eighty percent of the classes taught is required. Failure to attend eighty percent of the classes constitutes grounds for dismissal. Students with special hardships that may affect their attendance should speak to me *in advance* of their absence from class.

The prison field trip is optional, but highly recommended. It takes a lot of work on my part to organize the trips, and many people at the prisons volunteer to meet with you. Students who attend the trip are always so enthusiastic about their experiences. If you will not be attending, please show the courtesy to let me know well in advance.

2. Class preparation and participation will be taken into account in determining the final grade.
3. A seminar paper of at least 35 pages, exclusive of footnotes, is required to fulfill the writing requirement. Thus, the total number of pages should be about 38 pages including footnotes. Students may write papers that exceed that number of pages, but shorter papers are discouraged. The final paper, as well as the prospectus and all drafts, must be original work, based on original legal research. (See note on originality below.) You may select any topic relating to criminal law or criminal procedure, subject to my approval.
4. A short **prospectus** (two to five pages) is required for all papers. The prospectus should briefly introduce the topic and the thesis of the paper. A preliminary **bibliography** must be attached with your prospectus as well. The bibliography is simply a list of all materials that you have examined in preparing your prospectus. Students writing normal seminar papers need not turn in a bibliography with any subsequent draft or with your final paper. I do not require a bibliography after the prospectus stage of the process.
5. **Two drafts** of the seminar paper will be required. The quality of the prospectus and drafts will not be taken into account in determining the final grade, so long as the prospectus and drafts demonstrate a *good faith effort* toward the development of the research project. However, the final grade will be negatively affected by the failure to submit either of the two drafts in a timely manner. If you require an extension, you should speak to me about it *in advance* of the deadline.

An Important Rule Relating to The Requirement of Originality:

Although you are undoubtedly aware of the rules forbidding plagiarism, keep in mind that there is also a requirement that your work be original. Even if plagiarism is avoided by properly citing all references to another's work, you may still not be doing truly original work. Merely re-telling another author's article, for example, if properly footnoted, does not constitute plagiarism, but neither is it original. Thus, please **do not read law review articles (or similar articles found on the web) on the subject of your paper until you have completed your first draft.** Your research should begin instead with primary sources: judicial opinions, legislation, legislative history, writings from other disciplines, newspaper or magazine articles. In short, you may consult everything but law review articles prior to the writing of the first draft. In writing your second draft, you should do a literature search for law review articles. This will then enable you to add references to other points of view. Some may support your view, disagree with your position, or simply take a different perspective. You should include most if not all of these by at least acknowledging them in footnotes.

How to Submit Papers:

You should submit Word documents as attachments in an email to me.

Some Guidelines for Writing Papers

Throughout the process, please BACK UP YOUR WORK so you don't lose your work if your computer crashes. **Computer disasters will not be considered valid excuses for tardiness of drafts.**

Before you submit your first draft:

1. Please number your pages.
2. Your paper should start with a title, followed by your name, both centered.
3. Your text should be in 12 pt. font and footnotes in 10 pt. font with one-inch margins on the left and right sides. Text is double spaced, with no additional spaces between paragraphs or sections. Footnotes are single spaced within and between notes.
4. **This is critical:** write your footnotes as you go. Even if you don't put them in perfect bluebook format, you should at least keep track of your sources as you go. If you don't, you can get yourself into problems with possible plagiarism. Even more likely, you will end up spending an inordinate amount of time at the end trying to find the sources for your quotations or cited ideas.

Before you submit your second draft:

1. Once you begin working on your second draft, it will be permissible to refer to law review articles. You can think about incorporating the viewpoints of other authors into the text of your paper, checking your research against that in the articles, and/or just using the articles as additional support for points you already make in your paper. Contrary viewpoints can simply be acknowledged, or you can attempt to distinguish them or explain why you think your position is more sensible or reasonable.

2. Think about telling your story three times: (1) first in your introduction; (2) then in the body of the paper; and (3) in your conclusion. Your introduction should give an overview of the entire paper in a straightforward and evenhanded fashion. Be sure to explain your thesis and conclusions, too—don't hide the ball. End your introduction with a roadmap section that explains how each of the major sections of the paper is organized. Each major section of your paper should then advance your thesis in some way. Remind the reader of how each section is relevant to your thesis.
3. As best you can, try to use short, simple sentences. Think about topic sentences for your paragraphs, and work toward smooth transition between sections of the paper. I'll try to help you with the latter.
4. Select a title that gives the reader sufficient information about your topic. It need not be too long or wordy, but it should help the reader to understand the general topic.

As you complete the final version:

1. Before turning in your final papers, please check your footnotes for bluebook compliance. The LRW teachers are happy to assist you if you have any questions.
2. Your conclusion should be brief, from one paragraph to about two pages max. You shouldn't need too many footnotes here. This is where you can be a little more emotional or forceful in advancing your position.

Schedule for Semester

Note: You are not required to read each and every footnote in the articles we will read for this course. They are included so that you may refer to them when something in the text sparks your curiosity about the source of information for a proposition.

Aug. 26 **Discussion on selecting a paper topic and researching a paper**
Guest lecturer: Mon Yin Lung, Associate Director of the O'Quinn Law Library

Aug. 28 **Improving Forensic Science**

Readings:

S. Thompson, *The Complex Critique of Forensic Science*, from COPS IN LAB COATS: CURBING WRONGFUL CONVICTIONS THROUGH INDEPENDENT FORENSIC LABORATORIES (forthcoming Carolina Academic Press, 2014).

Flawed Evidence under a Microscope

Sept. 2 **Wrongful Convictions Lead to Changes in Prosecutorial Discovery Requirements**

Readings:

Errors in Judgment: The Consequences of Prosecutorial Mistakes

Morton Case Sparks Calls for Texas Evidence Law Reform

Update: Suspect in Michael Morton Case Arrested

Thompson honored for Willingham Work

Perry Signs Michael Morton Act

S.B. 1611 (The "Michael Morton Act")

S.B. 825 (extending statute of limitations for filing a complaint against a prosecutor for discovery violation).

Daniel Medwed, *The Prosecutor as a Minister of Justice*

Head in the Sand Over Prosecutorial Misconduct

Sept. 4 **Federal Corporate Criminal Practice: DOJ's Evolving Policy on Corporate Charging and Deferred and Non-Prosecution Agreements.**

Guest lecturer: Ryan McConnell, McConnell Sovany LLP

Readings:

Ryan D. McConnell, Jay Martin & Charlotte Simon, *Plan Now or Pay Later: The Role of Compliance in Criminal Cases*

Sept. 9 **Pretrial Diversion in Harris County**

Guest lecturer: Jay Jenkins, Project Attorney—Harris County, Texas Criminal Justice Coalition

Readings: to be distributed in class in advance of this class session

Sept. 11 **Privacy, Internet Surveillance, Cell Phone Searches**

Readings:

Andrew Clement, *NSA Surveillance: Exploring the Geographies of Internet Interception*

Oren Kerr, *The Next Generation of Communications Privacy Act*

How a Freshman Legislator Protected Your Emails

Riley v. California __ U.S. __ (2014).

Sept. 16--NOON **Meeting Discovery Requirements under the Michael Morton Act (Lunch talk, place TBA)**

Guest lecturer: Jaime Esparza, District Attorney, El Paso County. Please make plans to attend Mr. Esparza's lunch talk. We will NOT meet at our usual time.

Sept. 18 **Guest lecture: Prof. Tobi Tabor, on writing a seminar paper.**

Sept. 23 **No class. First drafts due by 5:00.**

Sept. 25 **No class.**

Sept. 30 **Evidence-Based Practices: Reducing Jail Populations and the Unfair Impact of Poverty in Pretrial Release Decisions**

Guest lecturer: Timothy J. Murray, Director Emeritus, Pretrial Justice Institute, Washington, D.C.

Readings:

The Pretrial Justice Institute, *Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process*

James “Andy” Rogers (UHLC JD 2012), *The Hidden Cost of Bail Bonds on Texas Counties*

Depenalizing Poverty: A Proposal for Improving Harris County Bail Policies (by the Texas Fair Defense Project)

Oct. 2 The Right to Counsel: Understanding the Rights

Readings:

Gideon v. Wainwright, 372 U.S. 335 (1963) (excerpt)

THE CONSTITUTION PROJECT, JUSTICE DENIED: AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL (Apr. 2009): pp 18-31.

Padilla v. Kentucky, 559 U.S. 356 (2010) (excerpt)

CHRISTOPHER DUROCHER, ARE WE CLOSER TO FULFILLING GIDEON’S PROMISE: THE EFFECTS OF THE SUPREME COURT’S “RIGHT-TO-COUNSEL TERM” (American Constitution Society for Law and Policy Issue Brief, Jan 2013).

Nancy Leong, *Gideon’s Law-Protective Function*, 122 YALE L.J. 2460 (2013).

Paul Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176 (2013)

Oct. 7 The Right to Counsel: Understanding the Indigent Defense System and its Problems

We will watch a documentary movie entitled “Gideon’s Army.”

Readings

Tigran W. Eldred, *Prescriptions for Ethical Blindness: Improving Advocacy for Indigent Defendants in Criminal Cases*, 65 RUTGERS L. REV. 333 (2013): pp 334-340 (Introduction), 368-385 (Part IV)

Jonathan A. Rapping, *You Can't Build on Shaky Ground: Laying the Foundation for Indigent Defense Reform Through Values-Based Recruitment, Training, and Mentoring*, 3 HARV. L. & POL'Y REV. 161 (2009): pp 161-184

Oct. 9 The Right to Counsel: Realities and Reforms

Guest lecturer: Andrea Marsh, Senior Counsel to the Texas Fair Defense Project and Director of Pro Bono Programs for the William Wayne Justice Center for Public Interest Law at University of Texas School of Law

Readings:

Andrew Cohen, *How Americans Lost the Right to Counsel, 50 Years After Gideon*, THE ATLANTIC (Mar. 13, 2013): excerpt

Robert C. Boruchowitz, et al., *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts* (2009): pp 14-17

ANDREA MARSH & SUSANNE PRINGLE, *THE WAY FORWARD: RECOMMENDATIONS FOR IMPROVING INDIGENT DEFENSE IN TEXAS ON THE FIFTIETH ANNIVERSARY OF GIDEON V. WAINWRIGHT* (2013), pp. 10-14.

Wilbur v. City of Mount Vernon, ___ F. Supp. 2d ___, 2013 WL 6275319 (W.D. Wash. 2013): excerpt

L. Jay Jackson, *Miami-Dade's Overburdened PD's Office May Decline New Clients, Florida Court Says*, ABA JOURNAL (Oct. 1, 2013).

Erik Eckholm, *Public Defenders, Bolstered by a Work Analysis and Ruling, Push Back Against a Tide of Cases*, N.Y. TIMES (Fe. 8, 2014).

MARSH & PRINGLE, *THE WAY FORWARD*: pp 27-32.

Dr. Tony Fabelo, et al., *Improving Indigent Defense: Evaluation of the Harris County Public Defender* (Sep. 30, 2013).

Jordan Smith, *Stopping the Public Defender "Wheel," The Crime Report* (Jan. 23, 2014).

MARSH & PRINGLE, *THE WAY FORWARD*: pp 35-40

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Oct. 14 The Criminal Justice System and the Mentally Ill

We will watch a segment from "60 Minutes"

Readings:

National Alliance on Mental Illness, *The Criminalization of People with Mental Illness*

Statement of Darcy Gruttadaro, congressional Briefing: Mental Health and Youth Violence

National Alliance on Mental Illness, *Violence, Mental Illness and Gun Reporting Laws*.

Lydia Smith, *Mental Health and Violence Stigma: Patients Twice as Likely to be Homicide Victims*, International Business Times (Jun. 18, 2014).

Felony Mental Health Court Program for Harris County District Courts, Description and Overview

Emily DePrang, *Barred Care*, Jan. 13, 2014 (Texas Observer).

Ana Yanez-Correa, *Implement a Mental Health Pilot Program in Harris County* (Fact Sheet on SB 1185 which was subsequently enacted by the Texas legislature).

Copy of SB 1184 enacted as part of the Texas Health and Safety Code.

Adrian Garcia & Charles McClelland, *Harris County Jail not the place to treat mental illness* (Jan. 2, 2011).

Oct. 16 **Race and Criminal Justice**

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (Ch. 2, pp. 58-94)

Oct. 21 **Race and Criminal Justice**

The New Jim Crow (cont'd) (Ch. 3, pp. 95-136) & (Ch. 4, pp. 137-152)

Article “*Death Penalty: Justice for Whites?*”

John K. Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report Data* (Urban Institute: 2013).

Oct. 23 **No class due to prison field trip.**

Fri. Oct. 24 **Field trip to prison.** This will take the better part of the work day. Please make plans accordingly.

We will visit an area prison. **We will leave from the Law Center at 8:00 a.m. SHARP.** Please gather in the front of the school near the statue of Albertus Magnus. We will

carpool. If you plan to drive, please be sure to fill up your gas tank. If you do not plan to drive, please bring a few dollars to chip in for gas. If you live south of school, you may want to meet us there. The prison is in Rosharon/Angleton. Let me know if you will be meeting us there. **Dress code: Absolutely no shorts, lycra pants, or flip-flops.** Long pants or modest skirts are fine. Women should dress conservatively. Sneakers or comfortable shoes are a must. You will also need your driver's license and some lunch money. **We will return no later than 2:00 and probably by 1:00.**

Oct. 28 **Federal Criminal Practice: A Prosecutor's Perspective on Federal Drug Policy**

Guest lecturer: Mitchell Neurock, Executive Assistant United States Attorney, Southern District of Texas.

Readings:

United States of Incarceration: The Global Context

Trend to Lighten Harsh Sentences Catches on in Conservative States, N.Y. Times (on Texas law)

U.S. Orders More Steps to Curb Stiff Drug Sentences, N.Y. Times

U.S. Attorney Memorandum on Medical Marijuana and Mandatory Minimums

U.S. Attorney Memorandum on Retroactive Application of Department Policy on Charging Mandatory Minimums and Recidivist Enhancements in Certain Drug Cases

Oct. 30 **No class.** Individual appointments available to discuss papers.

Nov. 4 **Second Drafts due by 5:00. No class.**

Nov. 6 **No class.**

Nov. 11 **Forensic Science—Arson Investigations**

We will watch the first part of a *documentary movie: Incendiary: The Willingham Case*

Readings:

National Academy of Sciences, *Strengthening Forensic Science in the United States: A Path Forward*, at pp. 170-73 (2009) (Analysis of Explosives Evidence and Fire Debris).

The New Yorker, *Trial by Fire*

Nov. 13 **Forensic Science—Arson Investigations, pt. 2**

We will watch the last part of the *documentary movie*: *Incendiary: The Willingham Case*, with discussion to follow.

Readings:

Leading Fire Investigation Into the Twenty-first Century (Texas Monthly, Jun. 16, 2014)

Innocence Project of Texas, Statewide Arson Review

Optional Readings:

Report of the Texas Forensic Science Commission: Willingham/Willis Investigation
(entire document available at <http://www.fsc.state.tx.us/documents/FINAL.pdf>).

Addendum to the April 15, 2011 Report of the Texas Forensic Science Commission

Nov. 18 **Preventing Wrongful Convictions**

We will watch a documentary called *Murder on a Sunday Morning*.

Nov. 20 **Preventing Wrongful Convictions**

We will watch the last part of the documentary and discuss it.

Nov. 25 **No class.** Reserved for individual appointments to discuss papers.

Dec. 2 Final Papers due by 5:00.