HOT TOPICS IN CRIMINAL LAW AND PROCEDURE

M, W 4:00-5:30

Spring 2013

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Office Hours

T 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. The seminar will introduce you to four of the country’s top legal scholars who have been invited to present their papers at the Law Center. You will carefully read their papers and be prepared to ask questions at their talks. 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 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.

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 retelling 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 can polish the paper as well as add references to other points of view from
law review articles.

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.

As you start on 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.

As you start on 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 begin to 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 by Mon Yin Lung, Associate Director of the O’Quinn Law Library

Aug. 28 **Wrongful Convictions—Forensic Science—Arson**

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

Readings on Forensic Science and Arson Investigations #1
• National Academy of Sciences Report, pp. 111-182.

Sept. 4 **Wrongful Convictions—Forensic Science—Arson**

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

Readings

Sept. 9 **Prospectus and Bibliography due by 5:00. No class.**

Sept. 11 “**Systemic Review of Junk Forensic Science: The Next Wave**"
Guest speaker: Jeff Blackburn, Innocence Project of Texas.
(Mr. Blackburn will address the arson review project of the Texas Fire Marshall and the Texas Innocence Project, as well as the FBI’s hair microscopy review.)

Readings:
• *Flawed Evidence Under a Microscope*
• *Report of the Texas Forensic Science Commission, Willingham/Willis Investigation* (report is in your packet, but for the entire document see
http://www.fsc.state.tx.us/documents/FINAL.pdf

Optional online: For a discussion of hair microscopy evidence from a Texas perspective, see
http://gritsforbreakfast.blogspot.com/2013/07/federal-hair-microscopy-review-
Sept. 16

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

Sept. 18

Wrongful Convictions—Prosecutorial Misconduct

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. 23

No class. Individual appointments on papers will be available.

Sept. 25

No class. First drafts due by 5:00.

Sept. 30

Privacy, Electronic Surveillance and the Fourth Amendment

Readings:
- Brief of Amici Curiae in U.S. v. Jordan (regarding warrantless receipt of historical cell-site location information)
- Strickland’s warrants-for-cloud-content amendment continues to rack up media praise, Grits for Breakfast, 6/25/13
- House Research Organization bill analysis for HB 2268
- Jason Krause, Unlikely allies join in a push to require warrants for access to digital communications, American Bar Assoc., Apr. 1, 2013.
- Mark D. Young, Electronic Surveillance in an Era of Modern Technology and Evolving Threats to National Security

Oct. 2

Privacy, Electronic Surveillance and the Fourth Amendment

Readings:
- In Re Application of the Federal Bureau of Investigation for an Order Requiring the Production of Tangible Things from Verizon…


• Oren Kerr, *The Modest Role of the Warrant Clause in National Security Investigations*

Oct. 7

**Wrongful Convictions—Eyewitness Identification Testimony**

• Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (2011), Ch. 3 “Eyewitness Misidentifications”

• Texas “Model Policy on Eyewitness Identifications” (skim)

• Sandra Guerra Thompson, *Daubert Gatekeeping for Eyewitness Identifications*, SMU L. Rev. 2012.

Oct. 9

**Race and Criminal Justice**

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

Oct. 14

**Race and Criminal Justice**

• *The New Jim Crow* (cont’d) (Ch. 3, pp. 95-136)

• *The New Jim Crow* (cont’d) (Ch. 4, pp. 137-152)

• Article “Death Penalty: Justice for Whites?”

Oct. 16

**Trayvon Martin, Stand Your Ground, NYC Stop and Frisk**

• Courts Putting Stop-and-Frisk Policy on Trial

• A Fresh Cut In An Old Wound—A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, the Prosecutor’s Discretion, and the Stand Your Ground Law

Oct. 21

**Introduction to Federal Sentencing**

**Readings:**

• *Federal Sentencing Policy: Changes Since the Sentencing Reform Act of 1984 and the Evolving Role of the United States Sentencing Commission*

• *Homework Assignment: Sentencing Exercise*

  The reading entitled “Sentencing Exercise” gives you the facts of a bank robbery case. Assume this defendant is going to be

Oct. 23  
**Corporate Criminal Law: DOJ’s Evolving Policy on Corporate Charging and Deferred and Non-Prosecution Agreements.**  
Guest speaker: Ryan McConnell  
**Readings:**  
- Ryan D. McConnell, Jay Martin & Charlotte Simon, *Plan Now or Pay Later: The Role of Compliance in Criminal Cases*  

Fri. Oct. 25  
**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/Angeleton. 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  
**No class due to prison trip.**

Oct. 30  
**Federal Sentencing: A Prosecutor’s Perspective**  
Guest speaker: U.S. Attorney Kenneth Magidson  
**No Readings.**

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

Nov. 6  
**No class due to prison field trip.**

Nov. 11  
**Evidence-Based Pretrial Release Decisions**  
**Readings:**  
- Conference of State Court Administrators, *2012-2013 Policy Paper, Evidence-Based Pretrial Release.*  
- Elizabeth A. Eakin (UHLC JD 2012), *A Scientific Approach to Pretrial Services in Texas*
• James “Andy” Rogers (UHLC JD 2012), *The Hidden Cost of Bail Bonds on Texas Counties*


**Nov. 13**  
**No class due to federal sentencing symposium**

**Nov. 14  5:30-7:00**  
**Reception and keynote speech** by Judge William K. Sessions III, Coronado Club (919 Milam, Suite 500) in downtown Houston

**Nov. 15  8:45-3:00**  
**Federal Sentencing Symposium**, UHLC Rm. 109 BLB. Continental breakfast available by 8:00. Lunch will be served in the Heritage Room.

**Nov. 18**  
**No class due to federal sentencing symposium**

**Nov. 20**  
**Gideon at 50**  
**Reading:**  
• *Fifty Years of Defiance and Resistance after Gideon v. Wainwright*

We will watch a short movie entitled “Defending Gideon”

**Nov. 25**  
**No class. Reserved for meetings on papers.**

**Nov. 27**  
**No class. Thanksgiving holiday.**

**Dec. 2 & 4**  
**No classes. Reserved for meetings on papers.**

**Dec. 5**  
**Final Papers due by 5:00.**