

HOT TOPICS IN CRIMINAL LAW AND PROCEDURE

M,W 2:30-4:00

Spring 2012

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Office Hours

M,W 4:00-5:00 (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 40 pages, exclusive of footnotes, is required to fulfill the writing requirement. Thus, the total number of pages should be about 43 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 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 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.

- Jan. 18 Introduction and Selecting a Paper Topic (no readings assigned)
Guest lecturer: Law Librarian Dan Baker
- Jan. 23 Cybercrime and the Fourth Amendment
Orin Kerr, *Applying the Fourth Amendment to the Internet: A General Approach*
- Jan. 25 4 newspaper articles &
Mark D. Young, *Electronic Surveillance in an Era of Modern Technology and Evolving Threats to National Security*
- Jan. 30 **Prospectus and Bibliography due by 5:00. No class.**
- Feb. 1 Read Prof. Dan Kahan's article—**to be distributed separately from photocopied materials.**
- Feb. 6 & 8 No classes due to Wednesday's lecture.
- Feb. 9—12:00—1:50 Heritage Room—**Prof. Dan Kahan. Lunch will be served.
(Note: If you are unable to stay until 1:50, you need to advise me in advance.)
- Feb. 13 Guest lecture: Prof. Tobi Tabor, on writing a seminar paper.
- Feb. 15 White Collar Crime and the Financial Crisis
Wall St. J. article, "*As Federal Crime List Grows, Threshold of Guilt Declines*;"
Moohr's article, "*What the Martha Stewart Case Tells Us About White Collar Crime*."
Ceresney, Eng & Nuttal, *Regulatory Investigations and the Credit Crisis: The Search for Villians*
- Feb. 20 No class. **First drafts due by 5:00.**
- Feb. 22 Race and Criminal Justice
Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (Ch. 2, pp. 58-94)
- Feb. 27 *The New Jim Crow* (cont'd) (Ch. 3, pp. 95-136)

- Feb. 29 *The New Jim Crow* (cont'd) (Ch. 4, pp. 137-172)
Article “*Death Penalty: Justice for Whites?*”
- Fri., Mar. 2 **Field trip to prison.** This will take the better part of the entire 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 3:00 and probably by 2:00.**
- Mar. 5 & 7 No classes due to prison field trip.
- Fri., Mar. 9 **Alternate date for prison field trip.**
- Mar. 12 & 14** **Spring Break.**
- Mar. 19 Medical Marijuana & Federalism
Michael M. O’Hear’s article *Federalism and Drug Control*
- Mar. 21 *Gonzalez v. Raich* & articles that follow
- Mar. 26 Wrongful Convictions—Eyewitness Identifications
We will watch “What Jennifer Saw”
Brandon Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (2011), Chapter 3.
Thompson, *Beyond a Reasonable Doubt? Reconsidering Uncorroborated Eyewitness Identifications*;
Texas Eyewitness Identification Model Policy (announced 12/21/11)
- Mar. 28 Gun Smuggling Along the Texas Border
Guest speaker: Dr. George Diaz, author of forthcoming book, “Contrabandista Communities: A History of Smuggling on the Rio Grande Borderlands, 1848-1945.” Read Ch. 4 and epilogue, “Good Deals and Drug Deals.”

- Apr. 2 **Second Drafts due by noon. No class.**
- Apr. 4 Wrongful Convictions—Prosecutorial Misconduct
Innocence Project Report;
Two articles on Morton case in the *Texas Tribune*;
Article: *Thompson Honored for Willingham Work*;
Daniel Medwed, *The Prosecutor as a Minister of Justice*;
Article: *Head in the Sand Over Prosecutorial Misconduct*,
- Apr. 9 Documentary Movie: *Crime After Crime* (movie will end at 4:30)
- Apr. 11 Discussion of *Crime After Crime*
- Apr. 16 Documentary Movie: *Murder on a Sunday Morning* (movie will
end at 4:30)
- Apr. 18 Discussion of *Murder on a Sunday Morning*
- Apr. 23, 25, 30 Reserved for meetings on papers.
- May 2 **Final Papers due by 5:00. No class.**