

ADVANCED TOPICS IN LAW AND SOCIETY

CRIM 407 --- Fall, 2016 --- Prospective Course Syllabus

Days: Mondays and Wednesdays, 7:20 PM --- 8:35 PM in Robinson Hall, Room B104

Instructor: John R. Murphy, JD

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George Mason University uses only GMU email accounts to communicate with enrolled students. Students must activate their student email accounts, use it to communicate with their department and other administrative units, and check it regularly for important university information including messages related to this class.

Office Hours: Thursdays at 8:40 PM by appointment, or at other prearranged times, at 354 Enterprise Hall, CRIM Faculty Office

Course Description and Objectives

Many of the most important and emotional issues of our day are ones heavily impacted and regulated by our laws and our legal system. This class will examine:

- The insanity defense and mental illness in high profile criminal cases
- Vigilantism and the law of self-defense
- The Constitutional requirements for police stops, frisks, and arrests
- The impact of jurors in criminal trials
- The challenges of actual innocence claims after conviction
- The Constitutional limitations placed on majority rule

The objective of this class is to encourage critical thinking and analysis. Therefore, a premium will be placed on class participation and discussion. Each student is expected to have read the material prior to class and to arrive ready to participate. Some of the material you will be tested on will be covered only in the lectures, so the quality of your class notes may be important to you as the semester progresses. Electronic devices may be used for note taking purposes only. Texting, recording, or accessing the web while class is in session is prohibited.

Course Prerequisites: CRIM 100 or GOVT 301

Course Format

Class sessions will consist of lectures, general class discussions, ten regularly scheduled quizzes, one group research paper, an in-class oral presentation of their research paper by each group, a Midterm examination, and a Final examination. Students in this class are expected to have read the assigned materials *prior to class*, and to arrive ready to discuss those materials. Other optional readings in the syllabus are not required but may enhance your understanding of the materials under discussion. Although class attendance is not mandatory, I will keep a record of class attendance and will consider it when determining whether to boost (though never lower) your Class Participation grade at the end of the semester.

Prospective Course Syllabus

This syllabus may be subject to revision as necessary. For instance, we may have to accommodate the availability of guest speakers. However, maintaining the schedule for the quizzes and the schedule for your case brief and discussion will be a high priority.

Grading Scale

A+ 97-100

A 93-96

A- 90-92

B+ 87-89

B 83-86

B- 80-82

C+ 77-79

C 73-76

C- 70-72

D 60-69

F 0-59

Requirements and Grading

The final grade in this course for the semester will be determined as follows:

20% -- Class Participation (10 quizzes and in-class discussion)

10% -- Research Paper

10% -- In-class Presentation of your paper.

30% -- Midterm examination

30% -- Final Examination

Class Participation Grade (20%)

The base line for your Class Participation grade will be your cumulative score from the ten quizzes. However, that score may be raised (but not lowered) by my assessment of your in-class contributions to class discussions. I may also consider your overall attendance rate if it is high, though you should plan to participate in class discussions if you hope for a significant bump up from your cumulative quiz score. The assigned readings should be done prior to class. Optional readings are not required reading, but may help you better understand some of the material under discussion.

Group Research Paper (10%)

Students will be divided into groups at the beginning of the semester. Each group will complete one research paper on a topic to be decided with me at the beginning of the semester. The paper will be at least ten typed pages of text, double spaced. Any fact asserted in the paper should have a citation clearly showing where you found support for the assertion. The citations should be listed at the end of your report. ***You must use at least five sources not included in the assigned readings.*** There is no limit on the amount of pages you may use for citations. However, your citation pages are in addition to (not part of) the ten pages of your report's text. **Each student must contribute an equal amount of work to the project and each student in the group will receive the same grade for the Research Paper as other members of the group.**

Your reports are due the first class after the Thanksgiving break (Monday, November 28). Please submit a hard copy to me in class and also email it to me.

In-class Presentation of your paper (10%)

You and your group will give an oral presentation to the class of your research findings. You may use any visual aides you wish to make the presentation as interesting and understandable as possible. Each member of the group must deliver a portion of the presentation. After the presentation, your group should be prepared to answer questions on your topic. **Each member of the group will receive an individual grade for their part of the presentation.**

Midterm (30%)

The Midterm Examination will cover all assigned readings as well as lectures and the content of all in-class discussions.

Final Exam (30%)

The Final Examination will cover all the material from the course, including assigned readings and the contents of lectures, class discussions, and group presentations.

Office of Disability Services (ODS)

If you are a student with a disability and you need academic accommodations, please see me and contact the Office of Disability Services (ODS) at 703-993-2474 or at ods.gmu.edu. All academic accommodations must be arranged through ODS.

University Writing Center

Clarity and quality of analysis, as well as spelling and grammar, are important considerations in the evaluation of your written submissions. If you feel that you need to improve your writing skills, please seek assistance from the University Writing Center. Their number is 703-993-1200.

Missed Classes and Test Rescheduling

Class attendance is not mandatory but attendance will be taken at every class. There will be no make up opportunities for missed quizzes, since they are considered part of the Class Participation grade. However, if you miss a quiz for circumstances beyond your control I may, in my discretion, restore some or all of your credit for the missed quiz when calculating your Class Participation grade at the end of the semester.

Due to time constraints, it is important for you to participate in the Discussion of your Briefed Case while we are discussing the topic that the case pertains to. If you are unable to attend those classes due to an emergency, you must let me know as soon as possible. Late Briefs may not be accepted if you have failed to make *prior* arrangements with me, and I reserve the right to lower the grade of late papers if I do accept them.

Make up examinations (Midterm or Final) will be allowed only under exceptional circumstances. If you know in advance that you will miss the Midterm or Final examination, you must notify me immediately so that we can discuss why and the possibility of rescheduling. If you provide written documentation from a professional (doctor, police officer, etc.) no penalty will be applied. Otherwise, the test score on the make up exam will be reduced by one letter grade. **ALL MAKE UP EXAMS MUST BE COMPLETED WITHIN SEVEN DAYS OF THE SCHEDULED TEST DATE.**

Honor Code Policy

All work is to be completed independently. Students should be familiar with the policies of the Criminology, Law and Society Department. Students should also be familiar with George Mason University's Honor Code, which requires all members of this community to maintain the highest standards of academic honesty and integrity. Cheating, plagiarism, lying and stealing are all prohibited. Please consult honorcode.gmu.edu for more detailed information. **All violations of the Honor Code will be reported to the Honor Code Committee.**

Bad Weather and Other Emergencies

Call GMU's closing line at 703-993-1000 to see if classes are closed due to bad weather. If I need to cancel a class for any reason, I will make every effort to email you at your GMU email address.

Enrollment Information

Last Day to add this course: September 6, 2016

Last Day to drop this course without tuition penalty: September 6, 2016

Last Day to drop this course with a 33% tuition penalty: September 20, 2016

Final Day to drop this course (67% penalty): September 30, 2016

-- Course Textbook: Austin Sarat, *The Social Organization of Law: Introductory Readings* (Roxbury Publishing Company 2004) (available at GMU bookstore and on Amazon)

-- To view both federal and Virginia cases, GMU students may access Academic Universe through the GMU Library website

Class Schedule:

I. The Purposes of Government

ISSUE: What should be the responsibilities and purposes of Government? What do we owe our Government and what does our Government owe us?

READ: Sarat, pp. 39-42 (*Leviathan*); 49-52 (*On Liberty*); 7-11 (the "Hockey Dad" case); 12-17 (*DeShaney v. Winnebago*).

OPTIONAL READING:

Loving v. Virginia, 381 U.S. 1 (1967) (state prohibition on interracial marriage)
Griswold v. Connecticut, 381 U.S. 479 (1965) (state regulation of contraceptives)
Eisenstadt v. Baird, 408 U.S. 438 (1972) (same topic as *Griswold*)
Lawrence v. Texas, 538 US 558 (2003) (state regulation of consensual sex acts)

August 29. Introductions. Review of Syllabus. What are the legitimate interests of Government?

August 31. Liberal Democracy, Illiberal Democracy, and Constitutional Democracy. Which best serves the legitimate interests of Government?

II. Separation of Powers and Constitutional Democracy

READ: Sarat pp. 84-93

**Federalism: Evaluating the Founders' Design, *U. Chi. L. Rev.* 1484.
Federalist Papers, 10, 45, 51, 78.**

OPTIONAL READING:

United States v. Comstock, 560 U.S. 126 (2010) (creating federal criminal laws)

September 5. LABOR DAY HOLIDAY

September 7. Overview of Federalism in America. **QUIZ # 1**

September 12. The policymaking roles of the Legislative, Executive, and Judicial branches of government.

September 14. Is the majority always right? Is the minority ever right? How do we decide in a Constitutional Democracy? **QUIZ # 2.**

III. Aspects of the Social Contract: Preserving "Domestic Tranquility". Whose job is it and what methods are acceptable?

READ: Sarat, pp. 18-26 (Bernhard Goetz case)
Second Amendment of U.S. Constitution

OPTIONAL READING:

Brandenburg v. Ohio, 395 U.S. 444 (1969) (inciting violence/First Amendment)

September 19. The law of Self Defense. The concept of Vigilantism.

September 21. Violent protest and the political tradition. **QUIZ # 3**

IV. “Stop and Frisk”: Constitutional Rules of Police Contact

READ: Fourth Amendment of U.S. Constitution
Sarat, pp. 456-462

OPTIONAL READING:

Tennessee v. Garner, 471 U.S. 1 (1985)

Graham v. Connor, 490 U.S. 386 (1989)

Terry v. Ohio, 392 U.S. 1 (1968)

September 26. Reasonable Suspicion and Probable Cause under the Fourth Amendment of the U.S. Constitution. What is a “Terry stop”?

September 28. When may police force be justified? **QUIZ # 4**

V. Issues in Law Enforcement: “Zero Tolerance” (Broken Windows Theory) and Racial Profiling.

READ: Sarat, pp. 404-454.

OPTIONAL READING:

Whren v. United States, 517 U.S. 806 (1996)

United States v. Sokolow, 490 U.S. 1 (1989)

United States v. Brignoni-Ponce, 422 U.S. 873 (1975)

October 3. Is Broken Windows Theory broken?

October 5. Racial Profiling.

VI. Charging Decisions and Prosecutorial Discretion.

READ: Sarat, pp. 463-467.

October 10. COLUMBUS DAY HOLIDAY

October 12. Overview of Grand Jury System.

VII. Social Science in the Courtroom

READ: Sarat, pp. 319-340; 537-547.

Ramsey, Sarah H. & Kelly, Robert F. (Fall, 2006). "Assessing Social Science Studies: Eleven Tips for Judges and Lawyers". *Family Law Quarterly*, 40(3), 367-380

OPTIONAL READING:

McCleskey v. Kemp, 481 US 279 (1987)

October 17. Should Judges base their legal decisions on the latest social science statistics?

October 19. Jury nullification and judicial activism. **QUIZ # 5**

VIII. Politics in the Courtroom

READ: Sarat, pp. 341-348

October 24. Challenges of the jury system.

October 26. MIDTERM

IX. Appeals and Questions of Actual Innocence Post-Trial.

READ: Article II, section 2[1] of the U.S. Constitution

"The Appeal, Writ and Habeas Corpus Petition Process", *FindLaw.com*. Web

October 31. Establishing actual innocence post-trial. Appeals, Habeas Corpus Petitions, and Executive Clemency. **VIDEO: "A Murder in the Park"**.

November 2. **VIDEO: "A Murder in the Park"**. Discussion. **QUIZ # 6**

X. Mental Illness and the Law

READ: Rolf, Carol A. (Spring, 2006), "From M'Naghten to Yates – Transformation of the Insanity Defense in the United States -- Is It Still Viable?" *Rivier College Online Academic Journal*, 2(1)

November 7. Overview of the legal standards for proving criminal insanity.

November 9. John Hinckley case (attempted assassination). **QUIZ # 7**

XI. Investigating and Presenting the Criminal Insanity Case.

READ: Chapman, Steven (February 27, 2015). "'American Sniper' and our Crazy Laws on the Insanity Defense", *Chicago Tribune*

November 14. Jeffrey Dahmer case (serial murder/cannibalism). **VIDEO documentary.**

November 16. Seung-Hui Cho case (Virginia Tech mass shooting). **VIDEO documentary.**
QUIZ # 8

XII. The Future of the Criminal Insanity defense

READ: Jacobo, Julia (May 14, 2016). "Mother of Colorado Movie Theater Shooter James Holmes Speaks Out for First Time". *ABC News*. Web.
<http://abcnews.go.com/US/mother-colorado-movie-theater-shooter-james-holmes-speaks>

November 21. Discussion. **QUIZ # 9**

November 23. THANKSGIVING HOLIDAY

XIII. Class Presentations

November 28. Presentations.

November 30. Presentations.

XIV. Class Presentations, Review for Final

December 5. Presentations.

December 7. Presentations.

FINAL EXAMINATION DATE AND TIME: Wednesday, December 14, 2016, at Robinson Hall, Room B104 (our classroom). 7:30 PM — 10:15 PM