

**Department of Criminal Justice and Criminology
College of Criminal Justice
Sam Houston State University
Huntsville, TX 77341-2296**

**CRIJ 7375.01
SEMINAR IN LEGAL ASPECTS OF CRIMINAL JUSTICE**

**Spring Semester, 2018 – Tuesdays
9:00-11:50 a.m., Room A-213**

Professor: Dr. Michael S. Vaughn
Phone: 936.294.1349
E-mail: mvaughn@shsu.edu
Credit Hours: 3

Office: 217 Hotel
Office Hours: By appointment, but I'm
here most days; email me to set a time.

COURSE SYLLABUS

REQUIRED TEXTS:

Columbia Law Review, Harvard Law Review, University of Pennsylvania Law Review, & Yale Law Review. 2015. *The Bluebook: A Uniform System of Citation* (20th ed.). Baton Rouge, LA: Claitors. Pub Div. 978-0692400197

Rolando V. del Carmen, Susan E. Ritter, & Betsy A. Witt. 2016/2017. *Briefs of Leading Cases in Corrections* (6th ed.). New York: Routledge. 978-1437735086

Rolando V. del Carmen, & Jeffery T. Walker. 2015. *Briefs of Leading Cases in Law Enforcement* (9th ed.). New York: Routledge. 978-0323353984

Joshua Dressler, & George Thomas III 2016. *Criminal Procedure, Principles, Policies and Perspectives* (6th ed.). St. Paul: West. 978-1634603164

Stephen Elias. 2015. *Legal Research: How to Find & Understand the Law* (17th ed.). Berkeley: Nolo. 978-1413321821

Craig Hemmens, Benjamin Steiner, & David Mueller. 2013. *Significant Cases in Juvenile Justice* (2nd ed.). New York: Oxford University Press. 978-0199958412

Darrell L. Ross. 2012. *Civil Liability in Criminal Justice* (6th ed.). New York: Routledge. 978-1455730131

Scott Vollum, Rolando V. del Carmen, Durant Frantzen, Claudia San Miguel, & Kelly Cheesman. 2014/2015. *The Death Penalty: Constitutional Issues, Commentaries, and Case Briefs* (3rd ed.). New York: Routledge/Taylor & Francis. 978-1455776337

COURSE ABASTACT:

This course addresses legal issues within the criminal justice system, focusing on the various component parts, which include legal research, criminal procedure, judicial policy making, law as social control, juvenile law, death penalty law, prison law, civil liability, and the role of attorneys within the criminal justice apparatus. Our primary emphasis is upon the judicial interface with the processes inherent within the system. In addition to studying the content of and rationale for specific judicial mandates, we will also consider the broader policy implications for the criminal justice system resulting from heightened legalization of the field.

SPECIFIC GOALS OF THE COURSE:

To develop among students legal research and writing skills; to give students an analytical insight into the substance and procedure of criminal justice and its legal environment; and to acquaint students with some of the leading court decisions that have had an impact on criminal justice personnel and the constituency they serve.

OBJECTIVES OF THE COURSE:

- Acquaint students with the basics of legal research.
- Develop case briefing skills among students.
- Introduce class to legal analysis and reasoning
- Instill among students familiarity with and an understanding of legal terms and concepts
- Acquaint students with some of the classic and controversial court cases in criminal justice
- Challenge students to write a publishable legal paper
- Acquaint class with important concepts in legal research, constitutional law, criminal procedure, criminal law, and juvenile law.

CLASS FORMAT:

The first part of most class sessions features class presentations on the assigned and briefed case. The rest of the class session is interactive – a law school-graduate school combined approach. It features a class discussion of materials in the assigned reading and other outside materials. The main tasks of the professor in the course are guidance and quality control.

COURSE REQUIREMENTS: GRADES WILL BE BASED ON:

- A. Mid-term examination – Seventh Week, - ¼ of course grade.
 - B. Final examination – Sixteenth Week – ¼ of course grade.
 - C. Total of case briefs and class participation – ¼ of course grade.
 - D. A publishable law-oriented paper – due on Twelfth Week – ¼ of course grade.
- 100-90% is A; 89-80% is B; 79-70% is C; 69-60% is D; below 59% is F.

A detailed outline of your paper is due on 5th Week (February 20) with 20 social science sources (should be a mixture of peer-reviewed criminal justice) articles and law reviews on topic) and 10 court cases. The final paper may not conform exactly to the outline.

LEGAL BRIEFS OF U.S. SUPREME COURT CASES:

Cases in criminal justice will be assigned for students to brief and submit as papers. These cases will be discussed during the first part of every class session. The use of audio-visual materials in your presentation is encouraged (Power Point). A brief description on how to brief a case is later documented in the syllabus. One feature to these case briefs that are significantly different than ordinary case briefs is the “NOTES AND COMMENTS” section. In the “NOTES AND COMMENTS” section, you are required to place the case within the existing literature on the issue. To do this requires additional research into law reviews and law journals on what previous scholars have written on the topic. It also requires some research into the social science research databases to place the legal issues into the broader literature from a criminal justice perspective.

A PUBLISHABLE LAW-ORIENTED PAPER:

This is similar to a term paper in graduate school, except that it addresses a legal topic using statutes, decided cases, legal sources, and referencing. Use *A Uniform System of Citation* for referencing and citation style.

Choose your topic, but submit it to me for approval when you are ready. The paper must be original and has not been written for any other current or past course. It must be of publishable quality. In the past, many of these course papers have resulted in student/faculty publications, so topic choice is critical, and you should talk with me in detail over your topic before you choose it.

The paper should be approximately 35-60 pages long, double space, and with footnotes at the bottom of the page (Microsoft Word has this feature). There is a title page with a running head and full contact information of all authors. Next is an Abstract (that includes the title) not to exceed 150 words, That is followed by a Roman Numeral Table of Contents that identifies all the headings and subheadings . A Review of the Literature, not to exceed three to four pages, follows the Introduction. This Review identifies the leading written sources on your topic (such as peer-reviewed articles, law reviews, books, monographs, etc.) that you find most helpful in your research. Summarize what these sources say. There is no need for a bibliography. Use footnotes (meaning references are at the end of every page) instead of endnotes (which are at the end of the paper).

As in all aspects of academic work, absolute honesty is expected in your law-oriented paper. Submit a hard copy to me in class and an e-mailed copy to mvaughn@shsu.edu. The professor reserves the right to submit the paper to TURNITIN or other screening programs for verification.

Submit a detailed outline on 5th Week (February 20). This detailed outline will be graded like a case brief. The paper is due on 15th Week (May 1).

TYPE OF EXAMINATIONS:

In the classroom paper and pencil Midterm and Final exams. 4 hours are allotted to take each test. Must write so I can read it. Computers are not allowed. Part I consists of distinctions, definitions, specific responses, and hypothetical questions – a maximum of four points for each question. Choose any 25 out of 30 questions, for a total of 100 points. Part II features essay questions. Choose any 2 out of four questions – for a total of 100 essay points. Total number of points for the examination is 200. 90% is A; 80% is B; 70% is C; 60% is D; Below 59% F. Grading is based on a soft curve, not on an absolute score.

MAKE-UP EXAMINATIONS:

Except in emergency cases, make up exams will not be allowed unless the professor is informed of the absence ahead of time. These exams will be allowed only for legitimate reasons, as determined by the professor.

STUDENT ACADEMIC POLICIES ON CLASS ATTENDANCE, STUDENT ACADEMIC HONESTY, DISABLED STUDENT AND SERVICES, AND ABSENCE ON RELIGIOUS HOLY DAYS MAY BE FOUND AT:

<http://www.shsu.edu/dept/academic-affairs/aps/aps-students.html> **ii**

FURTHER CLASS ATTENDANCE POLICY IN ADDITION TO THE UNIVERSITY'S:

Attendance is expected and required. More than two absences without justification, as determined by the professor, will result in a lowering of the course grade or a failure.

POLICIES ON USE OF TELEPHONES AND TEXT MESSAGES IN ACADEMIC CLASSROOMS AND FACILITIES MAY BE FOUND AT:

<http://www.shsu.edu/dept/academic-affairs/aps/aps-curriculum.html>

DISRUPTIVE STUDENT BEHAVIOR POLICY:

Disruptive student behavior in the classroom will not be tolerated. Students may consult the policy in the 2017-2018 Graduate Catalog.

WITHDRAWAL FROM CLASS:

Students wishing to withdraw are cautioned to follow formal procedures outlined by the university. Consult the 2017-2018 Graduate Catalog for official policies on withdrawal from classes.

INCOMPLETE COURSE GRADE:

Except for the gravest of emergencies, a grade of "incomplete" will not be allowed for the course. Any missing grades, whether for examination or assignments, will be assumed to be zeros and will be averaged as such.

READING ASSIGNMENTS:

This course requires a high degree of dedication, preparation, and perseverance. Some of the material is difficult, and the volume is heavy, so procrastination on the readings, assignments, and writings is not an option. Each student is expected to have completed the reading assignments before each class session. Reading the assignments before each class session is critical for any student to do well in this course. Some Test material on the exams will be in the readings and not covered in class.

OVERALL GRADE CALCULATION:

The final grade will be based on an average of the 2 tests (each worth 25% of the final grade), the final paper (worth 25% of the final grade), student discussion and PowerPoint presentations of court cases (25% of the final grade). 100-90%=A, 89-80%=B, 79-70%=C, 69-60%=D, 59% and below=F.

WEEKLY ASSIGNMENT

JANUARY 23, First Week: INTRODUCTORY SESSION; LEGAL RESEARCH I

Syllabus orientation.

The World of Criminal Justice v. The World of Law

Legal Research v. Social Science Research

Read:

Elias, Chapters 1–5

Acker, J.R. (1990). Finding the law: A criminal justice guide to basic legal research techniques. *Journal of Criminal Justice Education*, 1(2), Fall 1990, 215-244.

Nolasco, C.A.R.I., Vaughn, M.S., & del Carmen, R.V. (2010). Toward a new methodology for legal research in criminal justice. *Journal of Criminal Justice Education*, 21(1), 1-23.

The legally oriented paper

HOW TO BRIEF A CASE – A GENERAL GUIDE – class handout

LEGAL CITATION GUIDE: THE BLUE BOOK

Legal Materials Orientation – SHSU Library—Diana Kim, Criminal Justice Librarian, Room 155 Library, 10:15 am to 11:50 am. Mandatory attendance required.

JANUARY 30, Second Week: LEGAL RESEARCH II

The Case Method of Studying Law

Read:

Elias, Chapters 6–9 & the Glossary

Auerbach, C.A. (1966). Legal tasks for the sociologist. *Law & Society Review*, 1, 91-104.

Mersky, R.M., & Dunn, D.J. (2002). Glossary of terms used in legal research. In R.M. Mersky & D.J. (Eds.), *Fundamentals of legal research* (pp. xvii-xl). New York: Foundation Press.

Mersky, R.M., & Dunn, D.J. (2002). An introduction to legal research. In R.M. Mersky & D.J. (Eds.), *Fundamentals of legal research* (pp. 1-13). New York: Foundation Press.

Mersky, R.M., & Dunn, D.J. (2002). The legal research process. In R.M. Mersky & D.J. (Eds.), *Fundamentals of legal research* (pp. 14-20). New York: Foundation Press.

Note: Assignment for next week (to be submitted in writing and discussed in class): Assume you are writing a legally-oriented paper on, “Is Racial Profiling Constitutional?” What sources will you use in your legal research, in what sequence, and what do you expect to find in each source? Submit a two-page response. Be ready to discuss your response in class next week. Will be graded as part of case briefs.

Read:

Dressler & Thomas Chapter 1

Corwin & Peltason (On Blackboard)

Schultz, Vile, & Deardorff (On Blackboard)

FEBRUARY 6, Third Week: CRIMINAL PROCEDURE I

DUE TODAY: Turn-in and discuss last week's assignment on legal research: Assume you are writing a legally-oriented paper on, "Is Racial Profiling Constitutional?" What sources will you use in your legal research, in what sequence, and what do you expect to find in each source?

Brief and Discuss: *U.S. v. Leon* (1984): Is there a 'good faith' exception to the exclusionary rule?

Read:

Dressler & Thomas Chapters 2, 3, 4, & 5
del Carmen & Walker Chapters 1–15

Bell, M.C. (2017). Police reform and the dismantling of police estrangement. *Yale Law Journal*, 126, 2054-2151.

Garrett, B., & Stoughton, S. (2017). A tactical Fourth Amendment. *Virginia Law Review*, 103, 211-307.

Fagan, J., & Ash, E. (2017). New policing, new segregation: From Ferguson to New York. *Georgetown Law Journal Online*, 106, 33-134.

Meares, T.L. (2014). The law and social science of stop and frisk. *Annual Review of Law & Social Science*, 10, 335-352.

Smith, C.E. (2015-2016). The U.S. Supreme Court's post-Ferguson controversies. *University of Miami Race & Social Justice Law Review*, 6, 53-83.

FEBRUARY 13, Fourth Week: CRIMINAL PROCEDURE II

Brief and Discuss *Miranda v. Arizona* (1966): The issue is what type of procedural mechanisms are required during police interrogation to protect the constitutional right against self-incrimination?

Read:

Dressler & Thomas, Chapters 6, 7, & 8.
Del Carmen & Walker Chapters 17, 18, & 19

Cassell, P.G. (1997). Miranda's negligible effect on law enforcement: Some skeptical observations. *Harvard Journal of Law & Public Policy*, 20(2), 327-346.

Kamisar, Y. (2007). On the fortieth anniversary of the *Miranda* case: Why we needed it, how we got it—and what happened to it. *Ohio State Journal of Criminal Law*, 5, 163-203.

Kamiser, Y. (2015). A look back at the gatehouses and mansions of American criminal procedure. *Ohio State Journal of Criminal Law*, 12, 645-658.

Leo, R.A. (1996). Miranda's revenge: Police interrogation as a confidence game. *Law & Society Review*, 30, 259-288.

Leo, R.A., & Koenig, K.A. (2010). The gatehouses and mansions: Fifty years later. *Annual Review of Law & Social Science*, 6, 323-339.

FEBRUARY 20, Fifth Week: CRIMINAL PROCEDURE III

DUE TODAY: A detailed outline of your law-oriented publishable paper (at least two pages long, single space) is due today. This will be graded like a case brief and worth 20 points. Include specific sources you will use in your paper; do not simply say you will use the Internet or the ALR. Use the outline form for this submission (what are the main topics and what comes under each topic?), not just a general narrative of your paper.

Brief and Discuss *Michigan v. Bryant* (2011) Did a dying man's statements to the police describing the shooter violate the 6th Amendment's Confrontation Clause of the Constitution when the police testified?

Read:

Dressler & Thomas Chapters 9, 10, 11, 12, 13, 14, 15, & 16
del Carmen & Walker Chapters 21 & 22

Cook, B.B. (2017). Biased and broken bodies of proof: White heteropatriarchy, the grand jury process, and unarmed black flesh. *UMKC Law Review*, 85, 567-623.

Ginther, M.R. et al. (2018). Essay: Decoding guilty minds: How jurors attribute knowledge and guilt. *Vanderbilt Law Review*, 71, 101-143.

Johnson, S.L. (2014). Batson from the very bottom of the well: Critical race theory and the supreme court's peremptory challenge jurisprudence. *Ohio State Journal of Criminal Law*, 12, 71-90.

Sklansky, D.A. (2018). The problems with prosecutors. *Annual Review of Criminology*. Available at: <http://www.annualreviews.org/doi/pdf/10.1146/annurev-criminol-032317-092440>

Yang, C.S. (2017). Toward an optimal bail system. *New York University Law Review*, 92, 1399-1493.

FEBRUARY 27, Sixth Week: CIVIL LIABILITY I

Brief and Discuss *Graham v. Connor* (1989) What standard of review governs police use of nondeadly force?

Read:

Ross Chapters 1–7

del Carmen & Walker Chapter 16

Blackwell, B.S., & Vaughn, M.S. (2003). Police civil liability for inappropriate response to domestic assault victims. *Journal of Criminal Justice*, 31(2), 129-146.

Eschholz, S.L., & Vaughn, M.S. (2001). Police sexual violence and rape myths: Civil liability under Section 1983. *Journal of Criminal Justice*, 29(5), 389-405.

Gross, J.P. (2016). Judge, jury, and executioner: The excessive use of deadly force by police officers. *Texas Journal on Civil Liberties and Civil Rights*, 21(2), 155-181.

Hegarty, J. (2017). Who watches the watchmen: How prosecutors fail to protect citizens from police violence. *Hamline Journal of Public Law & Policy*, 37, 305-336

Nolasco, C.A.R.I., & Vaughn, M.S. (2011). Judicial scrutiny of gender-based employment practices in the criminal justice system. *Journal of Criminal Justice*, 39, 106-119.

MARCH 6, Seventh Week: MID TERM EXAMINATION. – covering everything discussed or assigned thus far in the course.

MARCH 13, Eighth Week: SPRING BREAK

SPRING BREAK

MARCH 20, Ninth Week: CIVIL LIABILITY II

Brief and Discuss *Monell v. Department of Social Services of the City of New York* (1978) Can a municipality be held liable under Section 1983 for unconstitutional policies and customs that violate plaintiffs' constitutional rights?

Read:

Ross Chapters 8-14

del Carmen & Walker Chapter 23

Wynne, S.L., & Vaughn, M.S. (2017). Silencing matters of public concern: An analysis of state legislative protection of whistleblowers in light of the supreme court's ruling in *Garcetti v. Ceballos*. *Alabama Civil Liberties & Civil Rights Law Review*, 8, 239-278.

Blackstone, A., Uggen, C., & McLaughlin, H. (2009). Legal consciousness and responses to sexual harassment. *Law & Society Review*, 43, 631-668.

del Carmen, R.V., & Kappeler, V.E. (1991). Municipalities and police agencies as defendants: Liability for official policy. *American Journal of Police*, 10(1), 1-17.

Teitelbaum, M. (2017). Willful intent: U.S. v. Screws and the legal strategies of the Department of Justice and the NAACP. *University of Pennsylvania Journal of Law & Social Change*, 20, 185-216.

Vaughn, M.S. (1997). Political patronage in law enforcement: Civil liability against police supervisors for violating their subordinates' First Amendment rights. *Journal of Criminal Justice*, 25(5), 347-366.

MARCH 27, Tenth Week: JUVENILE LAW I

Brief and Discuss: *In re Gault* (1967): What due process protections are juveniles entitled to when adjudicated delinquent?

Read:

Hemmens, Steiner, & Mueller Chapters 1-5

Beale, S.S. (2009). You've come a long way, baby: Two waves of juvenile justice reforms as seen from Jenna, Louisiana. *Harvard Civil Rights-Civil Liberties Law Review*, 44, 511-545.

Feld, B. (2013). The youth discount: Old enough to do the crime, to young to do the crime. *Ohio State Journal of Criminal Law*, 11(1), 107-148.

Fountain, E., & Woolard, J.L. (2017). The capacity for effective relationships among attorneys, juvenile clients, and parents. *Ohio State Journal of Criminal Law*, 14, 493-519.

Schaefer, S.S., & Uggen, C. (2016). Blended sentencing laws and the punitive turn in juvenile justice. *Law & Social Inquiry*, 41, 435-463.

Spooner, K., & Vaughn, M.S. (2017). Sentencing juvenile homicide offenders: A 50-state survey. *Virginia Journal of Criminal Law*, 5, 130-170.

APRIL 3, Eleventh Week: JUVENILE LAW II

Brief and Discuss: *Roper v. Simmons* (2005) Is the execution of juveniles constitutional?

Read:

Hemmens, Steiner, & Mueller Chapters 6-9
del Carmen, Ritter, & Witt Chapter 5

Feld, B. (2013). Adolescent criminal responsibility, proportionality, and sentencing policy: Roper, Graham, Miller/Jackson, and the youth discount. *Law & Inequality*, 31(2), 263-330.

Feld, B. (2013). Real interrogation: What actually happens when cops interrogate kids. *Law & Society Review*, 47, 1-36.

Hemmens, C., & Bennett, K. (1999). Juvenile curfews and the courts: Judicial response to a not-so-new crime control strategy. *Crime & Delinquency*, 45(1), 99-121.

Lemon, C.L. (2017). Jury of my peers: The significance of a racially representative jury for juveniles in adult court. *Child & Family Law Journal*, 5, 97-113.

Soohoo, C. (2017). You have the right to remain a child: The right to juvenile treatment for youth in conflict with the law. *Columbia Human Rights Law Review*, 48(3), 1-74.

APRIL 10, Twelfth Week: PRISON LAW I

Brief and Discuss: *Turner v. Safley* (1987) What standard governs restricting inmates' constitutional rights?

Read:

del Carmen, Ritter, & Witt Chapters 1, 2, & 3

Landsman, S. (2012). Pro se litigation. *Annual Review of Law & Social Science*, 8, 231-253.

Lippke, R.L. (2017). Punishment drift: The spread of penal harm and what we should do about it. *Crime, Law, and Philosophy*, 11, 645-659.

Robertson, J.E. (2000). The majority opinion as the social construction of reality: The supreme court and prison rules. *Oklahoma Law Review*, 53, 161-196.

Simon, J. (2017). Racing abnormality, normalizing race: The origins of America's peculiar carceral state and its prospects for democratic transformation today. *Northwestern University Law Review*, 111, 1625-1653.

Smith, C.E. (2013). Brown v. Plata, the Roberts court, and the future of conservative perspectives on rights behind bars. *Akron Law Review*, 46, 519-550.

APRIL 17, Thirteenth Week: PRISON LAW II

Brief and Discuss: *Kingsley v. Hendrickson* (2015) What standard governs restricting pretrial detainee's constitutional rights?

Read:

del Carmen, Ritter, & Witt Chapter 6

Campbell, M. (2014). The emergence of penal extremism in California: A dynamic view of institutional structures and political processes. *Law & Society Review*, 48, 377-409.

Gottschalk, M. (2015). Bring it on: The future of penal reform, the carceral state, and American politics. *Ohio State Journal of Criminal Law*, 12, 559-603.

Matusiak, M.C., Vaughn, M.S., & del Carmen, R.V. (2014). The progression of evolving standards of decency in U.S. Supreme Court decisions. *Criminal Justice Review*, 39, 253-271.

Schoenfeld, H. (2010). Mass incarceration and the paradox of prison conditions litigation. *Law & Society Review*, 44, 731-768.

Vaughn, M.S., & Carroll, L. (1999). Separate and unequal: Prison versus free-world medical care. *Justice Quarterly*, 15(1), 3-40.

APRIL 24, Fourteenth Week: DEATH PENALTY LAW I

Brief and Discuss *Furman v. Georgia* (1972) Is the death penalty as administered constitutional?

Read:

Vollum et al. Chapters 1-5

del Carmen, Ritter, & Witt Chapter 4

Acker, J.R. (2003). The death penalty: An American history. *Contemporary Justice Review*, 6(2), 169-186.

Baldus, D.C., Woodworth, G., & Grosso, C.M. (1987). Race and proportionality since McCleskey v. Kemp (1987): Different actors with mixed strategies of denial and avoidance. *Columbia Human Rights Law Review*, 39, 143-177.

Garrett, B.L., Jakubow, A., & Desai, A. (2017). The American death penalty decline. *Journal of Criminal Law & Criminology*, 107, 561-642.

Mandery, E.J. (2017). Gregg at 40. *Southwestern Law Review*, 46, 275-302.

Steiker, C.S. (2009). The Marshall hypothesis revisited. *Howard Law Journal*, 52, 525-558.

MAY 1, Fifteenth Week: DEATH PENALTY LAW II

Brief and Discuss *Glossip v. Gross* (2015) Is lethal injection constitutional?

Read:

Vollum et al. Chapters 6–12

Kaufman, S.B. (2017). Mourners in the court: Victims in death penalty trials, through the lens of performance. *Law & Social Inquiry*, 42, 1155-1178.

O'Brien, B., Grosso, C.M., Woodworth, G., & Taylor, A. (2016). Untangling the role of race in capital charging and sentencing in North Carolina, 1990-2007. *North Carolina Law Review*, 94, 1997-2049.

Simons, J. (2004). Born again on death row: Retribution, remorse, and religion. *The Catholic Lawyer*, 43(2), 311-337.

Thaxton, S. (2017). Disciplining death: Assessing and ameliorating arbitrariness in capital charging. *Arizona State Law Journal*, 49, 137-222.

Weisberg, R. (2005). The death penalty meets social science: Deterrence and jury behavior under new scrutiny. *Annual Review of Law & Social Science*, 1, 151-170

DUE: Your publishable legally oriented paper is due today. Submit a hard copy in class and send an electronic copy by e-mail to: mvaughn@shsu.edu. In case of doubt about paper integrity, the paper will be submitted to TURNITIN for verification.

MAY 10, Sixteenth Week: FINAL EXAMINATION – Covering everything taken after the mid-term examination - ¼ of course grade.

**Department of Criminal Justice and Criminology
SAM HOUSTON STATE UNIVERSITY**

GUIDELINES FOR GRADING WRITING ASSIGNMENTS SPRING 2018

**CRIJ 7375 SEMINAR IN LEGAL ASPECTS OF CRIMINAL JUSTICE
Professor: Dr. Michael S. Vaughn, Ph.D.**

Guidelines for grading writing assignments.

The paper will be graded based on the following criteria:

- 1-30% content
- 2-25% organization and presentation
- 3-25% grammar, spelling, punctuation, and syntax
- 4-20% citation and reference style

1-Content

The paper should address the issue(s) of the assignment and answer directly the question(s) posed.

2-Organization and presentation

The paper should be presented in a neat and professional fashion. The paper also should be well organized.

3-Grammar, spelling, punctuation, and syntax

The paper should use correct grammar and punctuation. The paper should contain no spelling errors and read well.

4-Citation and reference style

The paper should conform to the latest edition of *The Bluebook: A Uniform System of Citation*.

**Department of Criminal Justice and Criminology
SAM HOUSTON STATE UNIVERSITY**

CRIJ 7375 SEMINAR IN LEGAL ASPECTS OF CRIMINAL JUSTICE

Professor: Dr. Michael S. Vaughn, Ph.D.

Potential Research Paper Assignment Topics:

Each student will write a research paper, not a case brief, on legal issues in criminal justice that will consist of 35 pages minimum in length to 60 pages. Do not write the paper in the form of a case brief. Use the GRID (distributed in class) to first brief the individual cases. Once the GRID is completed, please write each case description in sentence and paragraph form to create a coherent narrative. Before starting to discuss each case, write a sentence or two from the social science literature to introduce the case. Then, move into a discussion of the case.

Select a topic below or get the professor's approval for one not listed:

**LOOK THROUGH THE COURSE TEXTBOOKS TO GET IDEAS FOR PAPER TOPIC,
SEARCH DATABASES TO GET IDEAS, &/OR LOOK BELOW:**

Right to Confront Witnesses	Right to be free from Double Jeopardy
Right to Speedy Trial	Right to Jury Trial
Right to Effective Counsel at Trial	Border Checkpoints and Safety Roadblocks
Line Ups, Show Ups, & Photographic Identifications	Sobriety and Drug Checkpoints
Arrest Without Warrant	Electronic Surveillance Searches
Search & Seizure With a Warrant	Arrest With Warrant
Special Needs Searches	Search & Seizure Without Warrant
Home Searches	Inventory Searches
Miranda Rights	Reasonable Suspicion
Consent Searches (Criminal)	Plain View
Vehicle Stops	Open Fields Doctrine
Stop and Frisk	Exigent Circumstances
Probable Cause	Exclusionary Rule
Prison Unions	Freedom of Association in Prison
Medical Care in Prison	Prison Searches and Seizures
Overcrowding in Jails/Prisons	Prisoner Discipline
Prison/Jail Suicide	Prison Religion
Good Time	Inmate-on-Inmate Assault
State Created Liberty Interests	Use of Nondeadly Force by Prison
Officials	
ADA (Disability Discrimination)	Use of Deadly Force by Prison Officials
Prison Transfers	Segregation of Prisoners
18 U.S.C. Section 242 (Criminal Liability)	Strip Search

Probation and Parole Liability	Bivens Actions
Municipal Liability under Section 1983 (Jails)	(FTCA) 28 U.S.C. Section 2674
Sexual Violence Committed by Jail/Prison Staff	Color of Law Requirement in
Sections 242 & 1983	
Visitation in Prisons/Jails	Qualified Immunity from Lawsuits
Forced Medications in Jail/Prisons	Smoking in Prison
Forced Medications to Stand Trial/Sentenced	Prison Mail
Prison Publications	Prison Exercise
Prison Treatment Programs	Prison Mental Health Treatment
Prison Nutrition/Diet	Prison Dental Care
HIV/AIDS Medical Care in Prisons	Segregation of HIV/AIDS Prisoners
Retaliation Against Prisoners	Hot Pursuit Criminal
Access to Courts in Prison/Jail	Fireman's Rule
Working Overtime (FLSA)	Use of Nondeadly Force by Police
Use of Deadly Force by Police	ADEA (Age Discrimination)
Sexual Harassment (Title VII)	Failure to Investigate Adequately
False Arrest	False Imprisonment
Failure to Arrest Drunken Drivers	Stops, Searches, and Seizures (Liability)
Failure to Train/Supervise (Liability)	War on Drugs (Criminal or Civil)
Canine Liability	Municipal Liability under Section 1983
(Police)	
Sexual Violence Committed by Police	Police Grooming Policies
Respondeat Superior Liability under State Tort Law	Selection Procedures/Hiring
Dismissal Grounds	Dismissal Procedures
Disciplinary Grounds	Disciplinary Procedures
ADEA (Age Discrimination)	Race Discrimination
Sex Discrimination in Workplace	Religious Discrimination in the Workplace
Privacy in the Workplace	Polygraph in the Workplace
ADA (Disability Discrimination)	Sexual Orientation Discrimination in
Workplace	
Sexual Harassment in the Workplace	Open Records/Meetings
Transfer in the Workplace	Promotion Procedures
Unions in the Workplace	Collective Bargaining
Arbitration in the Workplace	Grievance Procedures
Worker's Compensation	Secondary Employment
Conduct Unbecoming an Officer	Pension Rights

There are many other topics on which to write about, so I encourage you to explore the databases, such as HeinOnline, to get ideas before deciding on a topic. All I ask is that you run your topic by me for approval before you proceed.

How to Write a Paper for Dr. Vaughn

VERY IMPORTANT: The assignment requires students to integrate social science research with the legal case law and produce a hybrid paper that is primarily legal in scope but it is informed by social science research on the topic.

If you are writing a paper on civil liability, make sure you either do Section 1983 or state tort law. Mixing of the two is easy to do, but this should be avoided since standards of liability and the precedents differ for each. Likewise if you are writing a paper on federal criminal procedure or constitutional law, make sure you focus federal constitutional and statutory interpretation. Precedents are different for state constitutional law and statutory interpretation of state laws compared to federal constitutional law and federal statutory interpretation. Mixing federal and state criminal cases will cause more confusion than you need in this paper.

Know the difference between Section 1983 or tort law or civil liability cases and criminal cases. Know that cases pertaining to motions to suppress evidence are criminal cases; also know that if you are writing a paper on civil liability, many of your cases will pertain to motions for dismissal and motions for summary judgment. For this reason, if your focus is on civil liability, in the search strategy of Westlaw, you should use "Section 1983" as one of the search terms with searching for civil cases of a federal nature.

Keep the paper narrowly focused on the topic; you are not writing a book so do not get too carried away. The topic of prison "conditions of confinement" is too broad, What is it about prison conditions of confinement that makes it legally noteworthy: food preparation, sewage systems, water leaks, hot/cold temperatures, overcrowding, etc.

Take each of the four sections below and treat each section as a discrete entity. This assignment requires much time and organization and it can seem overwhelming at first, but if you take each part of the paper and complete one and then move on to the next, it can be more manageable. Warning: This assignment cannot be done in a week; it is a semester long project.

Introduction & Literature Review

2 to 5 pages

The introduction should introduce the problem to readers. It should draw on the social science literature (Academic Search Complete, Criminal Justice Abstracts, Criminology Collection, Sage Premier, EBSCOhost all databases, Proquest Criminal Justice, HeinOnline, JSTOR, ScienceDirect, SocIndex, SpringerLink, Social Science Full Text, PsycINFO, PsycArticles). This part of the paper is not legal; this part of the paper frames the issue based on the social science literature for an understanding to be achieved through legal analysis. At the end of the introduction, the paper should include a brief "roadmap" paragraph (4 to 6 sentences) that tells readers what the rest of the paper is about.

U.S. Supreme Court Precedent or State Supreme Court Precedent

2 to 4 pages

Use Westlaw to find cases. This part of the paper should briefly tell readers what the U.S. Supreme Court has said about the area and articulate the standard for liability (i.e., in prison

medical care cases, in *Estelle v. Gamble*, the Court said the standard for liability is deliberate indifference; in police use of force cases, the Court in *Graham v. Connor* said the standard for liability is objective reasonableness) or the standard in criminal cases (i.e., in *Miranda v. Arizona* the Court said the standard to give *Miranda* rights was custodial interrogation). Give readers the highlights of what the Court has said in the area. If there are no U.S. Supreme Court cases on the issue, then discuss what standards lower courts are using. Don't get too carried away with this part of the paper, for this could be the entire paper if you write too much here, and this assignment is not about Supreme Court precedent, so this needs to be limited. If you are doing a 50-state statutory analysis of an issue (analyzing all 50 states laws on a specific issue), then there may not be a supreme court case or maybe it is a state supreme court case or perhaps there is no court case at all.

Lower Court Interpretation of U.S. Supreme Court Precedent or State Supreme Court Precedent

(heart of the paper): 20 to 30 pages

Here, you must locate lower court cases on their topical areas (Westlaw). 15-20 lower court cases should be used here (U.S. Court of Appeals or U.S. District Court Cases if 1983 actions is the focus and/or you could also focus on state law (cases from state supreme courts and state court of appeals). If state law is your focus, you would get state cases that were interpreting state supreme court precedent. Under state law, you could take a concept like *independent state grounds* where states give their citizens more protections under their constitutions than what is required under the U.S. constitution, and look at several states that have looked at extending protections to their citizens through the legal concept of independent state grounds. In this situation, you would report on developments in several states but the cases would all be based on state law, but it would be the state law and constitutional authority in a particular state on a narrow legal issue. In the civil context, some may want to get into state tort law but it is more complicated and difficult, but if you are writing about liability under state law then obviously you will be using state cases). Break this discussion into two broad areas: cases where the defendants are possibly liable and cases where the defendants are not liable. Students should not mix cases of possible liability with cases of no liability. Under each of these two areas, further organize the material into categories and subcategories. If use of nondeadly force is the topic, then cases on potential liability and no liability would make up two separate categories and under each category, further break the cases into meaningful categories: group 3-4 cases together that focus on force with batons, another 3-4 on chemical agents, another 3-4 on bodily restraint holds, etc. Categories could also be related to use of force at traffic stops, use of force during arrests, use of force at domestic disturbances, use of force at jail, etc. OR, use of force with juveniles, use of force with adults, use of force with foreign nationals, use of force with the elderly, use of force with the mentally ill, use of force with the mentally challenged, use of force with the intoxicated, etc. Since creating the categories is an inductive process and the specific factual situations of the cases will drive what type of categories one develops, it is difficult to precisely say what the categories will be. Creating the categories within each of the broader areas of possible liability (or in the criminal context; police did not prevail and the evidence is inadmissible, i.e., defendant's motion to suppress is granted) and no liability (or in the criminal

context; police prevailed and the evidence is admissible, i.e., not suppressed) is part of the creative process and students must read several cases before getting discouraged because the categories only come from what the factual situations in the cases dictate. **Do not write more than one-and-a-half page per case in this lower court section.** Some of these cases are complex and students could write several pages per case, but this is not the point of the paper. The point of the paper is for students to integrate several cases into a cohesive body of work. You should find commonalities and differences between cases and then group these similarities and differences into categories. At the end of the section on possible liability (or in the criminal context, where the police lost the case and the evidence was suppressed because of a bad search), students are required to write a brief paragraph (4 to 6 sentences) to summarize the section; at the end of the section on no liability (or in the criminal context, where police prevailed, the evidence was admissible at the defendant's criminal trial) students are required to write a summary paragraph that summarizes this section (4 to 6 sentences). The same is true at the beginning of the category before any cases are discussed. Here, students should write a 4 to 6 sentence paragraph (from the social science literature) that introduces the category to readers before jumping into the case discussions.

Conclusion

2 to 4 pages

Here, students should sum up their findings, discuss any trends in the law that they uncovered, tell readers what still needs to be known about their topical areas, and discuss needs for future research. Also, students should identify the policy implications flowing from their research: training, supervision, education, policy development, etc. Legal research can be very esoteric and appear to be removed from what goes on in the justice system, but in actuality it is very practical to officers and administrators working directly in the field of criminal justice. Courts and legislators are telling justice workers what they can and cannot do based on federal and state constitutional law and through statutory interpretation.

Why you do not want to mix state cases with federal cases in your paper. It is a matter of diversity of jurisdiction:

It can be confusing when dealing with our system of federalism with 51 sovereign entities with separate legal systems (federal government & 50 states). State courts may hear questions based on federal law but they must apply federal precedents from federal courts within their jurisdiction and apply federal statutory and constitutional authority. State courts may hear questions based on federal law, but they are not required to do so. This is an issue of **diversity of jurisdiction**. Most state courts have general jurisdiction which gives them the discretion to hear questions based on federal law, but they must hear questions brought to them based on state law. On the other hand, federal district courts (trial courts in federal system) must hear questions brought to them on the basis of federal law, but they have subject matter jurisdiction with respect to questions of state law or state constitutional interpretation. Subject matter jurisdiction limits federal courts' discretion to what they can hear regarding state issues to what Congress has authorized them to hear. If federal courts are authorized to hear questions of state law, they must rely on state law and state statutory and constitutional authority. When federal courts hear state issues in federal courts, they must rely on state precedents and try to determine what the state's highest court or state's legislature meant when the law was enacted or interpreted. Because of a

variety of jurisdictional issues, occasionally a federal court, even if it has the requisite jurisdiction to hear a question involving state law, will exercise its discretion and send the case back to state court. Similarly, state courts with general subject matter jurisdiction will refuse to hear a case litigating an issue based on federal law (even though they could); instead, they send the case to federal court for them to apply federal precedent and federal statutory and constitutional authority, presumably something the federal courts should feel more comfortable with since they do it on a daily basis than do the run-of-the-mill state courts.

The U.S. Supreme Court has both **original jurisdiction** and **appellate jurisdiction**. **Original jurisdiction** exists in all cases affecting ambassadors, other public ministers, and counsels, and all cases in which a state is a party. **Appellate jurisdiction** exists over all cases decided by the lower federal courts and cases decided by state courts involving issues of federal law.

(In Civil Cases Only) Motion to Dismiss: a formal pretrial objection made by the defendant attacking the legal sufficiency of the plaintiff's lawsuit. It is an assertion made without disputing the facts that the lawsuit does not state a cause of action, and the defendant is entitled to judgment. The well-settled rule of federal practice is that a motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would not be able to recover under any state of facts that could be proved in support of his/her claim.

(In Civil Cases Only) Motion for Summary Judgment is a preverdict judgment rendered by the court in response to a motion by plaintiff or defendant, who claims that the absence of factual dispute on one or more issues eliminates the need to send those issues to the jury; a device designed to effect a prompt disposition of controversies on their merits without resort to a lengthy trial, if in essence there is no real dispute as to salient facts or if only a question of law is involved.

(In Criminal Cases) Motion to Suppress: refusal to produce evidence or to allow evidence to be produced for use in litigation. Suppression of evidence refers most commonly to the sanction in a criminal case for an unreasonable search or seizure that violates a defendant's constitutional rights. In *Weeks v. United States* (232 U.S. 383 (1914)), the U.S. Supreme Court held that illegally seized evidence must be excluded from use in federal criminal trials. In 1961 in *Mapp v. Ohio* (367 U.S. 643), the Court expanded the exclusionary rule to include state criminal trials.

By Dr. Rolando V. del Carmen (with modifications)

GUIDE TO CASE BRIEFING

Case briefs help the reader to understand court cases better and are used extensively as a learning tool in law schools and in the practice of law. Students read a case, take it apart into classified segments, and then reassemble it in a more concise and organized form so as to facilitate learning.

In order to familiarize students with the basics of case briefing, a sample case brief is presented here. It must be stressed that there are various ways to brief cases, usually depending on what the reader or instructor considers important. For example, some instructors include only the court's majority opinion, while others go into concurring and dissenting opinions. Some require comments concerning the significance of the case, while others want excerpts from the decision. What follows is one of the simplest ways to brief a case.

The basic elements of a simple case brief are

1. Name of the case
2. Citation (telling where the case can be found)
3. Date decided
4. Facts
5. Main issue
6. Decision
7. Principle of law
8. Analysis—"NOTES AND COMMENTS"

Example of a Case Brief: The Case of Miranda v. Arizona

- 1. Name of the Case:** Miranda v. Arizona
- 2. Citation:** 384 U.S. 486
- 3. Date Decided:** 1966

Note: *In your brief, the preceding elements go in this order: Miranda v. Arizona, 384 U.S. 486 (1966).*

4. Facts: Ernesto Miranda was arrested in his home and taken to the police station in Phoenix, Arizona, where he was interrogated by two police officers for two hours. He was not advised of his right to remain silent or of his right to an attorney. Miranda signed a written confession and was later convicted of kidnapping and rape. He appealed his conviction to the U.S. Supreme Court, saying that the evidence against him was obtained in violation of his constitutional right against self-incrimination and therefore should not have been admitted in court.

***Note:** The facts section can be too detailed or too sketchy, both of which can be misleading. In general, be guided by this question: What minimum facts must you include in your brief so that a person who has not read the whole case (as you have) will nonetheless understand it? That amount of detail is for you to decide--you must determine what facts are important or unimportant.*

5. Main issue: Are statements made by a suspect during custodial interrogation--where the suspect has not been advised of his right to remain silent or to have an attorney--admissible as evidence in court during the trial?

***Note:** The issue statement must always be in question form, as here. Be sure that your issue statement is neither too narrow (as to be applicable only to the peculiar facts of that case) nor too general (as to apply to every case even remotely similar in facts), so that it is useless. Also, some cases have more than one issue.*

6. Court Decision: The conviction of Miranda was reversed, and the case was sent back to trial court for new trial without using the evidence that was illegally obtained.

***Note:** The court decision section answers the following questions: Did the court affirm, reverse, or modify the decision of the immediate lower court from which the case came, and what happened to the case? Sometimes this is confused with the principle of law. The difference is that the court decision section simply tells you what happened to the case on appeal and what the court said is to be done with it.*

7. Principle of Law (otherwise known as Doctrine or Ruling or Decision): When a suspect is taken into custody or otherwise deprived of freedom in a significant way, he or she must be given the following warnings:

a. You have the right to remain silent; b. Anything you say can be used against you in a court of law; c. You have a right to the presence of an attorney; d. If you cannot afford an attorney, one will be appointed for you by the state.

If these warnings are not given, any evidence obtained by the police cannot be admitted in court during the trial, because it is deemed to have been obtained in violation of a suspect's constitutional right against self-incrimination.

***Note:** Most cases do not have a principle of law as lengthy as this. In any case, you must be able to state in brief, exact, clear language what the court said. Usually, you can pick the principle of law out from the case itself, particularly toward the end of the court decision. The principle of law is the most important element of the case, because it states the rule declared by the court. Such a rule becomes applicable to similar cases to be decided by courts in that jurisdiction.*

8. Notes and Comments: This section captures the importance of the case. In this section, you explain in detail how the case fits into the overall picture of the law on the subject. To do this you have to do a lot of research on the topic in the specific databases, such as Hein Online and Westlaw's Law Review Section. How does the case fit into the criminal justice literature You

will need to get law review/law journal/scholarly articles on the case (and on other similar cases) to help you write this part of the case brief. This will be the longest part of the case brief, which could run on to 20 pages. The expectation is that each brief will be a minimum of around 10 pages double-spaced in Times 12 font with inch margins, written in legal style. In fact, some case briefs that are done extremely well may be turned into publications, separate and apart from your law-oriented legal research paper.