

Sociology 105D/205D
Summer 2008 TTh, 10-11:50 am
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THE SOCIOLOGY OF CRIMINAL PROCEDURE

Course Description

This course is a hybrid between law and the social sciences. We'll cover major areas in American criminal procedure, including juries, search and seizure, *Miranda* rights, and the right to counsel. We'll read excerpts from major cases and legal scholarship in order to understand the fundamentals of legal areas. We'll then bring sociology, psychology, and other disciplines to bear in understanding how the law works. The central focus of this class will be the relationship between law and social science: Does the law line up with the realities of the social world? How, if at all, should social science research be brought to bear on law? What can scholars in these disciplines learn from each other?

We will address these questions by looking at specific topics in criminal procedure, including police interrogation, juries, searches and seizures, indigent defense, and racial profiling. Students of all disciplinary backgrounds are welcome.

Requirements

Participation: 30%
Response Papers: 5% each (20% total)
Idea Paper: 10%
Prospectus: 15%
Final paper: 25%

Participation

Because this is a summer course, we will move quickly through the material. You should come to each class prepared to engage actively in discussion. Readings are due the day for which they are assigned—if a reading is listed under “July 2,” that means you need to read it prior to the July 2 class. Please pay attention to *which pages* are assigned. Sometimes you will only be required to read *part* of an article or chapter.

Attendance is expected at every class session.

Contacting the Instructor:

I'll hold office hours on Wednesdays, from 10 am to noon. You can also make an appointment to see me another time. Feel free to drop by office hours just to chat, even if you don't have a specific question. If you need to reach me quickly, email is the fastest way.

Laptop Policy

Laptops are not permitted in class.

Disability Accommodations and Other Services

If you know or are concerned that you may have a disability, contact the Disability Resource Center (DRC) (<http://www.stanford.edu/group/DRC/>, info@drc.stanford.edu). The DRC can provide a variety of resources to aid instruction, and will work with the instructor and the student to arrange suitable accommodation.

If you require accommodation, it is your responsibility to contact the DRC, which will keep the details of your circumstances in confidence and work with you and your instructors to arrange suitable accommodation. Physical or mental conditions that interfere with your ability to complete coursework as scheduled in a syllabus constitute circumstances in which you should consult the Disability Resource Center.

Counseling and Psychological Services (CAPS) is available to help students who experience a wide variety of personal, academic and relationship concerns. Contact (650) 723-3785 (24 hours a day).

Honor Code:

As a Stanford student, you agree to abide by the Honor Code. This includes agreements that you will not give or receive unpermitted aid in any work to be used by the instructor as the basis of grading, and that you will take an active part in seeing to it that others—and you—uphold the spirit and letter of the Honor Code. Unless otherwise stated by the instructor, all assignments in this class are to be your sole efforts in research, analysis, and writing.

Materials:

Most of the materials for this class will be available on Coursework. These will include journal articles, newspaper articles, Supreme Court cases, and other materials. It is advisable to print out these readings and bring them to class, since you may want to reference them during discussion and laptops are not permitted in class. I've found that this works best for teaching seminars, but I'm aware that printing imposes an environmental cost. In order to conserve paper, you may want to print on both sides, use 2 → 1 printing, omit footnotes and unassigned pages when printing, or share printouts with others. Also, feel free to give me the printouts when you are finished. I will recycle the paper for you, or keep the materials for future classes.

We will also be using three books:

1. Israel, Jerold H., and Lafave, Wayne R. 2006. *Criminal Procedure: Constitutional Limitations* (7th Edition). West Group (Nutshell series).
2. Leo, Richard A. 2008. *Police Interrogation and American Justice*. Cambridge: Harvard University Press.
3. Vidmar, Neil, & Hans, Valerie P. 2007. *American Juries*. Amherst: Prometheus Books.

All of these books are available at the Stanford Bookstore, as well as on Amazon.com and other online booksellers. I have requested that copies be put on reserve at Green Library as well, where they will be available for checkout in two-hour periods.

Materials available on Coursework are denoted on the syllabus with a "CW."

SYLLABUS

I. PROCEDURE AND POLICING

Class 1. Tuesday, June 24: Introduction

- *Powell v. Alabama*, 287 U.S 45 (1932).
- Stanford Judicial Charter of 1997 (excerpts).

Class 2. Thursday, June 26: Procedural Justice and Rights Consciousness

- Tyler, Tom R. 1984. "The Role of Perceived Injustice in Defendants' Evaluations of Their Courtroom Experience." *Law & Society Review* 18: 1 (p. 51-62 and 68-71; skip or skim the results section (63-68)). CW.
- MacCoun, Robert J. 2005. "Voice, Control and Belonging: The Double-Edged Sword of Procedural Fairness." *Annual Review of Law and Social Science* (p. 171-193). CW.
- Silbey, Susan. 2005. "After Legal Consciousness." *Annual Review of Law and Social Science* (p. 323-328 and p. 335-340). CW.
- Nielsen, Laura Beth. 2004. "The Work of Rights and the Work Rights Do: A Critical Empirical Approach," in *The Blackwell Companion to Law and Society*, Austin Sarat, ed., Blackwell: Malden, MA (p. 63-69). CW.

Class 3. Tuesday, July 1: The Police and Policing

- Bell, Jeannine. 2004. "The Police and Policing," in *The Blackwell Companion to Law and Society*, Austin Sarat, ed., Blackwell: Malden, MA (p. 131-144). CW.
- Sklansky, David Alan. 2006. "Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement." *96 Journal of Criminal Law and Criminology* 3 (p. 1209-1243). CW.
- Herbert, Steve. 1996. "Morality in Law Enforcement: Chasing 'Bad Guys' With the Los Angeles Police Department." *30 Law & Society Review* 4 (p. 805-816). CW.
- Sunshine, Jason, & Tyler, Tom R. 2003. "The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing." *37 Law & Society Review* 3 (skim p. 513-525, skip 526-533, and read 534-537 carefully). CW.

II: THE FOURTH AMENDMENT: SEARCH AND SEIZURE

Class 4. Thursday, July 3: Intro to the Fourth Amendment; Consent

- Israel & LaFave, §2.1(a) and (c); §2.2(a), (b), (c), and (d); §2.4(d) and (e); §2.7(d); §2.9(a) and (b); §2.12 (all). (About 25 pages.)
- Boston consent searches video (5 minutes). CW.
- Oakland consent searches article (1 page). CW.
- FBI Bulletin regarding "knock-and-talks" (8 pages). CW.
- Nadler, Janice. 2002. "No Need to Shout: Bus Sweeps and the Psychology of Coercion." *2002 Supreme Court Review* 153 (abridged; p. 1-19). CW.

Class 5. Tuesday, July 8: Poverty, Race, and the Fourth Amendment

- Stuntz, William J. 1999. “The Distribution of Fourth Amendment Privacy.” 67 *George Washington Law Review* 1265 (abridged; p. 1-16). CW.
- Slobogin, Christopher. 2003. “The Poverty Exception to the Fourth Amendment.” 55 *Florida Law Review* 391 (abridged; p. 1-6). CW.
- *New York Times* article: regulatory searches and the poor (2 pages). CW.
- Gross, Samuel R. and Livingston, Debra. 2002. “Racial Profiling Under Attack.” 102 *Columbia Law Review* 5 (p. 1413-1438). CW.
- *New York Times* racial profiling article (1 page). CW.

Class 6. Thursday, July 10: Government Surveillance and Technology

- *Kyllo v. U.S.*, 533 U.S. 27 (2001) (read the opinion and the dissent). CW.
- Slobogin, Chris. 2007. *Privacy at Risk: The New Government Surveillance and the Fourth Amendment*. Chapters 3 and 4 (p. 50-73 and p. 79-117). CW.
- ACLU “Stop and Frisk Database” article (1 page). CW.

→ **IDEA PAPER due Friday, July 11 by 10 pm via email.**

Class 7. Tuesday, July 15: The Exclusionary Rule

- Israel & LaFave, §6.3 (all).
- Kamisar, Yale. 2003. “In Defense of the Search and Seizure Exclusionary Rule.” 26 *Harvard Journal of Law and Public Policy* 119 (p. 1-9). CW.
- Stuntz, William. 1997. “The Virtues and Vices of the Exclusionary Rule.” 20 *Harvard Journal of Law and Public Policy* 443 (p. 1-7). CW.

III: THE FIFTH AMENDMENT: CUSTODIAL INTERROGATION AND CONFESSIONS

Class 8. Thursday, July 17: Introduction to *Miranda* and the Fifth Amendment

- Leo, *Police Interrogation and American Justice*, p. 25-40; p. 46-48; p. 66-69; p. 272-283.
- *Miranda v. Arizona*, abridged
- Israel and LaFave, §4.4 (c) and (d) (3 pages)
- **Optional:** Israel and LaFave, §4.6 (defining “custodial”); §4.7 (defining “interrogation”)

Class 9. Tuesday, July 22: Interrogation Techniques

- Leo, p. 119-155 and p. 162-177.
- NPR’s *Justice Talking*, “Miranda Warnings.” (Click on “Listen to Full Program” and listen to the first 34 minutes.)
- USA Today article on *Seibert* case
- **Optional:** Leo, Chapter 3.

Class 10. Thursday, July 24: False Confession; Wrongful Conviction; Proposed Policy Reforms

- Leo, p. 195-253, p. 283-291, and p. 305-317.

→ **PROSPECTUS due Friday, July 25 by 5 pm (hard copy under my door, 120-053).**

IV: THE SIXTH AMENDMENT: RIGHT TO COUNSEL

Class 11. Tuesday, July 29: Providing Counsel to Indigent Defendants

- *Gideon v. Wainwright*, 372 U.S. 335 (1963) (opinion). CW.
- Backus, Mary Sue, and Marcus, Paul. 2006. “The Right to Counsel in Criminal Cases: A National Crisis.” *57 Hastings Law Journal* 1031 (abridged). CW.
- Roy B. Flemming. 1986. “Client Games: Defense Attorney Perspectives on Their Relations with Criminal Clients.” *11 American Bar Foundation Research Journal* 2. CW.
- Israel & LaFave, §7 (*optional*—refer to as needed).

Class 12. Thursday, July 31: How “Effective” Does Assistance Have to Be?

- *Rompilla v. Beard*, 545 U.S. 374 (2005) (opinion, concurrence, and dissent). CW.
- Bright, Stephen B. 1994. “Counsel for the Poor: The Death Sentence Not for the Worst Crime But for the Worst Lawyer.” *103 Yale Law Journal* 1835 (abridged). CW.

V: THE SIXTH AMENDMENT: RIGHT TO A JURY TRIAL

Class 13. Tuesday, August 5: The American Jury System and Jury Psychology

- Vidmar & Hans, Chapters 3, 6, and 7.
- Israel & LaFave, §9.6, §9.7, §9.8, and §9.9 (*optional*—refer to as needed).

Class 14. Thursday, August 7: Jury Selection

- Vidmar & Hans, Chapter 4
- *Miller-El v. Dretke*, 545 U.S. 231 (2005) (selections). CW.
- Barbara Allen Babcock. 1975. “Voor Dire: Preserving ‘Its Wonderful Power.’” *27 Stanford Law Review* 545 (selections). CW.
- Akhil Reed Amar. 1995. “Reinventing Juries: Ten Suggested Reforms.” *28 U.C. Davis Law Review* 1169 (selections). CW.
- Abbe Smith. 1998. “‘Nice Work If You Can Get It’: ‘Ethical’ Jury Selection in Criminal Defense.” *67 Fordham Law Review* 523 (selections). CW.

Class 15. Tuesday, August 12: Jurors and Scientific Evidence

- Vidmar & Hans, Chapters 8 and 9.
- Shelton, Donald E., Kim, Young S., & Barak, Gregg. 2006. “A Study of Juror Expectations and Demands Concerning Scientific Evidence: Does the ‘CSI Effect’ Exist?” *9 Vanderbilt Journal of Entertainment and Technology Law* 331. CW.

→ **Last day to turn in extra credit: Wednesday, August 6 by 4 pm (hard copy under my door).**

VI: PROCEDURAL REFORM

Class 16. Thursday, August 14: The Future of Criminal Procedure (and your presentations!)

- Stuntz, William J. 1997. “The Uneasy Relationship Between Criminal Procedure and Criminal Justice.” *107 Yale Law Journal* 1. CW.

→ **FINAL PAPER Due Thursday, August 14, at 10 am (hard copy, in class).**

ASSIGNMENTS

Response papers. Response papers should be 2 pages each. Due dates will be assigned the first week of class. **Turn in response papers via Coursework by noon the day before the reading is due.** For example, if you are writing a response to an article listed on the syllabus under “July 15,” your response is due July 14 by noon. I’ll give more details in class.

Idea Paper. This is a 2- or 3-page informal brainstorming paper that sets out three concrete possible ideas for your final paper. The paper should talk specifically about the topics that interest you and how you intend to approach them (e.g., “I am interested in how juries work” or “I want to write about police behavior” is not specific enough). **Due Friday, July 11 by 10 pm** (via email).

Prospectus. This is your first shot at your final paper topic. It should be 4-6 pages + an annotated bibliography with ≥ 10 sources, 3-4 sentences about each (the bibliography is not included in the page count). The prospectus can be a rough draft of the paper, a portion of the paper, an outline—whatever is most helpful to you. I will make detailed comments on your prospectus to help you write your final paper. **Due Friday, July 25 by 5 pm** (hard copy under my door, 120-053).

Final paper. This is your magnum opus for this class. It should be 10-15 pages, reflect a great deal of thought, and take the form of a journal article (I’ll go over this format in class). **Due Thursday, August 14, at 10 am** (hard copy, in class).

Extra credit. You have the option of earning extra credit by writing one or two extended critical book reviews. You may review Kevin Davis’s *Defending the Damned: Inside Chicago’s Cook County Public Defender’s Office*, Chris Slobogin’s *Proving the Unprovable: The Role of Law, Science, and Speculation in Adjudicating Culpability and Dangerousness*, David Sklansky’s *Democracy and the Police*, David Simon’s *Homicide: A Year on the Killing Streets*, Gary Delsohn’s *The Prosecutors: A Year in the Life of a District Attorney’s Office*, Malcolm Feeley’s *The Process is the Punishment*, Tom Tyler’s *Why People Obey the Law*, or Bruce Western’s *Punishment and Inequality in America*. This assignment is **optional**; if you do one book review, it will count for 10% of your grade. If you do two reviews, they will count for 10% of your grade each, or 20% total. (Other assignments’ weights will be reduced proportionally.) Instructions will be available on Coursework. Book reviews can be turned in any time throughout the quarter, but no later than **Wednesday, August 6 by 4 pm** (hard copy under my office door). Extra credit can only help you; if your grade on a book review would bring down your final course grade, I will not include it. I’ll try to make all of these books available through Course Reserves at Green Library, but let me know if you have problems finding a book you’d like to review.

Late Work. No extensions will be given for response papers. For other papers, you have 24 hours’ extension to use on one of them, whichever you want—no need to explain why or ask me in advance (if you choose to use this option for the final paper, please turn in a hard copy under my office door). Alternatively, you can apply your 24-hour extension to one—but not both—extra credit assignments.

Logistics. Use standard formatting for everything you turn in: double-space, 1-inch margins, 11- or 12-pt Times New Roman, etc.