

Criminology 607

Seminar in Law and Society

Dr. Skelton

The Nature of the Seminar

The purpose of this seminar is to explore the relationship between legal approaches and social science approaches to social institutions, social relationships, social problems, and social control. Within this context, students are free to explore their own research interests; the unifying theme of the seminar is the analytical approach rather than any narrow subject matter. I will suggest particular topics for research and discussion, but the final choice of subject matter is a group decision. Once the decision is made, each member of the seminar then has the obligation to go forward with research projects, ultimately reporting research results to the entire seminar.

Books to Read

I hope each member of the seminar will read, as quickly as possible, the following books:

Friedman, *Crime and Punishment in American History*

Gould, *The Mismeasure of Man*

Both books are available from the ISU Bookstore and also can be found in commercial bookstores and from booksellers on the Internet. The books should be read to give everyone the same background information to begin our exploration of law and society topics. The books are inherently interesting and very well written. The Friedman book is (I think) the best history available of the American system of criminal justice. The Gould book is an excellent book, intended for non-scientists, which explores both historical and contemporary issues of the scientific measurement of human characteristics and capabilities.

Seminar Work Products and Grading

1. Research report (40%)
 - a. Written report of 15-20 pages.
 - b. In-class PowerPoint presentation of the research report.
2. Moot Court argument (40%)

- a. Appellate brief.
 - b. Oral argument in moot court.
3. Critiques (15%)
- a. One-page critique of each research report presentation.
 - b. One-page judicial opinion for each moot court argument.
4. Log of research efforts (5%). You will keep a log of your research efforts (just an outline) for submission at the end of the course. You should keep a record of all of your efforts, even if unsuccessful, because sometimes finding nothing after looking in obvious places might tell you as much as finding something. Perhaps unsuccessful fishing trips mean that you were using the wrong lure or maybe that there are not fish in the pond (that is, maybe you just looked in the wrong place or maybe there is very little published research on your question or very few appellate cases on your legal issue).

I will use the above-listed guidelines to assign final grades for the course. Because this seminar is typically one of the last courses taken before completing the master's degree, I expect that individual performance will be at the highest professional level. I will apply my best professional judgment to your performance in a sincere effort to give you an objective grade which reflects both your effort and your achievement in the course. Grades are not "curved" nor are you in competition with anyone but yourself.

Social Science Research Guidelines

One of the requirements for Criminology 607 is to conduct a social science research project. The research problem will simulate a variety of research contexts which you might encounter professionally (e.g., a formal research paper presentation at a professional meeting, a grant application to a federal agency, a contract research proposal to a funding sponsor, a policy paper in support of a legislative proposal, or a study document for decision makers determining governmental resource allocations). You will endeavor to locate and analyze all of the professional literature on the topic, and you will report the results of your literature review to the class. In some cases, because of the nature of the topic, you might also review literature from other fields such as education, medicine or engineering.

You will also endeavor to describe the nature of your topic by locating any relevant quantitative measurements of interest. For example, if your general research topic is alcohol and drug abuse, you should be able to tell the class the magnitude of the problem (how many alcohol and drug abusers, is the number changing over time, what is the economic and social cost, what is the caseload in the criminal justice system associated with alcohol and drug abuse, and so forth). Such quantitative information is typically

found in government reports of various kinds. You may even resort to journalistic sources if no other measurements are available.

I would recommend that you consult the appropriate reference tools in our library (that is, the various indexes and abstracts collections such as the Criminal Justice Abstracts or Psychological Abstracts) in order to begin your research. You should plan on reviewing the historical development of your topic at least by sampling the old literature, and you should be able to describe the "state of the art" of the literature published in the past ten years. You are supposed to tell the reader about the research that has been done in the past, the results of that research, and just what we know (and don't know) about the topic. Of course, use the extensive resources available on the Internet (but be careful to evaluate the accuracy and reliability of those sources). I have provided a number of "external links" on the course website which might be helpful to get you started. ISU also subscribes to the Lexis-Nexis and Westlaw legal research services which allow you to search an extensive collection of legal materials from all states and the federal system as well as academic sources of information about the law. Be sure to read the information on the Cunningham Memorial Library website about how to modify your web browser in order to access these (and other) restricted databases in the library.

When you have finished your research (or more likely, when you have run out of time), you will prepare your report on the computer and distribute it to each class member using the Blackboard system software on the class website. You will also prepare a PowerPoint presentation of your research to be presented to the class. Your colleagues and I will listen respectfully and then criticize your performance. I will be especially interested in how you conducted your research, what exactly you looked at, and what exactly you found. It is a good idea to include a section on methodology in your report.

Each student is required to submit a short critique of each presentation done by the other students. Each student is also required to do some preparatory reading for each topical area which will be assigned to the class in general.

Suggested Form and Content

The reports should be in the following form (unless you have a good reason to do it some other way) and contain, at a minimum, the following information:

1. Introduction and problem statement -- tell us exactly what your topic is and why you chose it. This section should include a report of your methodology (that is, what did you do to find the information you are now reporting and where did you look that was unproductive).
2. Scope of the problem -- tell us what the nature of the problem is in quantitative terms (how many, how often, how much does it cost, and so on).
3. History of the problem -- tell us how the problem has developed since, say, the beginning of time until about ten years ago. The exact time reference will vary, of course,

with the topic. Included in this section would be a sample of the literature, and especially a review of any classical or seminal publications on the topic.

4. Review of recent literature -- tell us what the "state of the art" of knowledge is in the field(s) on this topic. Identify any distinct schools of thought or theoretical approaches. What kind of research has been done in the last ten years and what remains to be investigated.

5. Legal issues -- tell us what legal issues, if any, arise out of your topic. After all, this is the ultimate purpose of the project. We are trying to relate research in the social sciences and other intellectual fields to legal problems and their solutions. An easy example for this section would be if your topic were behavior modification of criminal offenders. The legal issues to be investigated would include the power of judges to sentence and impose conditions of incarceration or probation, the power of correctional agencies to impose treatment on inmates, and the constitutional ramifications of just what process is due to impose such outcomes on inmates.

6. Conclusion -- sum up your findings and astound us with the brilliance of your presentation.

Critiques of presentations should be restricted to one page and should address whether or not the presenters achieved the objectives implicit in the instructions for preparing the report. The critique might include suggestions for supplying missing information and for improving the search technique. Critiques will be sent to each class member through the "digital dropbox" software on the course website.

Ultimately, I will use your research reports and critiques in formulating the final appellate arguments which we will do later in the semester.

Appellate Argument Guidelines

One of the requirements for Criminology 607 is participation as counsel in an appellate argument in a moot court. You will assume the role of an attorney for the appellant or appellee in an imaginary (but realistic) case.

You must perform the following tasks:

- (1) Analyze and research your case.
- (2) Write an appellate brief presenting your argument to the court.
- (3) Argue your case in the moot court.

Appellate Briefs

An appellate brief (at least for our purposes) is a document which provides the court with an analysis of the legal issues in an appeal, and which seeks to persuade the appellate court to adopt the legal position advocated by the author. The briefs for Criminology 607 must meet the following standards:

(1) Briefs must be prepared using either WordPerfect or Word software formatted for printing on 8.5 by 11 inch paper. The briefs will be double spaced and formatted for one side of the page only. Margins should be 1 inch on the top, bottom and right, and 1.5 inches on the left. Briefs must be at least eight pages and not more than 14 pages in length.

(2) Each brief should have a "cover" consisting of just a first page in the following form:

* * * * *

IN THE _____ COURT OF _____

Appellant's name

v.

Appellee's name

Cause No. _____

Appeal from the _____ Court.

The Honorable _____, Judge

BRIEF OF THE _____ [Appellant or appellee]

Counsel: _____ [attorney's name]

Criminology 607

DATE: _____

* * * * *

(3) The brief should consist of four sections:

- (a) a statement of the issues presented for review;
- (b) a summary of argument without documentation;
- (c) an argument including supporting documentation in annotated form; and
- (d) a brief concluding statement indicating precisely the relief sought.

(4) The brief must cite, at a minimum, 15 relevant appellate cases in support of arguments (if, of course, there are that many). Case citations should be in proper form, and reports of cases must be from the primary sources. (This means that you use the "Harvard Bluebook" citation form and that you read the actual cases, not somebody's report on the cases.) Citation of social science or other scholarly literature is also permitted, where appropriate.

(5) *Retain your original copy of the brief, and submit copies of the brief to the "court" through the "digital dropbox" software on the course website. These briefs will be distributed to your opponent and to each member of the "court" (i.e., everybody else in the seminar).*

Judicial Opinions

After hearing oral arguments, each judge (i.e., students who are not arguing that case) will prepare an "opinion" which states his or her judgment in the case and the rationale for it. These opinions should not exceed one typed page, and must be distributed to the class through the "digital dropbox" software on the course website.

Court Procedure

Each argument will proceed according to the following schedule:

- (1) Argument for the Appellant. (10 minutes)
- (2) Argument for the Appellee. (10 minutes)
- (3) Rebuttal. (Counsel may offer up to 10 minutes of rebuttal)

When beginning the argument, it is required that each "attorney" (who will be addressed as "Counsel" according to usual practice) address the court with the traditional words: "May it please the Court. My name is [state your name] and I represent [state your client's name], the [state either Appellant or Appellee]." When the Chief Justice (that's me) tells you to proceed, you may begin your argument.

Do not merely read your brief. Rather, provide the court with a coherent, direct exposition of your argument, and make reference to your brief (by page number) when necessary. Remain calm and state your argument firmly and with conviction (even if you

don't believe it yourself). Remember that your task is to persuade the court that your legal argument is the correct policy for the court to adopt.

Writing the Brief

Obviously, the first step in writing your brief is to perform an analysis of the particular legal questions raised by your hypothetical problem. If you are representing the appellant, you must identify the legal bases for a reversal of the court below. Thus, you must identify some legal or constitutional error made by the court below upon which to base your theory of the appeal and upon which to organize your research. If you are representing the appellee, then you must identify the legal bases which will allow the appellate court to affirm the decision below. In essence, your argument must be based upon the theory that the decision below was legally and constitutionally sound (or at least tolerable) and should not be disturbed by the appellate court. Each side should be prepared, of course, to counter the arguments of the other.

Once you have formulated your theories of the case (which might require extensive preliminary reading to become familiar with the subject matter of the case and the fundamental law which applies to it), you must then conduct focused research in the legal materials to prepare your brief. I have injected an artificial element into all of these cases: all of our jurisdictions are imaginary. Thus, even if you find a case "on all fours" (that is, exactly and precisely on point), it will necessarily come from a foreign state or federal circuit and will not be mandatory precedent. Likewise, the problem statements will provide you with all necessary statutory materials. Some statutes may closely resemble existing statutes of actual states (since that is where I found them), but the statutory law of foreign states does not apply to our imaginary jurisdictions. As a result, all of our cases are "cases of first impression" in our particular imaginary courts. It then follows that your primary task is to find appellate decisions in sister jurisdictions from which to argue by analogy in your effort to persuade the court to decide in your favor.

Note especially that if your research reveals cases which are not in your favor, you cannot simply ignore them. You must formulate arguments which "distinguish" the unfavorable cases from the case you are presently arguing. If such cases exist and you fail to bring them to the attention of the court, the court tends to become irritated and to suspect that you have deliberately tried to mislead the court. The function of the brief and the oral argument is to assist the court in its determination of the law; your argument must persuade the court that the law requires the result that your client wants without distorting the law itself.

Notes on Form

Generally, footnotes are not required. Rather, cite legal materials directly in the text. For example, if your argument requires a "quotation from a case, simply cite it in the text." *Smith v. Jones*, 123 N.E.2d 456, 459 (Ind. 1942). If the same case is cited later, just give the "next quotation with an abbreviated citation and page number." *Smith* at 461. Look at the opinions of appellate courts to see how they do it, and you will get the idea. Your

citation form, however, should conform to the Harvard Bluebook and not to the form used by some courts.

The first section of your brief (that is, after the cover page) should look like this:

I. STATEMENT OF ISSUES

The Appellant asks the court to reverse the decision of the court below. Such a reversal is required by the resolution of the following issues of law in favor of the Appellant:

A. The Fourth Amendment right of the Appellant to be free from unreasonable search and seizure was violated by police conduct in searching his apartment without a warrant and without probable cause, and therefore the chicken suit and rubber gloves seized therein should have been suppressed and never admitted into evidence at his trial.

B. The Fifth Amendment right of the Appellant not to be a witness against himself was violated by the police when they interrogated him without proper *Miranda* warnings and by holding him by his feet out the 9th floor window of the police station during questioning.

C. And so forth.

The second section of your brief will be a more detailed statement of the issues along with an outline of your argument (that is, what legal principles and what process of legal reasoning should lead the court to find that your position is correct as to that issue).

The third section of your brief will be a narrative exposition of your argument complete with citations to authority (e.g., cases, statutes, encyclopedias, etc.). This is the heart of your brief, and provides the technical basis for your oral argument. You should be able, during oral argument, to cite specific pages of your brief where given citations to authority are listed.

The fourth section of your brief is usually a single paragraph (or even a single sentence) which tells the court exactly what you want it to do (e.g., reverse, reverse and remand, issue a writ of mandate or a writ of prohibition, etc.).

If you have doubts about form or phraseology, let me see your rough draft and give you my comments. (*Caveat*: This could be a foolhardy and risky request if done on the actual day of your argument. Please do not procrastinate.)

Schedule of Events

Date	Activity	Preparation
11 Jan	Organizational meeting; selection of topics	None
18 Jan	Research methods in law and society	Friedman/ Gould / Assigned materials
25 Jan	Research methods in law and society	Friedman/ Gould / Assigned materials
1 Feb	Research methods in law and society	Friedman/ Gould / Assigned materials
8 Feb	Research reports 1, 2, 3	Presentations of research papers
15 Feb	Research reports 4, 5, 6	Presentations of research papers
22 Feb	Research reports 7, 8, 9	Presentations of research papers
1 Mar	Research reports 10,11,12	Presentations of research papers Moot Court problems available
8 Mar	Legal research and writing	Assigned materials
15 Mar	Legal research and writing	Assigned materials
22 Mar	SPRING BREAK	No class meeting
29 Mar	Research and writing week	No class meeting ; Briefs due at 4:00 p.m. Thursday, 31 March 2005
5 Apr	Review of briefs	Read the briefs on the website before class; Revisions due at 4:00 p.m. Thursday, 7 April 2005
12 Apr	1 v. 2; 3 v. 4; 5 v. 6	Moot Court arguments
19 Apr	7 v. 8; 9 v. 10; 11 v. 12	Moot Court arguments
26 Apr	Final class meeting	None