

# **Prison Law and Policy**

## **LAW 1493 (Fall 2019)**

Professor Shon Hopwood

Class in McDonough, Room 205 on Monday/Wednesday  
from 11:10 a.m. to 12:35 p.m.

Office hours in McDonough, Room 426 by appointment

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### **Seating in Class**

Please choose a seat on your first day of class and then remain in that seat for the rest of the class. That will help me learn and remember your names.

### **Required Texts**

There is no textbook to purchase.  
All cases and law review articles can be found on Canvas.

## **Course Description**

This course focuses on the back end of the criminal justice system. We will be focusing on the law and policy of incarceration. We will study why the United States is so punitive, how government officials manage prisons, and what protections are in place to prevent harm to prisoners while incarcerated. We will also study whether our current penal system is successful in reducing the recidivism rate of those coming out of prison. These topics are particularly urgent given that the United States leads the world in the rate with which it imprisons people. Topics to be covered include: the history of prisoners' rights litigation; the scope of prisoners' constitutional rights; inmate access to the courts; First Amendment protections for prisoners; the prison disciplinary process; conditions of confinement; medical care; the problems of prison rape and overcrowding. There will also be a focus on legal practice—how lawyers litigate prisoners' rights suits.

## **Course Goals/Student Learning Outcomes**

There are two big ideas that you should learn in this class. You should be able to work with the relevant legal doctrine that applies to cases involving people in prison. At the end of class, you should be able to spot specific issues and then apply the relevant legal doctrine to those issues. Basically, your standard law school stuff. The goal is to make you a better lawyer and we will spend a great deal of time honing legal arguments.

In addition to doctrine, we will also study policy. These days, much of our criminal justice system is being reexamined. And behind every criminal procedure doctrine issue are important policy issues. These policy implications often drive the doctrinal decisions that courts and legislatures make. Consequently, you will be assigned reading about the policies behind the doctrine and we will discuss them in class. You will be tested on your critical analysis of both doctrine and policy.

## **Assessment Plan/Grading Rubric**

Your final grade will be based almost entirely on the three-hour take home exam at the end of the course. This three-hour exam must be downloaded and submitted using the Online/Exam Paper Management System. The exam will consist of multiple choice questions, short answer questions, and standard hypotheticals involving both issue spotting and policy discussion.

I also reserve the right to adjust someone up or down a half-grade based on class participation. That means that if you generally come to class on time, and you participate by being prepared and have good answers when called upon, then if you score a B+ on the exam, I can bump you up to an A- for the class. Conversely, if you routinely show up late for class and when you're asked questions you seem unprepared, then I could drop your grade to a B.

You do not get a bump for raising your hand and answering as many questions as possible. I'm looking for quality, not quantity. **I expect to hear from everyone in class**, so please be prepared. I encourage volunteering, **but I will also be cold calling** and working my way through the class.

## **Course Website**

There is a course website on Canvas. Please make sure you follow the Canvas page because I will post additional and relevant information on it.

## **Classroom Policies**

My general view of classroom policies is simple: do not to disturb your fellow classmates from learning. Outside of that, I don't have many restrictions. This is graduate school, and I don't expect to monitor what you do or don't do in the classroom (unless, of course, it becomes a problem).

Please come to class prepared. We will discuss the reading in class. The better prepared you are, the better class will be.

### **Course Recording Policy**

Every class will be recorded, and you will have unlimited access to those recordings.

### **Syllabus Changes**

I will have to make periodic changes to the syllabus in order to accommodate guest speakers. As a result, there might be some modest changes. But I will not add any new material. And I appreciate your flexibility in accommodating any changes.

## **Class and Reading Schedule**

The below readings have hyperlinks in them that should take you to a Westlaw or Internet cite to find the reading.

### **Class 1: Wednesday, September 4th**

Why learn Prison Law?

Sharon Dolovich, *Teaching Prison Law*  
[62 JOURNAL OF LEGAL EDUCATION 218 \(2012\)](#)

Examples of challenges to prison regulations:  
[Singer v. Raemisch, 593 F.3d 529 \(7th Cir. 2010\)](#)  
[Mathews v. Brown, 768 Fed. Appx. 537 \(7th Cir. 2019\)](#)

## **Class 2: Monday, September 9th**

Why do we punish?

*The Four Purposes of Punishment* (this document can be found under Files in Canvas)

Qualified immunity:

[\*Hope v. Pelzer\*, 536 U.S. 730 \(2002\)](#)

[\*Tolan v. Cotton\*, 572 U.S. 650 \(2014\)](#)

[\*White v. Pauly\*, 137 S. Ct. 548 \(2017\)](#)

[\*Kisela v. Hughes\*, 138 S. Ct. 1148 \(2018\)](#)

## **Class 3: Wednesday, September 11th**

Procedural Due Process: Good time and disciplinary proceedings:

[\*Wolff v. McDonnell\*, 418 U.S. 539 \(1974\)](#) (read only MAJORITY opinion EXCEPT for sections 6 through 8 of majority opinion)

[\*Superintendent, Massachusetts Correctional Institution, Walpole\*, 472 U.S. 445 \(1985\)](#) (read only MAJORITY decision)

Procedural Due Process: Classification and Prison Programming:

[\*Sandin v. Conner\*, 515 U.S. 472 \(1995\)](#) (read only MAJORITY decision)

[\*Wilkinson v. Austin\*, 545 U.S. 209 \(2005\)](#) (read only MAJORITY decision)

## **Class 4: Monday, September 16th**

The First Amendment rights of people in prison

[Ephrat Livni, \*To reduce recidivism rates, give prisoners more books,\* Quartz \(Sept. 30, 2016\)](#)

[Nila Bala, \*There's a War on Books in Prisons. It Needs to End.,\* Wash. Post \(Feb. 8, 2018\)](#)

[\*Turner v. Safley\*, 482 U.S. 78 \(1987\)](#) (read FULL case)

[\*Thonrburgh v. Abbott\*, 490 U.S. 401 \(1989\)](#) (read MAJORITY decision)

## **Class 5: Wednesday, September 18th**

First Amendment rights continued:

Email from Florida Prisons Banning Law Man (available under Files on Canvas)

[\*Prison Legal News v. Lehman\*, 397 F.3d 692 \(9th Cir. 2005\)](#)

[\*Prison Legal News v. Secretary, Florida Dep't of Corr.,\* 890 F.3d 954 \(11th Cir. 2018\)](#)

First Amendment

[\*Beard v. Banks\*, 548 U.S. 521 \(2006\)](#) (MAJORITY decision only)

Associational First Amendment rights:

[\*Overton v. Bazzetta\*, 539 U.S. 126 \(2003\)](#) (MAJORITY decision only)

## **Class 6: Monday, September 23rd**

[Tyrone Walker, \*How I 'Jump-Started' My Life After Prison,\* The Crime Report \(Apr. 30, 2019\)](#)

[Sheri Davis, \*DC Poised to Join Maine and Vermont: Your Right to Vote Cannot Be Taken Away Once Eligible,\* Common Cause \(June 19, 2019\)](#)

Guest Speaker: Sekwan Merritt, Georgetown Pivot Program

## **Class 7: Wednesday, September 25th**

Freedom of Religion:

[\*Holt v. Hobbs\*, 574 U.S. 352 \(2015\)](#)

Fourth Amendment:

[\*Hudson v. Palmer\*, 468 U.S. 517 \(1984\)](#) (read only the majority opinion)  
[\*Florence v. Board of Chosen Freeholders of County of Burlington\*, 566 U.S. 318 \(2012\)](#)

## **Class 8: Monday, September 30th**

Right of Access to the Courts: Communications with Attorneys

[\*Cody v. Weber\*, 256 F.3d 764 \(8th Cir. 2001\)](#)

[\*Jones v. Brown\*, 461 F.3d 353 \(3rd Cir. 2006\)](#)

Jailhouse Lawyers

[\*Johnson v. Avery\*, 393 U.S. 483 \(1969\)](#)

[\*Shaw v. Murphy\*, 532 U.S. 223 \(2001\)](#)

## **Class 9: Wednesday, October 2nd**

Law Libraries

[\*Lewis v. Casey\*, 518 U.S. 343 \(1996\)](#) (Justice Scalia's opinion ONLY)

Retaliation

[\*Gomez v. Vernon\*, 255 F.3d 1118 \(9th Cir. 2001\)](#)

[\*DeWalt v. Carter\*, 224 F.3d 607 \(7th Cir. 2000\)](#)

Eighth Amendment Deliberate Indifference

[\*Estelle v. Gamble\*, 429 U.S. 97 \(1976\)](#)

## **Class 10: Monday, October 7th**

Deliberate Indifference (continued)

[\*Farmer v. Brennan\*, 511 U.S. 825 \(1994\)](#)

[\*Williams v. Liefer\*, 491 F.3d 710 \(7th Cir. 2007\)](#)

[\*Gibson v. Moskowitz\*, 523 F.3d 657 \(6th Cir. 2008\)](#)

[\*Easter v. Powell\*, 467 F.3d 459 \(5th Cir. 2006\)](#)

## **Class 11: Wednesday, October 9th**

Eighth Amendment Conditions of Confinement

[\*Rhodes v. Chapman\*, 452 U.S. 337 \(1981\)](#)

[\*Wilson v. Seiter\*, 501 U.S. 294 \(1991\)](#)

[\*Brown v. Plata\*, 563 U.S. 493 \(2011\)](#) (Read MAJORITY opinion only)

## **Class 12: Tuesday, October 15th**

Guest Speaker: Justin Paperny, founder of White-Collar Advice and Prison Professors

## **Class 13: Wednesday, October 16th**

The Eighth Amendment Use of Force

[\*Hudson v. McMillian\*, 503 U.S. 1 \(1992\)](#)

[\*Wilkins v. Gaddy\*, 559 U.S. 34 \(2010\)](#)

[\*Kingsley v. Hendrickson\*, 135 S. Ct. 2466 \(2015\)](#)



### **Class 14: Monday, October 21st**

NO CLASS on this day, but you are still assigned readings. We will discuss these readings on Wednesday, October 23rd

### **Class 15: Wednesday, October 23rd**

U.S. House of Representative: The Committee on Small Business holds a hearing titled, “Prison to Proprietorship: Entrepreneurship Opportunities for the Formerly Incarcerated.”

The hearing is scheduled to begin at 11:30 A.M. on Wednesday, October 23, 2019 in Room 2360 of the Rayburn House Office Building.

We will discuss the readings for October 21st on this day, in addition to the readings below.

### **Class 16: Monday, October 28th**

Special Issues for Women in Prison

[\*Mendiola–Martinez v. Arpaio\*, 836 F.3d 1239 \(9th Cir. 2016\)](#)

[\*Amador v. Baca\*, 2017 WL 9472901 \(C.D. Cal. 2017\)](#)

Cause of Action

[42 U.S.C. § 1983](#) (for state prisoners)

*Bivens* claims (for federal prisoners)

[\*Correctional Services Corp. v. Malesko\*, 534 U.S. 61 \(2001\)](#) (majority opinion only)

[\*Ziglar v. Abbasi\*, 137 S. Ct. 1843 \(2017\)](#) (majority opinion only)

### **Class 17: Wednesday October 30th**

The difference between official capacity versus individual capacity  
[\*Kentucky v. Graham\*, 473 U.S. 159 \(1985\)](#)

Pleading and Supervisory liability  
[\*Ashcroft v. Iqbal\*, 556 U.S. 662 \(2009\)](#)  
[\*Gee v. Pacheco\*, 627 F.3d 1178 \(9th Cir. 2010\)](#)

### **Class 18: Monday, November 4th**

The Prison Litigation Reform Act (PLRA)  
[28 U.S.C. § 1915](#)  
[42 U.S.C. § 1997e](#)

[Margo Schlanger and Giovanna Shay, \*Preserving the Rule of Law in America's Jails and Prisons: The Case for Amending the Prison Litigation Reform Act\*, Vol. 11 \*Journal of Constitutional Law\*, 1 \(2009\)](#)

### **Class 19: Wednesday, November 6th**

Private Prisons

[Mary Sigler, \*Private Prisons, Public Functions, and the Meaning of Punishment\*, 38 FLA. ST. U. L. REV. 149 \(2010\)](#)

[John Pfaff, \*Why Today's Criminal Justice Reform Efforts Won't End Mass Incarceration\*, America \(Dec. 21, 2018\)](#)

## **Class 20: Monday, November 11th**

[Lauren-Brooke “L.B.” Eisen, \*How to Create More Humane Private Prisons\* \(Nov. 2018\)](#)

[Lauren-Brooke “L.B.” Eisen, \*Resistance to Private Prison Industry Mounts Amid Debate Over Trump’s Immigration Detention Policies\* \(July 2019\)](#)

Guest Speaker: Lauren-Brooke, “L.B.” Eisen from the Brennan Center for Justice

## **Class 21: Wednesday, November 13th**

Exhaustion

[\*Booth v. Churner\*, 532 U.S. 731 \(2001\)](#)

[\*Woodford v. Ngo\*, 548 U.S. 81 \(2006\)](#)

[\*Jones v. Bock\*, 549 U.S. 199 \(2007\)](#)

## **Class 22: Monday, November 18th**

Prison Litigation Reform Act (continued)

[\*Ross v. Blake\*, 136 S. Ct. 1850 \(2016\)](#)

[\*Bruce v. Samuels\*, 136 S. Ct. 627 \(2016\)](#)

[\*Murphy v. Smith\*, 138 S. Ct. 784 \(2018\)](#)

## **Class 23: Wednesday, November 20th**

Solitary Confinement

[Reginald Dwayne Betts, \*Only Once I Thought About Suicide\*,  
125 Yale L.J. F. 222 \(2016\)](#)

[\*Silverstein v. Federal Bureau of Prisons\*,  
559 Fed.Appx. 739 \(10th Cir. 2014\)](#)

[\*Disability Rights Montana v. Batista\*, 930 F.3d 1090 \(9th Cir. 2019\)](#)

[Margo Schlanger & Amy Fettig, \*Eight Principles for Reforming Solitary  
Confinement\*, American Prospect \(Oct. 6, 2015\)](#)

## **Class 24: Monday, November 25th**

Remedies

[\*Carey v. Phipus\*, 435 U.S. 247 \(1978\)](#)

[42 U.S.C. § 1997e\(e\)](#)

[\*Royal v. Kautzky\*, 375 F.3d 720 \(8th Cir. 2004\)](#)

[\*Aref v. Lynch\*, 833 F.3d 242 \(DC Cir. 2016\)](#)

## **Class 25: Monday, December 2nd**

[John F. Pfaff, \*The Complicated Economics of Prison Reform\*,  
114 MICH. L. REV. 951 \(2016\)](#)

[David Cole, \*The Changing Politics of Crime and the Future of Mass  
Incarceration\*, \*Reforming Criminal Justice\* \(2017\)](#)

## **Class 26: Wednesday, December 4th**

Review Day