Prison Law and Policy

Professor Danielle C. Jefferis Course Syllabus – Spring 2022

| Office: 225 Cedar Street, 4th Floor, #419 | M/W 2:40 – 4:10 p.m. |
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| (619) 525-1686 <u>djefferis@cwsl.edu</u> | Room: 2G |
| Office Hours: M 4:30-6:30 p.m. (in-person) | 3 credits |
| W 5-6:30 p.m. (Zoom) | |
| Th 10:30-12 p.m. (Zoom) | |

Welcome to Prison Law and Policy. This is a three-credit introductory study of the law of confinement in the United States. In this course, we will examine the landscape of incarceration in America, the governing legal framework of the American prison system, and the theoretical underpinnings of incarceration policy. The sheer number of people who are incarcerated in the United States—almost 2.3 million—makes prison law a critical field of study for any lawyer. Whether one wants to pursue work in criminal law, immigration law, civil rights law, mental health law, poverty law, or any number of other legal fields, you may be called upon to account for or engage with the prison system. Moreover, people of color are considerably overrepresented in the American penal system, making the study of prison law a critical component to understanding structural racism and racial inequality in the United States.

Accordingly, in addition to studying the laws governing prisons and prison conditions, in this course we will discuss issues of racial, gender, and economic justice; equity; fairness; and power. We will analyze and critique the system as we see it functioning in the context of real cases and hypotheticals derived from real cases. Your engagement and our discussion of these and other issues that arise as you learn the materials for this course will require your careful attention, thought, and respect of each other and the community that we build in and out of the classroom.

Two important notes: First, due to the nature of incarceration and the law regarding conditions in prisons and jails, we will at times be discussing sensitive issues in this course. Class discussion may include topics like physical abuse, sexual assault, and other forms of violence. If you suspect that specific material is likely to be emotionally challenging for you, I am happy to discuss any concerns you may have before the subject comes up in class. If you ever wish to discuss your personal reactions to course material, either with the class or with me outside of class, I welcome such discussion as an appropriate part of our coursework.

Second, this course may include a visit a prison or jail contingent on the state of the pandemic, the status of official restrictions and/or guidance on this sort of gathering, and government approval. You will receive more information about any scheduled visits as soon as possible. If you choose to opt out of the visit, you must inform me within one week of our first class so that I can arrange an alternative assignment for you.

Office Hours

My scheduled office hours this term are Mondays from 4:30 to 6:30 p.m., Wednesdays from 5:00 to 6:30 p.m., and Thursdays from 10:30 to 12:00 p.m. On Mondays, I will hold **on-campus office hours**. On Wednesdays and Thursdays, I will hold **Zoom office hours**. Be sure to note the meeting format when deciding which day to visit.

I welcome and encourage drop-in visits during office hours, but I also give you the option of signing up for an appointment in advance using Calendly: http://www.calendly.com/profjefferis. The sign-up slots are broken into fifteen-minute increments. You may sign up for two slots in a row if you feel you need a longer meeting. You may sign up in groups but when you make your Calendly appointment, please list each student who will be attending. In addition, if you send me the question and/or topic you wish to discuss with me in advance of our meeting, that will likely make our meeting more productive.

If you make an appointment via Calendly and a conflict with your scheduled appointment arises, **contact me as soon as possible**. Do not just no-show your appointment. Barring an emergency, failing to hold scheduled appointments is a professionalism issue and impacts your fellow students who may also hope to utilize office hours.

If you do not see any available time on Calendly that works for you, please email me to request to set up an appointment outside of my office hours windows. I will do my best to accommodate your request but may not be able to do so on relatively short notice.

Course Materials

Please bring your casebook and readings to each class.

- 1. Schlanger, Bedi, Shapiro, & Branham, INCARCERATION AND THE LAW (West 10th Ed.) (2020).
- 2. Woodfox, SOLITARY: A BIOGRAPHY (2019).
- 3. Additional readings/course materials posted and/or linked to on Canvas.

Course Objectives and Learning Outcomes

The primary objective of this course is for you to gain an understanding of the governing legal framework of the American prison system. You will learn the relevant legal doctrine, as derived from the U.S. Constitution and federal statutes, as well as the principles underlying past and present incarceration policy and theories regarding the future of American incarceration. In addition to learning the relevant doctrine, you will

review and analyze rules and principles of federal civil procedure as applied to the field of prison law and be exposed to practical skills related to the practice of prisoners' rights law and the representation of clients who are incarcerated. You will also develop critical reading and thinking skills, research skills, and scholarly writing skills.

After taking this course, you should be able to:

- Understand the landscape of incarceration in the United States, including the similarities and differences among prisons, jails, and other types of detention facilities and between federal, state, and local facilities.
- Demonstrate substantial knowledge and understanding of the constitutional and statutory legal framework governing conditions of confinement and prisoners' rights, as well as the procedural requirements an incarcerated person must satisfy to litigate a conditions-of-confinement claim in federal court.
- Identify and analyze key legal issues that relate to conditions of confinement and potential claims incarcerated people may have under the U.S. Constitution and federal statutes.
- Identify and analyze defenses and bars to recovery that a prison system or prison employee may raise if named as a defendant to a prisoners' rights lawsuit.
- Demonstrate an awareness of the intersecting roles of race, gender, socioeconomic status, and other social factors as they relate to incarceration in the United States.
- Recognize the concerns incarcerated people might have and the issues they may face when engaging with the civil justice system.
- Articulate and apply federal civil procedure rules and concepts (e.g., personal and subject-matter jurisdiction, the pleading standard, etc.) to prison law issues.
- Understand the origins of American incarceration, including the policies that led to mass incarceration, and the theoretical debates regarding the future of carceral punishment in the United States.
- Demonstrate strong legal research skills, both of primary and secondary sources, and the ability to distill and synthesize research to formulate a thesis and supporting argument on a chosen paper topic.

Teaching and Learning During a Pandemic

By now, many of you may have adapted to the virtual world we all have experienced due to the COVID-19 pandemic. Our plan for the Spring is to continue to hold in-person classes. However, if we have learned anything over the last year and a half, it is that few things in this world are predictable. Our planned in-person instruction may change at any point during the term, and that change may occur with little notice. You must be committed to doing the best that you can do in changing circumstances. You must be flexible, and you must be adaptable. Fortunately, those skills are, in many ways, skills of good lawyering. Developing them now will serve you well in the future. You must incorporate structure and discipline into your days, weeks, and months so that you keep up with your coursework. I ask that you also be patient—with yourself, with your colleagues, and with me. We are all navigating this changing environment together, and we must support each other to ensure that we all thrive.

Before classes begin, you must enroll in the course page on Canvas. I will use Canvas to communicate with the class, post class reading materials and assignments, and distribute other course-related materials and information. I expect you to check Canvas regularly for announcements and postings.

Law school is your introduction and initiation to the practice of law and the legal community. It is also your opportunity to develop your professional identity and refine your professionalism skills. To that end, I expect that you will exhibit professionalism throughout all our classes, whether they are in person or online. If we do have to shift to online classes, keep in mind that while we may not be seeing each other in person, we will see each other on a screen.

My expectation and requirement for online classes are that you have your camera on and microphone muted throughout each class, unless I have asked you to do otherwise, you are participating in class discussion, or you have my prior permission to do otherwise.

Each class will be recorded, meaning that your name will appear below your image on the screen and saved in perpetuity. **Please appear and behave on Zoom with that in mind.**

At this point, face masks are required at all times while inside campus buildings, including while in class, for the health and safety of our community. Please be mindful and considerate of your classmates and professors and adhere to this requirement.

Attendance

This course meets **twice per week** on Mondays and Wednesdays from 2:40 to 4:10 p.m. The American Bar Association requires "regular and punctual class attendance . . . to satisfy residence and class hour requirements." Accordingly, you are required to attend every class in conformity with Sections 4.01-4.04 of CWSL's academic policies (available at <u>https://www.cwsl.edu/studenthandbook</u>). I expect you to come to class on time and be prepared and engaged throughout class.

If we are meeting on Zoom, I expect you to come to class on time and, as stated above, to attend class with your cameras on and microphones off unless I have asked you to do otherwise, you are participating in class discussion, or you have my prior permission to do otherwise.

If you cannot attend class on a particular day, please email me in advance of class. If something happens during class that prevents you from meeting the above requirements, email me to let me know as soon as possible.

Participation

The material for this course requires attention, thought, and reflection. I expect you to read the assigned materials for each class and to contribute meaningfully to each in-class discussion. It is critical that you complete the assigned reading before class to be prepared. During class, I may "cold call" when there are no volunteers or to encourage participation among all students.

Pursuant to Section 5.02 of CWSL's academic policies, I may raise or lower a final course grade up to three points on the 95-50 scale for exceptional or unsatisfactory class participation and preparation. I measure class participation not only by the frequency of your participation but also by the level of your engagement and understanding of the material reflected in your comments and questions.

Canvas

You must enroll in the course page on Canvas. I will use Canvas to post mandatory and recommended class reading materials and relevant links. I expect you to check Canvas regularly for announcements, additional materials, and postings.

Honor Code Policy

Pursuant to the CWSL Code of Student Professional Conduct,

CWSL students are truthful, responsible, and professional toward each other and all other members of the CWSL community. They do not take unfair advantage of each other, nor do they engage in dishonesty, fraud, deceit, theft, misrepresentation or harassment. They also must not violate CWSL's published policies. Students have an obligation to report known violations of this Code and assist in its enforcement.

The CWSL Code of Student Professional Conduct is available at https://www.cwsl.edu/-/media/files/student-handbook/honor_code.ashx?la=en.

Accommodations

Please advise the Office of Student and Diversity Services (<u>studentservices@cwsl.edu</u>) or any accommodations you require to ensure participation in this course.

Laptops and Cell Phones

I permit the use of laptops during class but I expect you to adhere to Section 2.09 of CWSL academic policies, which states, "No student may use a laptop computer or any other equipment where its use interferes with the ability of other students in the class to listen and concentrate." (emphasis added). This means, in part, that <u>internet use is prohibited unless necessary for a classroom exercise</u>. You may not chat or otherwise communicate with your classmates during class, browse the internet, read and send emails, use social media, etc. Computer use during online classes that falls under this provision may include, but is not limited to, inappropriate use of the Zoom chat feature, failure to keep your camera on/microphone on mute without my prior permission, unprofessional appearance or behavior on camera, etc.

Use of the cell phones or other electronic devices used primarily for communication is not permitted during class unless necessary for a classroom exercise. Texting during class is not permitted. Please turn off your cell phones before class to minimize distractions to yourself and your colleagues. Disruptive use of technology during class will negatively impact your final grade.

You may not record class in any manner without my prior written authorization.

Credit-Hour Policy

This is a three-credit hour class and complies with the American Bar Association's Standard 310. Pursuant to Standard 310, you must spend a minimum of 93.6 hours **outside of class** preparing for class and completing assignments/papers. This works out to 7.2 hours each week).

Research Paper Requirements

This course is a Scholarly Writing Requirement-Optional course. Students who opt to fulfill the Scholarly Writing Requirement (SWR) through this course must write an original, independently produced, in-depth research paper on a narrow topic related to prison law and analogous to a law review article. This paper must be extensively documented (each fact must have a cited source), since the paper is essentially a law review article, with few personal assertions. This paper must be **a minimum of twenty pages, typed, double-spaced, and excluding footnotes**, with citations consistent with the Bluebook. Students seeking SWR credit must be enrolled concurrently in the Legal Scholarship Training Seminar.

Students who are not using this course to fulfill the SWR must write a paper that is **a minimum of ten pages, typed, double-spaced, and excluding footnotes**, with citations consistent with the Bluebook. All factual assertions, quotes, legal propositions, etc. require citations.

For all students, you must choose your paper topic in consultation with me. Topics are on a first-come, first-served basis (e.g., not everyone in the class may write on the same solitary confinement issue). All papers must use twelve-point, Times New Roman font, double-spacing, and one-inch margins. Footnotes must be single-spaced in eleven-point, Times New Roman font. Your paper should reflect appropriate clarity, organization, style, grammar, syntax, editing, and citations. These formatting requirements apply to all drafts as well as the final paper.

All papers must be **research** papers, in that they must document the sources on which you rely and use in making your assertions. Your papers should cite directly to legal sources, such as constitutional provisions, cases, or statutes, or secondary sources, such as law review articles, treatises, or other legal commentary. The use of websites should be extremely limited – such material must be unavailable elsewhere. While the focus of your paper must be legal, law does not need to be the exclusive source for your research. Papers may draw from other disciplines, such as political theory, economics, criminology, sociology, history, or psychology. You may find scholarly works from these and other disciplines on JSTOR and HeinOnline. Depending on the topic you select, you may also wish to rely on news/media sources. However, you must be mindful of the reliability of the sources you select.

The timeline for completing the writing-related assignments for the paper is below. Please plan accordingly.

SWR Deadlines:

- Topic Selection: 5:00 p.m. on January 24, 2022.
- Paper Thesis and Preliminary Source List: 5:00 p.m. on February 1, 2022.
- Short Outline: 5:00 p.m. on February 15, 2022.
- Detailed Outline: 5:00 p.m. on March 8, 2022.
- First Draft with Sources (at least 4,000 words): 5:00 p.m. on March 28, 2022.
- Final Draft: 5:00 p.m. on April 23, 2022.

Non-SWR Deadlines:

- Topic Selection: 5:00 p.m. on January 24, 2022.
- Paper Thesis and Preliminary Source List: 5:00 p.m. on February 1, 2022.
- First Draft with Sources (at least 2,000) words: 5:00 p.m. on March 28, 2022.
- Final Draft: 5:00 p.m. on April 23, 2022.

Class Presentations

All students will present in class on the topic they are researching for their paper. Each student must present for twenty to thirty minutes. You will choose your presentation date once the trimester begins.

Class Speakers

Throughout the trimester, we may welcome guest speakers to our class. I expect you to be fully prepared and engaged for each guest's visit, just as you are for every other class session. To facilitate full engagement and robust dialogue with our speakers, I require you to prepare at least two questions to ask a speaker in advance of their visit to our class, and I expect you to ask at least one of those questions of each speaker. You will receive more details about this requirement, and the speakers from whom we will hear this term, once the course begins.

<u>Grading</u>

You will receive one grade at the end of the trimester based on the following:

- Class participation (25 percent).
- In-class research paper presentation (25 percent).
- Final research paper (SWR and non-SWR) (50 percent).

Course Outline and Readings

In the outline below, the casebook readings refer to the Schlanger, Bedi, Shapiro, and Branham casebook entitled INCARCERATION AND THE LAW. The Woodfox readings refer to Albert Woodfox's book, SOLITARY: A BIOGRAPHY. A Unless I tell you otherwise, readings assigned in the casebook start and stop at the most prominent heading on the page in question. If the ending page has no headings, read to the bottom of the page. When assigned segments in the casebook include questions or sample problems, please spend time thinking through them before class. All other readings and materials will be posted and/or linked to on Canvas.

The following represents the topics we will cover during our course and the reading assignments for each class. Prison law, however, is an ever-evolving topic. We may need to adjust our materials based on changes in the law that occur throughout the semester.

| Mon., Jan. 10 | Introduction to Prison in America |
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| | Read: Course Syllabus (Canvas); Casebook 1-17; Adam Gopnik, "The Caging of America," New Yorker (Jan. 30, 2012) (Canvas); Mark Jordan, "A Visit" (date unknown) (Canvas); Lawrence Bartley, "I Am Not Your 'Inmate'," The Marshall Project (Apr. 12, 2021); and |

| | Kevin Byrd (as told to Adria Watson), "I Was Trained to Call Men a Word They Hated," The Marshall Project (Apr. 12, 2021) (Canvas). |
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| Weds., Jan. 12 | Introduction to Prison in America (cont.) |
| | Read: Casebook 17-40, 541-49; Excerpt from Michelle Alexander, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010) (Canvas); and Woodfox Prologue-Ch. 3. |
| Mon., Jan. 17 | NO PRISON LAW CLASS Martin Luther King, Jr. Day Observance |
| Weds., Jan. 19 | Introduction to Prison in America (cont.) |
| | Read: Excerpt from Abbe Smith, GUILTY PEOPLE (2020) (Canvas); Excerpt from Danielle C. Jefferis, <i>Carceral Intent</i>, 27 MICH. J. OF RACE & L (2022) (Canvas); and Woodfox Chs. 4-6. |
| Fri., Jan. 21 | MAKE-UP CLASS |
| 2:40 – 4:10 p.m. (Broida Room – Library) | History of Prisoners' Rights in the United States |
| | Read: Casebook 41-54, 711-22, 747-56; Woodfox Chs. 7-10. |
| Mon., Jan. 24 | Access to the Courts |
| | Read: Casebook 439-57; and Woodfox Chs. 11-13. |

| Weds., Jan. 26 | Conditions of Confinement |
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| | Read: U.S. CONST. AMEND. VIII; Casebook 55-71; and Woodfox Chs. 14-15. |
| Mon., Jan. 31 | Conditions of Confinement (cont.) |
| | Read: Casebook 71-92; and Woodfox Chs. 16-17. |
| Weds., Feb. 2 | Conditions of Confinement (cont.) |
| | Read: Casebook 92-109; and Woodfox Chs. 18-19. |
| Mon., Feb. 7 | Conditions of Confinement (cont.) |
| | Read: Casebook 110-38; and Woodfox Ch. 20. |
| Weds., Feb. 9 | Conditions of Confinement (cont.) |
| | Read: U.S. CONST. AMEND. XIV; Casebook 138-60; and Woodfox Chs. 21-22. |
| Mon., Feb. 14 | Conditions of Confinement (cont.) |
| | Read: Casebook 160-85; and Woodfox Chs. 23-25. |

| Weds., Feb. 16 | Solitary Confinement |
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| | Read: Casebook 211-28; and Woodfox Chs. 26-27. |
| Mon., Feb. 21 | NO PRISON LAW CLASS Presidents Day Observance |
| Weds., Feb. 23 | Solitary Confinement (cont.) |
| *Follow Monday Class Schedule* | Read: Casebook 228-51; and Woodfox Chs. 28-30. |
| Fri., Feb. 25 | MAKE-UP CLASS |
| 2:40 – 4:10 p.m. (Broida Room– Library) | Freedom of Expression and Religion Read: Casebook 335-54; and Woodfox Chs. 31-32. |
| Mon., Feb. 28 | Freedom of Expression and Religion (cont.) |
| | Read: Casebook 355-77; and Woodfox Chs. 33-35. |
| Weds., Mar. 2 | Freedom of Expression and Religion (cont.) |
| | Read: Casebook 377-99; and Woodfox Chs. 36-38. |
| Mon., Mar. 7 | Freedom of Expression and Religion (cont.) |

| | Read: Casebook 399-420; and Woodfox Ch. 39. |
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| Weds., Mar. 9 | Freedom of Expression and Religion (cont.) |
| | Read: Casebook 421-32; and Woodfox Chs. 40-41. |
| Mon., Mar. 14 | NO PRISON LAW CLASS |
| Weds., Mar. 16 | NO PRISON LAW CLASS |
| Mon., Mar. 21 | Private Prisons and Contractors |
| | Read: Casebook 915-32; and Woodfox Chs. 42-43. |
| Weds., Mar. 23 | Private Prisons and Contractors (cont.) |
| | Read: Casebook 933-46; Shane Bauer, "My four months as a private prison guard," MOTHER JONES (July/Aug. 2016) (Canvas); and Woodfox Chs. 44-45. |
| Mon., Mar. 28 | Paper Presentations |
| | Read: • Woodfox Ch. 46. |
| Weds., Mar. 30 | Paper Presentations |
| | Read: • Woodfox Ch. 47. |

| Mon., Apr. 4 | Paper Presentations |
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| | Read: • Woodfox Chs. 48-49. |
| Weds., Apr. 6 | Paper Presentations |
| | Read: • Woodfox Chs. 50-51. |
| Mon., Apr. 11 | Paper Presentations + Theories of Change |
| | Read: Rachel Poser, "Why It's Nearly Impossible for Prisoners to Sue Prisons," New Yorker (May 30, 2016) (Canvas); Excerpt from Angel E. Sanchez, <i>In Spite of Prison</i>, 132 HARV. L. REV. 1650 (2019) (Canvas); Jessica Benko, "The Radical Humaneness of Norway's Halden Prison," N.Y. TIMES MAG. (Mar. 26, 2015) (Canvas); and Woodfox Chs. 52-53. |
| Weds., Apr. 13 | Paper Presentations + Theories of Change (cont.) |
| | Read: Excerpt from Terrell Carter, Rachel López, & Kempis Songster, <i>Redeeming Justice</i>, 116 N.W. L. REV. (2021) (Canvas); Rachel Kushner, "Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind," N.Y. TIMES (Apr. 17, 2019) (Canvas); and Woodfox Ch. 54 & Epilogue. |