



# Elisabeth Haub School of Law

PACE UNIVERSITY

**PRISONERS' RIGHTS**  
**Introduction**  
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**Fall Term 2021**  
**Tel: 914 422-4258**

## Prisoners' Rights Syllabus

### I. THE COURSE AND WHAT YOU WILL GET OUT OF IT

Welcome to the Prisoners' Rights Class. This course deals with a topic long overlooked by the public and the legal profession. Thankfully prisons now are more a subject of public discussion than at any time in the recent past. Because of the importance of prisons and the growing public awareness of prisons, there has never been a better time to take this course.

Close to two million Americans are incarcerated today in prisons and jails. We have had penal institutions since the founding of the country. However, the law governing the rights of prisoners is relatively new. The largely constitutional law and a growing amount of statutory law which has developed over the past five decades now governs the lives of the millions of incarcerated men and women in prisons and jails in the United States today, also profoundly affecting the children and other family members of the incarcerated. Since prisons are the quintessential "closed institutions," every aspect of the lives of inmates is controlled by the state. Thus, prisons serve as a unique laboratory for the development of constitutional doctrine. Prisoners' rights law deals with topics as diverse as the cruel and unusual punishment, freedom of speech and religion, access to the courts, race and gender discrimination, due process, and privacy, as well as remedial problems involved in implementing prisoners' rights through litigation and other dispute resolution techniques.

There is a complex but important relationship between what rights prisoners retain and what purposes we have in incarcerating them. In this class, we shall confront what society's obligations are to people who have transgressed, what deference is due to people entrusted with the obligation to manage prisons and the role of courts and the law in ensuring the humane treatment of people who are in the state's custody. We also shall tackle the issue of how the courts should function in adjudicating the rights of prisoners without overstepping their bounds, without unduly interfering in the functions of the executive and the legislative branches, and for federal courts, without infringing on state rights.

## LEARNING OUTCOMES

My goal for you is that you leave this class with a sophisticated understanding of the law governing prisoners' rights. In the process of doing this my goal is that our ability to address complex legal doctrinal constitutional and statutory issues in a lawyerlike and effective manner will have improved. Finally, and importantly, my goal for you is that you use this class to develop your own more informed notion of the proper role of prisons in American society. To do this we will devote much class time to the study of the law of prisoners' rights as would be done in any normal law school class discussing legal doctrine. But in addition to gain an appreciation of the context in which the law operates and delve more deeply we also will hear from a wide variety of speakers who are knowledgeable about important issues in this field.

## II. CLASS REQUIREMENTS AND POLICIES

Your final grade in this course will be based on class participation, writing assignments, and a final exam, or an approved research paper in lieu of a final exam. Each component is discussed below as well as other class requirements.

### A. Class Participation

I expect each student to attend class prepared in advance and ready to be actively engaged in the class discussions. Normally, you should not miss a class. If you miss more than three classes for whatever reason you will be subject to a penalty, which can include disqualification from taking the final examination or from receiving credit for the course.

An important reason for this requirement is that we are a community of learners and as such we owe an obligation to each other to participate in this community and to help each other learn. We also get much more out of class when we take it seriously and prepare.

Class participation includes coming to class prepared (*i.e.*, having done the required readings) and participating insightfully in discussions (both when volunteering and when called upon to contribute). Regular and punctual attendance is also mandated by the American Bar Association which accredits this law school and the New York State Court of Appeals which renders our graduates eligible for the bar examination.

You must record your attendance. It is your obligation to do this for every class that you attend in order to be considered present. Attendance means not only signing in but being present. If you attend a class remotely you have the same obligation to participate as anyone else. To do that you must remotely sign in to Zoom via your Pace account (using your SSO credentials). For instructions on how to do this, see [https://law.pace.edu/sites/default/files/LawITS/Zoom\\_Client\\_SSO.pdf](https://law.pace.edu/sites/default/files/LawITS/Zoom_Client_SSO.pdf)

If you are attending remotely, to signify your presence and to actively participate in the class you must have your camera on during the class and for the duration of the class.

**B. Writing Assignments & Guest Speakers**

To better understand prisons and prison law, we will have guest speakers over the course of the semester. I am pleased that a wide variety of experts have agreed to be guest speakers. The speakers who will attend our class are as follows:

1. Tyrell Mohamad, Monitoring Associate, The Correctional Association of New York
2. Jeffrey Deskovic, Esq. Attorney, Formerly incarcerated for 16 years in New York State Prisons, Head of the Deskovic Foundation devoted to exonerating wrongfully convicted persons
3. Frank Leone, Retired, Father of Incarcerated Son
4. Stefen Short, Esq. Supervising Attorney, Legal Aid Society, Prisoners' Rights Project
5. Joseph A. Marutollo, Esq -Principal deputy Chief Civil Division, United States Attorney's Office for the Eastern District of New York
6. Katherine Vockins, Founder and Executive Director, Rehabilitation Thought the Arts
7. Jose Perez, Formerly Incarcerated, Member Rehabilitation Through the Arts
8. Nicholas, A. Robinson, Distinguished Professor of Law, Founder of Environmental Law Program, Elisabeth Haub School of Law at Pace University

For each speaker in advance and after there will be reading assignments. You may be asked to send reflections about the readings and questions for the speakers in advance of the class at which that speaker will attend class. You may also be asked to write a reflection paper after the guest speaker has spoken. I may also ask you to write a brief paper regarding your reaction to the material assigned for a week's readings and class. When I do you should address such issues as what intrigued you about the reading? What did you agree/disagree with most strongly? What are the implications of the cases or articles we read? Do you see any links between this and cases or concepts we might have covered thus far? What questions will best illuminate the material for other class members? What are the links between this and the issues you have encountered in other classes or elsewhere?

**Class attendance, participation and writing assignments are worth 20% of your grade.**

### C. Final Examination

The final examination which will be held on December 10<sup>th</sup>, will be based on material covered in the class.

**The final examination will be worth 80% of your final grade.**

### D. Paper in Lieu of Final Exam

With my permission you may write a research paper on a prisoners' rights topic as an alternative to the final examination. The topic must be approved by me in advance by no later than November 10<sup>th</sup>. To obtain my approval the paper must take an issue and analyze it thoroughly and with your perspective. It must either explain why the current law on a subject is appropriate or if not, it must explain why not and offer suggested legal and /or policy solutions. The paper must be well written, organized and analytical, and submitted on time. It must be at least 3,000 words in length. The paper is due no later than the date for the final exam, December 10<sup>th</sup>.

**If you choose a paper in lieu of the final exam the paper will be worth 80% of your final grade. Please note that this alternative does not satisfy the upper level writing requirement.**

### E. TWEN

TWEN is an important part of this course, I will regularly post notices about class assignments and messages about the course electronically on Twen. You are responsible for checking Twen frequently and your e-mail for current information about the course and what is expected of you.

### F. Office Hours

My offices hours are on Zoom on Tuesdays from 11:30 a.m. to 1:30 p.m. I am also available to meet at other mutually convenient times. Feel free to email me at [mmushlin@law.pace.edu](mailto:mmushlin@law.pace.edu) to schedule an appointment.

### G. Procedure for Students with Disabilities who wish to Obtain Accommodations

The University's commitment to equal educational opportunities for students with disabilities includes providing reasonable accommodations for the needs of students with disabilities. To request a reasonable accommodation for a qualified disability a student with a disability must self-identify and register with the Office of Disability Services for his or her campus. No one, including faculty, is authorized to evaluate the need for or grant a request for an accommodation except the Office of Disability Services. Moreover, no one, including faculty, is authorized to contact the Office of Disability Services on behalf of a student. For further

information, please see Resources for Students with Disabilities at: [www.pace.edu/counseling/resources-and-support-services-for-students-with-disabilities](http://www.pace.edu/counseling/resources-and-support-services-for-students-with-disabilities)

## H. COVID-19 SAFETY

For your own safety and for the safety of our community, you are expected to be familiar with and comply with all current COVID-19 regulations, which are posted at: [www.law.pace.edu/return-to-campus-plan](http://www.law.pace.edu/return-to-campus-plan).

## I. Visit to a Penal Facility

In past years prior to the pandemic, I arranged a class visit to Sing Sing prison, a maximum security prison for men in Ossining New York about a half hour drive from campus. In the past, students told me that this was a memorable event in their law school learning experience. This year I have been in touch with the Superintendent of Sing Sing who tells me that currently visits are not possible but that may change. If the policy changes I will notify you and we will decide at that time about whether it is practicable to visit Sing Sing. In any event, no student will be penalized in any way for not participating in a prison visit if there is one.

## J. TEXTBOOK AND OTHER READINGS

The textbook for the course is Schlanger, Bedi, Shapiro & Branham, *Incarceration and the Law: Cases and Materials* (10th ed). **There will be other readings which I will post on Twen in advance of certain classes.**

**I will post on Twen assignment regularly at least a week in advance of each class.**

The textbook for the course is Schlanger, Bedi, Shapiro & Branham, *Incarceration and the Law: Cases and Materials* (10th ed). Numbers below are to the pages in the textbook. The assignment for the first class is

## K. Class Schedule

**August 30<sup>th</sup>**

### **Introduction**

TEXT 1-54

**September 1<sup>st</sup>**

### **Conditions of Confinement I**

Introduction	57-58
Cruel and Unusual Punishment: Convicted Prisoners	58-59
<i>Jackson v. Bishop</i>	59-64
<i>Estelle v. Gamble</i>	64-71
<i>Rhodes v. Chapman</i>	71-83

**September 8<sup>th</sup>****Conditions of Confinement II**

<i>Whitley v. Albers</i>	83-92
<i>Wilson v. Seiter</i>	92-101
<i>Hudson v. McMillian</i>	101-09

**September 13<sup>th</sup>****CONDITIONS OF CONFINEMENT III**

<i>Helling v. McKinney</i>	110-18
<i>Farmer v. Brennan</i>	118-35
Subjective Standards Critiqued	135-38

**September 15<sup>th</sup>****Conditions of Confinement IV**

Due Process Pretrial Detainees	138-39
<i>Bell v. Wolfish</i>	139-60
<i>Kingsley v. Hendrickson</i>	160-75
<i>Castro v. County of Los Angeles</i>	176-85

**September 20<sup>th</sup>: Sexual Abuse**

Introduction	283-86
The Prison Rape Elimination Act	286-94
Jacoby v. PREA Coordinator	295-99
Constitutional Rights	299
<i>Crawford v. Cuomo</i>	299-303
<i>Graham v. Sheriff of Logan County</i>	303-14
ross Gender Veiwing and Seraches	314
<i>Timm v. Gunter</i>	315-23
<i>Jordon v. Gardner</i>	323-29

## September 22<sup>nd</sup>: Solitary Confinement

Introduction	187
How is Solitary Confinement Experienced?	188-193
<i>In re Medley</i>	194-99
<i>Madrid v. Gomez</i>	199-211
Challenges to Solitary	211-21
International Law	221-28
<i>Ashker v. Brown</i>	228-40
A Tipping Point	240
<i>Davis v. Ayala</i>	240-43
<i>Porter v. Clark</i>	244-51

## September 27<sup>th</sup>: Solitary Confinement Experienced and Reformed

Guest Speaker: Tyrell Mohammad  
Correctional Association of New York

Assignment TBA

## September 29<sup>th</sup>: Life in Prison: The Wrongfully Convicted

Guest Speaker:  
Jeffrey Deskovic, Esq.  
Exonerated after 16 years of confinement in New York Prisons

Assignment TBA

## October 4<sup>th</sup> : Environmental Law and Prison Law

Guest Speaker Professor Nicholas Robinson,  
Assignment TBA

## October 6<sup>th</sup> Civil Liberties in Prison I

### FIRST AMENDMENT

FREEDOM OF EXPRESSION	
INTRODUCTION	335-39
<i>PROCUNIER V. MARTINEZ</i>	339-45
<i>TURNER V. SAFLEY</i>	355-66

**October 11<sup>th</sup> : Civil Liberties in Prison II**

<i>O'LONE V. ESTATE OF SHABAZZ.</i>	366-77
<i>THORNBUGH V. ABBOTT</i>	377-86
<i>Beard v. Banks .</i>	386-99
<i>PRISON LEGAL NEWS V. COOK.</i>	407-12
<i>RILUPA</i>	421-423
<i>HOLT V. HOBBS</i>	423-438

**October 13<sup>th</sup> Civil Liberties in Prison III:  
VISITATION AND FAMILY VISITING**

Guest Speaker Professor Frank Leone  
Assignment TBA

OBSERVATIONS ON A PRISON VISIT	413-14
NOTE ON <i>OVERTON V. BAZZETTA .</i>	414-16

**October 18<sup>th</sup>: Procedural Due Process in Prison I**

INTRODUCTION	461-62
BACKGROUND	470-72
<i>Wolff v. McDonnell</i>	472-84
<i>Superintendent v. Hill</i>	484-88
<i>Meachum v. Fano</i>	489-93

**October 20<sup>th</sup>: Procedural Due Process in Prison II**

<i>Vitek v. Jones</i>	493-502
<i>Sandin v. Conner</i>	502-09
<i>Wilkinson v. Austin</i>	509-16

**October 25<sup>th</sup> Searches**

Fourth Amendment Search Claims	517-18
Searches of Living Quarters	



<i>Hudson v. Palmer</i>	518-25
Bodily Searches	525-26
<i>Swain v. Spinney</i>	526-27
<i>Florence v. Board of Chosen Freeholders</i>	527- 35

### October 27<sup>th</sup>: Litigation I

Injunctive litigation	705-13
The Spread of Prison and Jail Injunctions	719-22
1990s Skepticism	722
<i>Lewis v. Casey</i>	722-34
Pre PLRA Modification of Judgments	734-35
John Boston, Modification of Judgments	746-47
The Prison Litigation Reform Act	747-57, 760-68
Prisoners' Rights Bar Response,	768-71
Population Caps: <i>Brown v. Plata</i>	771-811
Injunctive Litigation: Assessment	813-825

### November 1<sup>st</sup>: Litigation II

Damages	
Qualified Immunity	825-30
Qualified Immunity	846-47
<i>Hope v. Pelzer</i>	848-55
Introduction	887-90
Exhaustion of Remedies	890-93
<i>Woodford v Ngo</i>	893-899
<i>Ross v. Blake</i>	899-904
Filing Fees and "Three Strikes"	904-06
Judicial Screening	907-08
Pleading	908-10
Court Appointed Counsel	910-12
Attorney's Fees	912-14

### November 3<sup>rd</sup>: Litigation III

Guest Speaker: Stephen Short, Esq.  
 Prisoners' Rights Project  
 Legal Aid Society  
 Assignment TBA

**November 8<sup>th</sup> Litigation IV**

Guest Speaker: Joseph Marutollo, Esq.  
 Chief Civil Division  
 United States Attorney's Office  
 Eastern District of New York  
 Assignment TBA

**November 10<sup>th</sup>: Programing Work and Rentry**

Guest Speaker: Katherine Vockins  
 Executive Director

Assignment TBA

Introduction	253-54
Context: What do Prison Programs Look Like?	254-56
Rehabilitative Programing	256-57
<i>Laaman v. Helgemoe</i>	257-61
Prison Labor	261-68
Statutory Labor Regulation	268
<i>Vanskike v. Peters</i>	268-76
Reentry Services	276-81

**November 15<sup>th</sup>: Access to the Courts**

Introduction	439-440
<i>Ex Parte Hull</i>	440-41
Communications with Courts and Attorneys	
<i>Procurier v. Martinez</i>	442-45
Jailhouse Lawyers, Law Libraries and other Legal Assistance	
<i>Johnson v. Avery</i>	446-51
<i>BOUNDS V. SMITH.</i>	451-57
<i>LEWIS V. CASEY</i>	722-34
<i>NOTE ON LEWIS V. CASEY</i>	455-57
LITIGATING FROM THE INSIDE	457-59

**November 17<sup>th</sup>: Women Prisoners**

Introduction	575-77
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Conditions of Confinement Programming and Sexual Abuse	
<i>Women Prisoners of D.C. v. District of Columbia</i>	578-92
Reproduction and Childrearing	592-93
<i>Nelson v. Correctional Medical Services</i>	593-99
<i>Southerland v. Thigpen</i>	599-608
<i>Roe v. Crawford</i>	608-14
Alternative Models for Serving Women's Needs	614-22

**November 22<sup>nd</sup> : Race and National Origin  
Discrimination**

Race and Who Goes to Prison	541-49
Race and What Happens in Prison	549-50
<i>Washington v. Lee</i>	550-54
<i>Lee v. Washington</i>	554-55
<i>Johnson v. California</i>	555-64
<i>Richardson v. Runners</i>	564-65
<i>Michell v. Cate</i>	565-69
Language Access	569-74

**November 29<sup>th</sup>: Oversight of Prisons and Jails**

Introduction	981
Political Power	982-84
Standards	984-91
Oversight Concepts	992-1001
Oversight Examples	1002-11

Guest Speaker: Jennifer Scaife  
 Executive Director  
 Correctional Association of New York  
 Assignment TBA

**Class #26: Review and Reflection on Semester**