



**HAMLINE UNIVERSITY**  
School of Law  
COURSE SYLLABUS

Faculty: **Professor Derik Fettig**  
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Office 203E

Course: **Seminar: Fifth Amendment and Confessions**

Semester: **Spring 2013**

Meeting Schedule: **Tuesdays, 12:50-3:00 p.m.**

Room: **240A**

***Assigned Readings:***

We will not use a text in this seminar. The law review articles assigned as reading are listed for each class session. You can download the assigned readings from Westlaw or Lexis and print for free in the library. Remember, you are not reading the articles to memorize content for an exam. Instead, focus on the ideas and arguments in the articles, and read actively by making notes about specific parts of an article that you want to discuss in class.

***Learning Outcomes for the Course:***

In this seminar, we will analyze the role of confessions in criminal prosecutions. The primary course objectives are for each student to analyze critically the purpose and efficacy of the Fifth Amendment in protecting against coerced confessions. This analysis will consider the interrogation techniques used by the government, and the prevalence of false confessions by criminal defendants. More broadly, students will examine the use of guilty pleas to resolve the vast majority of criminal cases. We will consider whether the use of plea bargains is a practical necessity in the criminal justice system or if a better approach is available. We will also examine issues that may arise in the context of terrorism or national security investigations.

In addition to fostering this in-depth understanding of the role of confessions in criminal prosecutions, this course will focus on the following learning outcomes:

- Each student will demonstrate expertise in a particular area of law related to the use of confessions by writing a substantial research paper;
- Students will develop research, writing, and editing skills;
- Students will demonstrate the ability to provide constructive, substantive feedback to their peers, an essential skill when working with other lawyers in any professional setting;
- Students will practice their oral communication skills by presenting assigned readings to the class and through a presentation of their individual research paper.

## ***Course Expectations:***

### ***HUSL Policies on attendance, lateness and preparation***

The program of instruction at the School of Law is based on an active and informed exchange between instructor and student and between student and student. Regular, prepared class attendance helps develop skills essential to the competent practice of law. A student who violates the attendance policy, including the instructor's specification of class expectation described below, may lose his or her right to take the exam in the course, to receive course credit or may receive other penalties described below and in Academic Rule 108. Persistent or frequent lateness or unpreparedness may also be the basis for reduction of the grade awarded in a course. See Academic Rule 108 for further details.

### ***Attendance Policies in this Course***

Regular attendance by all students is critical for a seminar to be productive, and compliance with the school's attendance policy is required. More than two absences puts a student at risk of being withdrawn from the course or of having to complete substantial make-up assignments.

### ***Policy on Laptop Use in Class:***

While you may bring laptops to class for note-taking, please be respectful of me and your fellow classmates when using your computer. Students using web browsers, electronic games, or email during class will be asked to leave, and repeated violations will result in a one-half grade reduction in your grade for the semester, at my discretion.

## ***Grading Components***

### **Class Participation = 15 percent**

- **General Expectations:**
  - You are expected to come to class having completed the required reading.
  - You are expected to participate actively in discussions of the readings.
  
- **Specific Duties:**
  - **Leading a Class Discussion:** You and a classmate will lead a class discussion based on one of the assigned readings. When you lead the class discussion, I will expect you to do the following:
    - (1) provide a general overview of the article, including the author's arguments;
    - (2) critique the article, or a substantial portion, by highlighting arguments you found particularly effective, rebutting arguments you found unpersuasive, and suggesting improvements to arguments you found incomplete or lacking in some way; and
    - (3) pose two-three questions in class to generate discussion based on the reading.
  - We will designate these assignments on the first day of the seminar.

- **Article Workshop:** You are expected to participate in the article workshop during class on **Tuesday, Feb. 19**. The workshop is intended to help you develop your seminar paper. We will divide into writing groups prior to the workshop class. At least 24-hours before the Article Workshop, you will email an outline of your article to the other members of your writing group. The outline should contain, at a minimum, the following: (1) a statement of the issue or problem that you have researched to date; (2) your initial thesis or recommendations to address the issue; and (3) an assessment of your research findings.

### **Critiques of Student Papers = 10 percent**

- You will type a critique of your classmates' first drafts, which will be posted on TWEN for access. Comments should address substantive issues and should be constructive in nature. Your critiques are due no later than the day the critiqued paper is presented in class, with the exception of the papers scheduled to be presented the week following spring break, as noted in the syllabus below.
- **You will provide your critiques to the student author and me by email.**

### **Draft of Paper and Class Presentation = 15 percent**

- **The first draft of your paper is due one week before your class presentation.**
  - Drafts of papers presented the week after spring break are due the Monday after break.
  - The draft need not be complete, but it should be more than a "rough" draft. Specifically, it should be a substantial draft of 10-15 double-spaced pages that includes a background and analysis section that develops your position. Of course, the more polished your draft, the greater benefit you will derive from my comments and the comments of your classmates.
  - You may use placeholder cites in the footnotes of your draft. You must, however, include a page or two at the end of your draft that lists the primary sources you consulted in researching the draft paper.
- **You will give a 30-40 minute presentation to the class on the topic of your paper.**
  - We will determine the date of each presentation on the first day of class.
  - I will expect you to do more than simply stand and read from your draft article. Feel free to be creative with your format. **The goal of your presentation is create a thoughtful discussion of your topic and to seek ways to improve your paper.** For that reason, allow time for discussion of your topic. Also, you should inform your classmates at the outset if you will entertain questions throughout your presentation, or if you will be reserving time at the end of your presentation for questions and discussion.

### **Final Paper = 60 percent**

- **Your final paper is due no later than Friday, April 26, at 5:00 p.m.**
- **Submit your final paper to me by email: [dfettig01@hamline.edu](mailto:dfettig01@hamline.edu)**
- Your final paper should be a scholarly work that takes into account my comments

and the comments of your classmates, to the extent you determine those comments are useful. It should be 25-30 double-spaced pages, inclusive of footnotes, written in 12-point standard font and one inch margins. Your analysis should be well-supported by footnotes in proper Bluebook format for law review articles. Your footnotes should be single-spaced in standard 10-point font.

### ***Class Schedule and Assignments***

NOTE: I may modify the readings in this syllabus during the semester. I will announce any modifications to the syllabus as far in advance as possible.

#### **Tuesday, Jan. 15**

##### **False Confessions and the Reliability of Confessions Generally**

- Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891 (2004)
  - Read the Introduction through Part III (pp. 891-932) and the Conclusion (pp. 995-1007)
  - Briefly skim Parts IV and V (pp. 932-95) regarding the outcomes of the case analysis conducted by the authors
- Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 FORDHAM URB. L.J. 791 (2006)
  - Read the Introduction (pp. 791-96), Part III.D. (pp.827-31), and Part IV (pp. 831-42)

##### **Strategies for Writing a Student Paper**

(These articles are mainly for your reference, but we will discuss them in class with regard to any advice that you found to be worthwhile.)

- Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL EDUCATION 247 (1998)
- Pamela Samuelson, *Good Legal Writing: Of Orwell and Window Panes*, 46 U. PITT L. REV. 149 (1984)

#### **Tuesday, Jan. 22**

##### **Miranda's Role in Preventing Coerced Confessions**

- Yale Kamisar, *On the Fortieth Anniversary of the Miranda Case: Why We Needed It, How We Got It—And What Happened To It*, 5 OHIO ST. J. CRIM. L. 163 (2007)
  - Read Parts I, II, IV, and VII (skip parts III, V, and VI).
- William J. Stuntz, *Miranda's Mistake*, 99 MICH. L. REV. 975 (2001)

## **Tuesday, Jan. 29**

### **Debating Miranda's Current Relevance**

- Charles D. Weisselberg, *Mourning Miranda*, 96 CAL. L. REV. 1519 (2008)
  - Read the Introduction through Part I (pp. 1521-29), and Parts III and IV (pp. 1539-1600)
- Mark A. Godsey, *Reformulating the Miranda Warnings in Light of Contemporary Law and Understanding*, 90 MINN. L. REV. 781 (2006)

**\*\*NOTE: Deadline to email me your paper topic is Monday, Feb. 4.\*\***

## **Tuesday, Feb. 5**

### **The Role of Guilty Pleas**

- Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L.J. 1909 (1992)
- Stephen J. Schulhofer, *Plea Bargaining as Disaster*, 101 YALE L.J. 1979 (1992)

## **Tuesday, Feb. 12**

### **The Role of Guilty Pleas Continued**

- Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463 (2004)
- Josh Bowers, *Punishing the Innocent*, 156 U. PA. L. REV. 1117 (2008)

## **Tuesday, Feb. 19**

### **Article Workshop**

- Remember to email an outline of your article to the other members of your assigned writing group at least 24-hours before this Article Workshop class. The outline should contain, at a minimum, the following: (1) a statement of the issue or problem that you have researched to date; (2) your initial thesis or recommendations to address the issue; and (3) an assessment of your research findings.

**Tuesday, Feb. 26**

**Interrogation and Confessions in Terrorism Cases**

- Ronald J. Rychlak, *Interrogating Terrorists: From Miranda Warnings to Enhanced Interrogation Techniques*, 44 SAN DIEGO L. REV. 451 (2007)
- Amos N. Guiora, *Relearning Lessons of History: Miranda and Counterterrorism*, 71 LA. L. REV. 1147 (2011)

**Tuesday, Mar. 5**

**Class Presentations**

**Tuesday, March 12**

**Class Presentations**

**Tuesday, March 19**

**Class Presentations**

**Tuesday, March 26**

**No Class – Spring Break**

**Tuesday, April 2**

**Class Presentations**

- Drafts of papers presented during this class must be submitted by Monday, April 1.
- Critiques for papers presented during this class must be submitted by Monday, April 8.

**Tuesday, April 9**

**Class Presentations**

**Tuesday, April 16**

**Class Presentations**

**Friday, April 26 – Final papers due no later than 5:00 p.m. by email to [dfettig01@hamline.edu](mailto:dfettig01@hamline.edu)**