

# George Mason University

Jurisprudence Seminar

Law 435

Professor Krauss

## Syllabus

### **I. ABOUT THE SEMINAR**

The Jurisprudence Seminar examines the nature of the judicial function (and, resultingly, the nature of Law) through a series of weekly discussions and the drafting of a substantial research paper. This seminar has proven over the years to be one of the most stimulating, and challenging, courses given at GMUSL. Many current events (i.e., the Florida Supreme Court's "interpretation" of that state's election statutes) lend to a theoretical seminar a practical importance that is both unusual and compelling.

The structure of this year's edition of the seminar is open-ended, i.e., your interests, manifested during the course of the semester, can impact on the content of classes. This will be the case most particularly, but not exclusively, for the final weeks. Please tell me a.s.a.p. of any topics you wish to explore.

Subject to your adaptation, then, here is a breakdown of the problems likely to be covered by readings (no compulsory book, rather photocopied readings) in this seminar.

**1. Introduction to the problem of interpretation in Law.** This introductory portion of the seminar should take three weeks or so. It has as its goal to persuade

you of the use, indeed the necessity, of “intellectualizing” questions of interpretation. The participatory nature of the seminar should also be established during this period.

**2. Legal reasoning: a critical analysis.** Are the processes of argumentation (for lawyers) and of justification (for judges) *logical*? Do they lend themselves to the conclusion that there is *one* right answer to all or any legal questions? Can/Should human legal interpreters be replaced by “objective” computers to some extent?

**3. Analysis of "schools" of interpretation.** The next part of the seminar introduces you to grand debates in legal interpretation today. Does interpretation "exist", or is there no real difference between interpretation of a [legal] text and creation of a [legal] text? Is the ‘Rule of Law’ [as opposed to the rule of judges] intelligible, or is it an unclothed emperor? Is any separation of legal powers possible?

Among the ‘schools’ to be examined is the ‘literalist’ school (i.e. the meaning of a text is found in its words); the subjectivist or ‘interpretivist’ school (the meaning of a [legal] text is found in the intention of its author); other ‘interpretivists’ (i.e. who deny that literalist or subjectivist interpretations are possible while maintaining that there does nonetheless exist one ‘right’ answer to any legal dispute); and ‘non-interpretivists’, who hold that interpretation is intrinsically indeterminate (and, therefore, that legal ‘interpretation’ is in reality policy-making).

4. **Other interpretive issues.** This could include an introduction to feminist interpretive jurisprudence, to “critical race theory”, to the potential for economic analysis of interpretive issues, etc. Your feedback will be vital in the selection of these topics. Please don't let me down!

The classroom readings and discussions will, hopefully and crucially, encourage you to examine relationships between legal interpretation and interpretation in other fields, such as literature and theology. In all these fields, as in law, expertise consists essentially of the ability to read and derive meaning from texts. So, in effect, this seminar will lead you to clarify and refine your own vision of legal philosophy.

## II. RESEARCH PAPER

The paper can cover a variety of subjects. **I must emphasize that the following list is not all-inclusive: you may request my permission to select another topic.** In a typical year, about half of the students enrolled in the seminar choose topics other than those listed below. Permission to research another topic will be granted if your project is an interesting one and is related to the seminar's subject matter.

1. Analysis of the duties of the interpreter of an immoral law.
2. Analysis of an important debate about legal interpretation (e.g. Hart vs. Fuller, Fish vs. Fiss, Fish vs. Dworkin, Hart vs. Dworkin, West vs. Posner, etc.).
3. **Critical, theoretical** analysis (and discussion of the relevance to Law) of a recent book discussing the phenomenon of interpretation. Among very many

other possible choices, consider these examples (in alphabetical order by author):

Delgado, *The Rodrigo Chronicles: Conversations About America and Race*, (New York: N.Y.U. Press, 1995).

Diggins, *The Promise of Pragmatism: Modernism and the Crisis of Knowledge and Authority*, (Chicago: University of Chicago Press, 1994).

Eco, *The Limits of Interpretation*, (Indianapolis: Indiana University Press, 1990)

Eisenberg, *The Limits of Reason: Indeterminacy in Law, Education and Morality*, 1993)

Greenawalt, *Law and Objectivity*, (Oxford: Oxford U. Press, 1992).

Haack, *Evidence and Inquiry: Towards Reconstruction in Epistemology* (Cambridge: Blackwell, 1993)

Held, *Feminist Morality: Transforming Culture, Society and Politics*, (Chicago: U. of Chicago P., 1994).

LaRue, *Constitutional Law as Fiction: Narrative in the Rhetoric of Authority*, 1995)

Leiter (ed.), *Objectivity in Law and Morals*, (Cambridge, Cambridge U. Press, 2001)

Minda, *Postmodern Legal Movements* (New York: NYU Press, 1995)

Searle, *Mind, Language and Society* (New York: Basic Books, 1998)

4. Study of the possible uses of artificial intelligence in legal interpretation.
5. Study of a “school” of literary or biblical interpretation: e.g. subjectivism (E. Hirsch), deconstruction (J. Derrida, N. Frye, S. Fish), semiotics (U. Eco), etc. and of its relevance for legal interpretation.
6. Analysis of some aspect of “Critical Legal Studies” or “Feminist Jurisprudence” or “Critical Race Studies”.
7. Interdisciplinary analysis of the concept of author's intention. [I.e., what does literary studies have to say about this? Biblical studies? Psychology?]
8. Analysis of the nature and content of *stare decisis*, of the nature of a "holding", of the nature of a "dissent", etc.

In principle, I prefer that papers be done individually. I will grant very rare exceptions to this rule upon adequate justification, but I do want to make it clear that increased quality *and* quantity will be required from team members in this case.

### **III. TIMETABLE FOR PAPER SUBMISSION**

I find that I'm by nature “soft”: i.e. if I don't bind myself in advance, I tend to grant all student requests for late submissions. This almost never has good results for the student or for me. So I'm hereby binding myself. I announce that the following calendar is mandatory, that no extensions will be granted, and that failure to comply with a deadline will result in a penalty of up to one “notch” (off your final grade) per late day. Plus, and more importantly, I'll be really mad at you for missing the deadline!

1. On or before **September 14**, 2004, you will submit a typed **proposal** for your paper.<sup>1</sup> The proposal should be 2-3 pages long, should demonstrate that you have read a bit about your topic (i.e., that you're not choosing any old topic just because the deadline is upon you...), and should show why you're interested in it. You are strongly encouraged (but not obliged) to meet with me beforehand to discuss possible topics.

I will return the proposal to your mailbox, more or less annotated<sup>2</sup> and marked "approved" or "disapproved" by Monday, Sept. 20. If the topic is disapproved, you must meet with me on Sept. 21 to select a satisfactory topic. If you don't have a suitable topic to propose at that meeting I will assign one. Don't worry: I do not anticipate having to resort to this.

2. If you wish to request an **extension** for the submission of the final paper (see immediately *infra*), **you must do so on or before October 5 [absolutely no exceptions allowed on this]**. A response to your request will be provided within three days. Denial of the request is the default position: i.e., your extension request will be granted only if you convince me that: a) you have done substantial research already; and b) you will put the Spring semester to good use and make the paper even better.

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<sup>1</sup> Please use the class submission form on the Seminar's TWEN site. Please format your submission using Microsoft Word, either Mac or Windows format.

<sup>2</sup> I find that I give more help to those who have demonstrated hard work. If your proposal is well thought through and researched, I will likely provide you with more feedback than if you lead me to believe that you have done little work yourself.

The extension should not be requested unless you expect to substantially improve the paper over the summer. Grading standards are higher for papers submitted after an extension. What's more, students may lose focus on a subject matter if, for example, they forget about their paper from December till April (when previous research is no longer fresh). On the other hand, a Spring semester during which, say, 100 quality hours are spent on research and writing can transform an otherwise excellent term paper into a prize-winning, publishable article that can reap long-term rewards. **This is not a pipe-dream: it has happened for over a half dozen students in this seminar.** It has changed career plans and enriched lives.

**3. November 9** is the deadline for submission of the **optional but highly recommended first draft**. [This deadline is extended to March 1, but the first draft is then compulsory, for those to whom an extension has been granted.] The draft should be 15-50 pages long. It can be 'rough', i.e., structure and form need not be polished and research need not be complete. The first draft should, however, demonstrate substantial research and thought.

Why do a first draft if it is optional? **Because it will elicit feedback from me.** With my other time commitments, if a draft is not submitted by the deadline I cannot commit to providing feedback before the final paper is graded.

One week after the first draft deadline, I will return the draft with written comments. I will indicate what type of grade the first draft looks "headed for", and what could be done to improve the grade. **Note that your first draft doesn't "cost" you anything: a "C" draft followed by an "A" final paper earns an "A" grade.**

5. On or before **December 7** you will submit the final draft. [This deadline is pushed back to May 1 for those who have obtained extensions.] Total length of the final paper must be 20-50 pages, unless written authorization to submit a longer or shorter paper has been granted.

An annotated bibliography must accompany your paper (but its length is not included in the page total). The bibliography will list and summarize (one short paragraph per entry) sources use in preparing your paper, whether or not you cite them in the paper.

Blue book or Maroon book citation methods are preferred; parallel cites are not required.

Each draft of a paper, as well as the final paper, should be double-spaced with normal margins (so I can annotate it). Footnotes should be single-spaced and contained on each page of text (i.e. no endnotes).

#### **IV CLASS PARTICIPATION**

The final paper will count for 3/4 of the “final grade”. My evaluation of your class work will determine the rest. You are expected to attend and participate actively in each class session. You may be assigned specific discussion responsibilities for a class sessions.