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 more stimulating, and challenging, courses given at GMUSL. Quite a few student publications (including an article that was instrumental in securing our law school’s first and only Supreme Court clerkship) began as Jurisprudence Seminar term papers. In addition, extremely recent events lend to this theoretical seminar a practical importance that is both unusual and compelling.

The structure of this year’s edition of the seminar is somewhat open-ended, i.e., your interests, manifested during the first part of the semester, can impact on the content of classes, particularly for the final weeks. So please tell me a.s.a.p. of any topics you wish to explore.

Subject to your adaptation, here is a breakdown of the problems likely to be covered by readings (no compulsory book, rather readings accessed via TWEN or the library) in this seminar.
1. **Introduction to the problem of interpretation in Law.** An introductory portion of the seminar should take about three weeks. 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. Attendance at the first session is compulsory.

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 inevitably biased and fallible human legal interpreters be replaced by “objective” determiners of meaning to some extent?

3. **Analysis of "schools" of interpretation.** The next part of the seminar introduces you to grand debates in legal interpretation. Does interpretation (and therefore the judicial function) "exist", or is there no substantive difference between discovery (interpretation) of [legal] meaning and creation of [legal] meaning? Is the ‘Rule of Law’ [as opposed to the rule of judges] intelligible, or is it, like the Wizard of Oz, a useful myth for the masses? Is any separation of powers possible?

   Among the ‘schools’ to be examined is the ‘literalist’ (textualist) school (i.e. the meaning of a text is found in its words); the purposivist (interpretivist) school (the meaning of a [legal] text is found in the intention of its author); non-purposivist ‘interpretivists’ (i.e. who deny that literalist or purposivist interpretations are possible, while still maintaining that there does nonetheless exist one ‘right’ answer to any interpretive (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 role of economic analysis of interpretive issues, and to the interpretive choices that law schools must make in hiring professors. Your feedback will be vital in the selection of these topics.

The weekly readings and discussions will, hopefully and crucially, encourage you to read up on the relevance to legal interpretation of scholarship on interpretation in other fields, such as history, literature and theology. In all these fields, expertise is in large part the ability to read and derive meaning from texts.

---

**II. RESEARCH PAPER**

The paper can cover a variety of subjects. Here are some examples. **I emphasize that the following list is not exhaustive: about half of all students request my permission to select another topic.** 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, Leiter vs. Dworkin, Posner vs. Scalia, Scalia vs. Stevens, etc.).

3. **Critical, theoretical** analysis (and discussion of the relevance to Law) of one or more recent books discussing the phenomenon of interpretation. Among other possible choices, consider these examples (in alphabetical order by author – the more recent the book the more likely a review would be...
publishable – note that "older" books can spur your research paper, even if this does not take the form of a review: so this should be seen as a list of suggested outside readings in addition to the bibliography):


Breyer, S., *Active Liberty*, 2005


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


Fish, Stanley. *Is There A Text In This Class?* Cambridge, MA: Harvard University Press. 1990


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


4. Study of the possible uses of artificial intelligence in legal interpretation.

5. Study of a “school” of literary or biblical interpretation: e.g. intentionalism (E. Hirsch), deconstruction (J. Derrida, N. Frye, S. Fish), semiotics (U. Eco), etc. and of its relevance for legal interpretation.


7. *Interdisciplinary* analysis of the concept of author's intention. [i.e., its treatment in literary studies, Biblical studies, Psychology versus Law]

8. Analysis of the nature and content of *stare decisis*, of the nature of a "holding", of the nature of a "dissent", etc.

9. Very detailed “autopsy” of a case relevant to this seminar.

**III. TIMETABLE FOR PAPER SUBMISSION**

The following calendar is mandatory, i.e., no extensions will be granted. Failure to comply with a deadline will result in a penalty that varies by deadline (see below). Plus, and more importantly, I’ll be really mad at you if you miss a deadline!
1. On or before **Jan 26**, 2015, you will submit (via the TWEN drop box) a **proposal** for your paper.¹ 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 a topic blindly because the deadline is upon you...), and should show why you're interested in it. You are **strongly encouraged** to meet with me beforehand to discuss possible topics.

I will return the proposal to your mailbox, more or less annotated² and marked “approved” or “disapproved” by Friday, Jan. 30. If the topic is disapproved (either because it is not germane to the course or because I think you winged it and did not do serious research), you must meet with me the following week to select a satisfactory topic. If you don't have a suitable topic to propose at that meeting I will assign one. 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 **infra**), **you must do so on or before Feb. 16 [absolutely no exceptions allowed on this]**. A response to your request will be provided within three days. **Denial of an extension request is the default position:** i.e., you have the burden to convince me by a preponderance of evidence that: a) you have already done research; and b) you will put the Summer semester to good use and make the paper better than it would otherwise be. The extension should not be requested unless you expect to substantially improve the paper over the Summer. If you are graduating, obviously, no extension is available.

¹ Please use the submission form on the Seminar’s TWEN site. Please format your submission using Word.

² 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 then if you lead me to believe that you have done little work yourself.
Note that students may lose focus on a subject matter if, for example, they put aside their paper from April till August (when previous research is no longer fresh). On the other hand, a Summer semester during which, say, 50-100 quality hours are spent on research and writing can transform an 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. **March 16** is the deadline for submission of the **required first draft**. [This deadline is extended to June 1 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 and drafting of every section need not be complete. The first draft should, however, demonstrate substantial research and thought, and provide the basic thrust of the paper.

The first draft forces you to put down your thoughts, and it will elicit detailed feedback and a “grade trajectory” from me. That is, 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 “count” in and of itself: a “C” draft followed by an “A” final paper earns an “A” final grade.**

5. On or before **April 30** you will submit the final paper. [This deadline is pushed back to August 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 the bibliography is not included in the page total). The bibliography will list and summarize (one short paragraph per entry) sources used in preparing your paper, whether or not...
you cite them in the paper. This helps me plan future editions of the seminar – which readings did you find more or less useful? You get knocked down one grade level on your final paper if you forget the bibliography, so don't forget!

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

Drafts, as well as the final paper, are double-spaced with normal margins, size 12 Times font. Footnotes should be single-spaced and contained on each page of text (i.e. no endnotes), in size 10 Times font.

IV CLASS PARTICIPATION

All students will get a bump up or down on their final grade, depending on their class participation. You may also be assigned specific discussion responsibilities for a class sessions, and if this happens your performance will weigh on the class participation decision.