This is a course on basic issues of criminal law, including: constitutional issues pertaining to criminal law, such as due process, jury trial, aspects of the burden of proof, punishment and the death penalty; issues of criminal evidence, how guilt is established, why we punish (the purposes of punishment), the nature of crime and criminal responsibility, and theories of criminal defense. The course is designed to be a seminar based on informed debate and discussion under my direction. As you will discover as we proceed, the issues in the course are important, controversial and inherently interesting. Consequently, there will be ample opportunity for debate, discussion, and critical analysis.

The main text in the course is Criminal Law and Its Processes, by Kadish, Schulhofer, Steiker, and Barkow (KSSB), 2012 edition. If you prefer to save money by using previous editions, that will work, too, especially if you use the 2001 or 2007 editions. Most or a lot of the material is the same or similar, so you should be okay. It is your decision.

This excellent text includes key cases and thoughtful commentary by experts and practitioners. We will also read a handful of paperbacks: Hate Crimes: Identity Politics and the Criminal Law, by James Potter and Kimberly Jacobs; A Crime of Self-Defense: Bernard Goetz and the Law on Trial, by George Fletcher; No Crueler Tyrannies: Accusation, False Witness, and Other Terrors of Our Times, by Dorothy Rabinowitz; and More then Victims: Battered Women, the Syndrome Society, and the Law, by yours truly. This syllabus also includes some recommended reading, but the case book is the best source, including hundreds of citations.

The course grade will be based on three primary exercises:

1. 35%: a term paper (12-15 pages) that will be due the first Monday of the final exam period. The term paper is to be a research or analytical project based on an issue, question, or institution of direct relevance to the class. You should discuss the topic with me ahead of time, and I will provide what assistance I can in terms of heading you in the right direction;

2. 35% based on a midterm examination to be taken at an agreed upon time after the spring break;

3. 20%: participation in the operation of the mock trial at the end of the term. The mock trial will deal with a domestic violence case, and will take place Thursday of the last week of classes, at a place to be arranged in the State Capitol or the law school. Material for the mock trial will be distributed early in the class. Grading for this exercise will be based on the following criteria: a) my own interaction with the teams in the trial and pre-trial exercises; b) evaluations by the other members of your team. There are several roles one can play in the trial: attorneys, witnesses, researchers, coaches. Though some roles are more “visible” than others, this will not
disadvantage anyone, for each student will be graded solely on the basis of how well he or she performs in his role and how well she contributes to the overall effort of the team;

4. 10%: class participation. The class will be very much debate and discussion driven, so good class participation (which consists of quality more than quantity) will be rewarded. Those who choose to be listeners more than discussants will not be penalized for this (good listeners help every discussion), and their grades will be based simply on how they perform in the three categories above. Those who do well in class discussions will be rewarded, however.

During the course of the term, you will also be asked at various points to prepare a short, one-page essay about a key matter under discussion, and to defend that position during part of the class period. Thus, sometimes class discussion will be directed and set up, while at other times it will be more open-ended. The typical class will consist of my setting up the issues through lecture, and ensuing class debate and discussion.

The pace with which we will proceed will depend upon the nature of the materials and the discussions. I will keep you posted as we proceed.

KSSB, Ch. 1; Rabinowitz, No Crueler Tyrannies: Accusation, False Witness, and Other Terrors of Our Times


KSSB, Ch. 2; Ch. 5, pp. 466-523-569.
Jacobs and Potter, Hate Crimes. Supplementary Material to be sent via classlist.

III. The Basic Elements of Criminal Responsibility.
KSSB, Ch. 3, pp. 205-282; (282-329); 149-204

IV. Attempts and the Significance of Resulting Harm.
KSSB, Ch. 6, pp. 607-655.

V. Homicide.
KSSB, Ch. 5, pp. 419-508.

VI. Exculpation.

A. Justifications: Self-Defense, Lesser Evil, Necessity, Duress, etc.
Self-Defense, Lesser Evil, Necessity, etc.
   KSSB, Ch. 8, pp. 817-911.
Fletcher, A Crime of Self-Defense.
Downs, More than Victims, Chs. 1, 5-8, and Walker, Terrifying Love (on reserve)

B. Excuses: Intoxication, Mental Disorder, Incapacity, etc.
   KSSB, Ch. 8, pp. 921-1031.

Some Recommended Works (See KSS for more specific issue areas)

-Richard Delgado, “‘Rotten Social Background’: Should the Criminal Law Recognize a Defense of Severe Environmental Deprivation?” 1985 Law and Inequality
-P. Devlin, The Enforcement of Morals (1965)
-Phil Fennel, Criminal Justice in Europe (1995)
-Michel Foucault, Discipline and Punish (1979)
-Jerome Frank, Courts on Trial (1949)
-Marvn Frankel, Partisan Justice (1980)
-David Garland, Punishment in Modern Society: A Study in Social Theory (1990); Peculiar Institution: America’s Death Penalty in an Age of Abolition (2011)
-Brandon L. Garrett, Convicting the Innocent (2011)
-H.L.A. Hart, Punishment and Responsibility (1868)
-Richard Herrnstein and James Q. Wilson, Crime and Human Nature (1985)
-Jerome Hall, General Principles of Criminal Law (1960)
-W. LaFave and A. Scott, Criminal Law (2d. Edition and updates)
-Herbert Packer, *The Limits of the Criminal Sanction* (1968)
-Steven Philips, *No Heroes, No Villains: The Story of a Murder Trial* (1978)
-Thomas Szasz, *The Myth of Mental Illness* (1974), and other works by Szasz
-Barbara Wooten, *Crime and the Criminal Law* (1963)