

Legal Studies 397P – ***Makin' it and Fakin' it: Legal Fictions*** – Fall '08

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Office Hours: TuTh 2.30-3.30 and by appt.

Legal Fictions are traditionally understood as law's counter-factuals, i.e. codes, concepts, doctrines and practices which seem to be at odds w/ aspects of the social world. It is not the counter-factual status of legal fictions that interests us most, we are concerned with the power they exert, or rather, how legal fictions are shaped and applied. The most prominent fiction is that of law's animation, law's separation from corporeal bodies and elevation to autonomous status (i.e. "the rule of law"). It is relatively unproblematic to say that law assumes facts, creates entities, and conceals aspects of its operation in order to extend or limit power. As such, law creates and deploys fictions (e.g. "corporate persons," "reasonable persons," "equal protection," "compelling interests"). This social construction of law may be seen as proper or not depending upon the power of competing stories and story tellers in legal discourse, as well as how we in the audience "receive" and "give life" to them. The bulk of this course will be a critical examination of some operational fictions as they are constituted – with the objective of developing a critical legal fiction lens.

**Books, materials, etc:**

Crows Over a Wheatfield, Paula Sharp – (OPTIONAL if you choose to do the extra credit) online via Amazon.com or others (lots of affordable used copies available).

The Vietnam War on Trial, Michael Belknap – (REQUIRED) available at Food for Thought Books, Amherst.

We will also be using selections from **Before the Law** by Legal Studies department faculty. I will make photo-copies of relevant sections for those of you who don't have a copy of the text.

**Course Packet** is at Collective Copies in downtown Amherst.

**Work:**

- i) Assignments (quizzes and response papers)- 40%
- ii) 2 Exams – 50% (dates to be determined)
- iii) Class Participation – 10%

You can make-up quizzes / exams if you ***clear it in advance*** of the scheduled quiz / exam time. ***No late work otherwise.*** There will be an extra credit opportunity made available after the first exam.

### 1. Legal Fictions and Their Power: (9/2 – 9/16)

Read: “Brooklyn Man, 38, Dies After Jolt From Police Taser,” NYT 1/9/2007; “The Safety of Tasers Is Questioned Again,” NYT 5/25/2006; “Tasers for UMass?” Daily Collegian, 3/21/05 – hand out; “Don’t Tase me, sis!” Hamp. Gaz. 1/5/08 – hand out; “Words Create Worlds,” National Geographic, December 2006, pp. 29 – hand out; “At Many Homes, More Profit and Less Nursing,” NYT, 9/23/07 – hand out; “Crime w/out Conviction” section at <http://www.corporatecrimereporter.com> - online; Hartmann’s Intro, Ch. 6 from Unequal Protection – **Course Packet**; d’Errico’s “Corporate Personality and Human Commodification” – **Course Packet**; Bell v. Maryland (378 U.S. 226) – online; Heart of Atlanta Motel v. U.S. (379 U.S. 241) - online. *Other readings and materials TBA.*

### 2. Construction of Fact and Truth in Law: (9/18 –10/9)

Read: Mensch, “The History of Mainstream Legal Thought” – **Course Packet**; Minnow, “Making all the Difference” – **Course Packet**; Carter’s chapter on legal reasoning from Reason in Law – hand out; Llewellyn’s passage on precedent in The Bramble Bush – hand out; Terry v. Ohio (392 U.S. 1 (1968)), Brown v. Texas (99 S. Ct. 2637 (1979)), Hiibel v. Sixth Judicial District Court of Nevada (542 U.S. 177 (2004)) - online; Legal Information Machines and Standing: Legal Fiction Lab(s): 9/30 or 10/2 – Calipari Instructional Room – DuBois Library – Learning Commons area; Read Crows for extra credit (details TBA); Judge Michael Ryan’s Hamp Gaz. Editorial on “Preserving the Rule of Law” - handout; *Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited*, Delgado and Stefanic - handout ; *Other readings and materials TBA.*

### MIDTERM (TBD)

### 3. Law and Relationships: (10/23 – 11/6)

Read: Crows Over a Wheatfield for extra credit (details TBA), “Joshua’s Story” in The Deshaney Case, Child Abuse, Family Rights, and the Dilemma of State Intervention – Curry – **Course Packet**; Deshaney v. Winnebago County Dept. of Social Services (489 U.S. 189; 109 S. Ct. 998; 103 L. Ed. 2d 249 (1989)) – online; “A Mother’s Quest,” *Latina*, August 2005 – hand out; Town of Castle Rock v. Gonzales (125 S.Ct. 2796 (2005)) – online; (“Battered Women Suing Police for Failure to Intervene,” *The Legal Studies Forum*, 75 *Cornell Law Review* 1393, Sept. 1990 – online; MacKinnon, “Rape: On Coercion and Consent, ” – hand out/ Before the Law; “From Chastity to Sexuality License: Sexual Consent and a New Rape Shield Law,” *Anderson*, 70 *Geo. Wash. L. Rev.* 51, Feb 2002 – online; “On Law and Chastity,” *Rodes*, 76 *Notre Dame L. Rev.* 643, January 2001 – online; “Court rules sex through fraud not rape,”

[http://www.boston.com/news/local/articles/2007/05/11/court\\_rules\\_sex\\_through\\_use\\_of\\_fraud\\_is\\_not\\_rape/](http://www.boston.com/news/local/articles/2007/05/11/court_rules_sex_through_use_of_fraud_is_not_rape/) and case name: Suliveres v. Commonwealth found at <http://www.masslaw.com/signup/opinion.cfm?page=ma/opin/sup/1008707.htm>; *Other readings and materials TBA.*

#### **4. Law and Violence: (11/10 – 11/25)**

“Rules of Engagement (R.O.E)” – Frontline <http://www.pbs.org/wgbh/pages/frontline/haditha>); Read: The Vietnam War on Trial, Belknap – chapters to be assigned; R. Cover, “The Violence of Legal Acts” – hand out / Before the Law; “Marine Corps Squad Leader Is Guilty of Unpremeditated Murder in Killing of Iraqi Man,” NYT 8/3/07 - handout; “Convicted Marine Details Ill-Fated Plan,” NYT 8/10/07 - handout; *Other readings and materials TBA.*

#### **5. Color Blindness and Equal Protection: (12/2 – 12/11)**

Read: “Seeing a Colorblind Future – The Emperor’s New Clothes,” P. Williams– **Course Packet**; Siegal “In the Eyes of the Law” – **Course Packet**; Grutter v. Bollinger, (123 S. Ct. 2325, 2003) – online; Gratz v. Bollinger, (123 S.Ct. 2411, 2003); Parents Involved in Community Schools v. Seattle School District (127 S. Ct. 2738 (2007)) - online; “History, Principle and Affirmative Action,” Stanley Fish in NYT 7/14/07 – hand out; “Privacy versus Antidiscrimination,” STRAHILEVITZ - [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1003001](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1003001); In Class Video(s), “OJ: Ten Years After,” PBS; *Other readings and materials TBA.*

**Second Exam – (TBD)**