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)


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 Dilemna Revisited, Delgado and Stefanic - handout; Other readings and materials TBA.

MIDTERM (TBD)

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


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


Second Exam – (TBD)