

RHETORIC, LAW & CULTURE

CMCL 321

Fall 2013

Professor Anjali Vats, JD, PhD

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Tuesdays & Thursdays 9:30am-10:45am

Wendell W. Wright (ED) 1220

Office Hours

Tuesdays & Thursdays 11:00am - 12:00pm or By Appointment

Classroom Office Building (COB) 227



“...law is most useful seen not, as it usually is by academics and philosophers, as a system of rules, but as a branch of rhetoric; and that is the kind of rhetoric of which law is a species is most usefully seen not, as rhetoric usually is, either as a failed science or the ignoble art of persuasion, but as the central art by which community and culture are established, maintained, and transformed. So regarded, rhetoric is continuous with law, and like it, has justice as its ultimate subject.”

~ James Boyd White

COURSE OVERVIEW

This is a course about the law and its rhetorical and cultural character. Proceeding from the premise that law is, as James Boyd White states, much more than “a system of rules,” we will explore a variety of rhetorical, critical, and cultural approaches to studying rhetorics of law and their relationship to the development of identity, community, and culture, in their myriad forms.

In the first part of the course, we will engage the theory and practice of lawyers, considering texts in legal realism and law and economics in order to build fluency in the language of the law as well as understand the ideological foundations of traditional legal theories. While this part of the course will not teach you to “think like a lawyer” per se, it will help you to understand some dominant approaches to studying the law, especially those associated with constitutional law, executive rulemaking, and federal and state statutes. In the second part of the course, we will examine in detail the theory of *constitutive rhetoric* which will inform the work we do for the remainder of the semester. Finally, in the third part of the course, we will discuss contemporary and class case studies—including Trayvon Martin, abortion rights, and the Scopes trial—to try on a variety of approaches to studying rhetorics of the law, including law and literature, narrative, metaphor, critical rhetorics of race, feminist criticism, and rhetorics of citizenship. Through these case studies, we will also engage scholarship that studies an array of legal forms, including constitutions, trials, and federal and state statutes. In order to facilitate your study of both the legal and rhetorical aspects of the selected case studies, the readings for this part of the course will include both primary and secondary materials, allowing you to see the texts which gave rise to the pieces of scholarship that we are reading.

The capstone project in this course will be a polished, 2,000-2,500 word essay on a legal case study of your choosing. In order to facilitate the process of writing this piece, you will be asked to select a legal case study by Week 3 of the semester, by way of Case Justification. In this Case Justification, you will be asked to demonstrate the rhetorical and legal importance of your chosen topic. Your final paper will be due at the end of the semester, prior to finals week. Our readings are certainly not exhaustive of the selected case studies. You are therefore welcome to choose the case studies we discuss in class for your final paper if you so desire.

By the end of the semester, you should be able to:

- List and explain the basic workings of the American court system and constitutional process;
- Describe the relationship between rhetoric, law, identity, culture, and community;
- Define and describe constitutive rhetoric;
- Identify and explain multiple approaches to studying the rhetoric of law;
- Select a legal case study for analysis and interpretation;
- Develop a thesis statement about your legal case study;
- Use primary and secondary sources to analyze and interpret your legal case study’s rhetoric;

- Professionally evaluate a peer’s analysis and interpretation of their chosen legal case study;
- Produce a polished essay which engages with theories of rhetoric, law, and culture; and
- Present your research findings to an audience.

REQUIRED TEXTS

The texts for this course will primarily take the form of book chapters, articles, and primary sources, most of which will be available on the course website.

In addition to the online readings, you will need the following text, available at the IU Bookstore:

Redlich, Norman, Attanasio, John, and Goldstein, Joel. *Understanding Constitutional Law (Understanding Series)*. (Albany: Matthew Bender & Co., Inc., 2012).

RECOMMENDED TEXTS

The *Pocket Edition of Black’s Law Dictionary* may be helpful in reading cases and deciphering legal language. You may also want a copy of James Jasinski’s *Sourcebook on Rhetoric* if you do not already have a copy. These books are available at the IU Bookstore, Amazon, and other booksellers.

ASSIGNMENTS

Your grade in this course will be based on the following assignments:

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| • Class Discussion | 15% |
| • Forum Posts & Comments | 15% |
| • Case Justification | 20% |
| • Thesis Statement & Outline | 10% |
| • Multimedia Presentation | 15% |
| • Final Paper | 25% |

All assignments are due at the beginning of class on the date listed on the Syllabus. Written assignments must be turned into on OnCourse in the Forums or through Turnitin.

CLASS DISCUSSION: In the first week of class, you will sign up to lead discussion on one of the case studies that we will be addressing in the third part of the course (we will have two people presenting on most days). You will have fifteen minutes in which to raise questions about the texts that you found interesting or worthy of conversation and/or present your own viewpoint on the case. Please note that this is *not* the time for a summary of the case but rather a time to begin the process of exploring the connections between the case study at hand, rhetoric and identity. In classes in which

you are not presenting, you are also expected to participate. Your participation will be graded per class on a ✓+, ✓, ✓- basis and used to calculate your final Class Discussion Grade. A ✓+ indicates excellent insights and observations and comments on the material, a ✓ indicates good insights and observations and comments on the material, and a ✓- indicates lack of insights and observations on the material and/or failure to meet the basic requirements of the assignment.

FORUM POSTS & COMMENTS: On any five of the days of the semester of your choosing and in which you are not presenting, you will write a 400-500 word Forum post which explores provocative rhetoric and/or legal issues raised in the readings for the day. You may include images, links to other sources, and quotes in these blog posts but doing so is not required. Please note that these Forum posts are *not* summaries and should demonstrate analytic engagement with the material.

On any five of the days of the semester of your choosing and in which you are not presenting, you must also write a 50 word comment about another post. Your posts and comments be graded per class on a ✓+, ✓, ✓- basis as described above.

CASE JUSTIFICATION: On *September 12th*, you will turn in a 750-1,000 word paper in which you will demonstrate that the case study you have selected for your final paper is an appropriate and worthy subject of study for this course. Discussing the context of the case study, its rhetorical and legal significance, its persuasive implications, and some of the texts you will be reading in your final paper may be helpful in establishing a case for your chosen legal controversy.

THESIS STATEMENT & OUTLINE: On *November 14th*, you will bring your thesis statement and detailed outline of at least 2 pages to class. We will discuss how to write a thesis statement and outline an argument and you will have the opportunity to pair up and discuss your paper with a partner in class. I will also be available for questions.

MULTIMEDIA PRESENTATION: Midway through the term, you will sign up to give a Multimedia Presentation on one of the last five days of the semester. You will create a creative and engaging presentation, including visuals and text, which presents your thesis statement and paper argument. You may use traditional or electronic media, including but not limited to posters, diagrams, PowerPoints, Prezis, websites, videos, mobiles, to present your research. Our last classes will function as a mini-conference in which the class will circulate, hear a five-minute prepared presentation about your paper, and ask you questions. This assignment is an opportunity for you to present your research and receive feedback before you turn in your final paper.

FINAL PAPER: The Final Paper should be approximately 2,000-2,500 words. In it, you should make and support an argument that engages *two or more* of the readings we have discussed in class and *two or more* outside readings as well as *three or more* primary sources. A well-developed thesis statement and clear and well-supported argument are the cornerstones of this paper. We will discuss what each of these requirements means over the course of the semester.

COURSE WEBSITE

Course information can be found on OnCourse. Please check it daily for readings, announcements, assignments, and slides from class lectures.

COURSE EXPECTATIONS

Course expectations are included here for your benefit as well as mine. Please review them thoroughly as I will strictly abide by them. Also, please note that this syllabus is subject to change at my discretion. Changes will be announced in class and noted on the course website when possible.

ON WRITING

We will write a great deal in this class. We will do so for two reasons. First, writing about rhetoric and the law is a much different task than reading about it. There will be many opportunities in this class to practice *using* rhetorical and cultural theories and the language of the law. Second, writing ensures thorough and thoughtful engagement with the course material which significantly improves course discussions as well as student understanding.

Readings and assignments are due at the beginning of class, in order to facilitate in-depth discussion.

CLASSROOM ETIQUETTE

We will discuss many difficult topics in this course, as evidenced by the image that introduces this syllabus. In doing so, we will strive to cultivate a safe classroom space in which each of us is comfortable expressing an opinion. Doing so requires respect, radical acceptance, thoughtfulness, and self-awareness. Harassing or discriminatory language and/or behavior or any other conduct which creates a hostile environment will not be tolerated. Please review the Indiana University Code of Student, Rights, Responsibilities and Conduct for definitions of these terms. That is not to say we will not sometimes make mistakes in discussing difficult topics and negotiating our various identities but rather that we will continually strive to abide by the principles of the safe space of the classroom and correct any mistakes we have made.

Creating a safe space also requires attentiveness and engagement. Showing up late to class, texting, sleeping, or any other variety of disrespectful and disruptive behavior may result in you being asked to leave the classroom. If you have questions or concerns related to respect and openness in the classroom, please do not hesitate to talk with me. My door is always open.

ATTENDANCE

We will cover a significant amount of material each day, most of which is very difficult to assimilate through the readings alone. You are highly unlikely to do well if you do not attend class regularly and actively engage with the course material. Also, please remember that it is your responsibility to speak with a classmate and not me to get notes.

LATE ASSIGNMENTS

There will be no late assignments accepted for the Class Discussion, Weekly Blog Posts, or Concept Presentation except in the case of emergency. For the remaining assignments, students will lose half a letter grade per day an assignment is late and no assignment will be accepted more than 7 days after the due date. In the event of illness, emergency, other extenuating circumstance, or school sanctioned event, please contact me as soon as possible, providing written verification of the excused absence. Makeup assignments must be completed no later than 5 days after the original assignment due date. There are no exceptions to this policy.

EMAIL

You may contact me by email and I will respond within 24 hours, excluding weekends and holidays. I will not respond to emails regarding assignments that are due within 24 hours or less so please start your assignments well in advance of their due dates.

CELL PHONES & LAPTOPS

Cell phones are absolutely prohibited in class for any purpose. That includes making phone calls, texting, taking notes, fact-checking, or looking up the time. Individuals who use their cell phones in class will be asked to put their phones away or leave the class.

Laptop use in class is permissible for notetaking only. Disruptive activities including but not limited to watching Netflix, checking your favorite social media websites, trolling for hilarious and amazing YouTube videos, playing video games, and checking email are not permitted. I will not hesitate to ban laptops if they prove to be disruptive to the class environment.

SPECIAL NEEDS

To request academic accommodations due to a disability, please contact Disability Services for Students at (812) 855-7578 or iubdss@indiana.edu. Please present me with your letter from DSS so we can discuss any accommodations you may need.

GRIEVANCE POLICY

I am happy to discuss grade concerns and grievances with students. If you wish to challenge a grade, you must: (1) wait 24 hours after receiving your score, (2) email me a one page summary of your concerns, making reference to the assignment requirements, and (3) make an appointment to meet with me, during office hours or another mutually agreeable time. Grade concerns and grievances will be considered for *one week* after papers are returned, after which time grades will be final and grade challenges will no longer be accepted.

ACADEMIC INTEGRITY

Indiana University's definitions of academic and personal misconduct are outlined in the Indiana University Student Code of Ethics. It your responsibility to read and understand Indiana University's expectations regarding your conduct.

Plagiarism includes any representation, intentional or unintentional, of another person's words or ideas in a manner that makes it seem as if they were your own, either in written or oral form. Plagiarism and cheating are significant offenses and it will be treated as such. If you have any questions about what constitutes plagiarism, please do not hesitate to ask.

GRADING

Grading will be on an A to F scale as follows:

- A – Outstanding work, demonstrates exceptional understanding of the course material.
- B – Good work, demonstrates an above average understanding of the course material.
- C – Satisfactory work, demonstrates an adequate understanding of the course material.
- D – Marginal work, demonstrates sufficient understanding of the course material.
- F – Failing work, demonstrates a poor understanding of the course material.

COURSE SCHEDULE

PART I: THE RULES OF LAW

August 27

Syllabus & Introduction

August 29

Courts and Constitutional Argument

- Redlich, Norman, Attanasio, John, and Goldstein, Joel. "The Constitution and Constitutional Argument," in *Understanding Constitutional Law*. (Albany: Matthew Bender & Co., Inc., 2012), 1-21.

- “The Courts and Judicial Review,” in *Understanding Constitutional Law*, 23-25, 30-32, 35-40, 45-50.
- Iowa Judicial Branch, *Courts at a Glance: For Everyone from Students to Seniors*, http://www.iowacourts.gov/wfdata/files/Courts_at_a_Glance.pdf.

September 3rd

Congress, Statutes, and Statutory Interpretation

- Wacks, Raymond. *A Very Short Introduction: Philosophy of Law* (Oxford: Oxford University Press, 2006).
- Kim, Yule. “Statutory Interpretation: General Rules and Recent Trends,” *Congressional Research Service Report for Congress* (2008), Summary, 2-5, 39-44.

September 5th

Beyond the Legal Frame

- White, James Boyd. “Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life,” *The University of Chicago Law Review* 52 no. 3 (1985): 684-702.
- Rhetorical Criticism Timeline
- Cornell University Law Library, “Basics of Legal Research, 2012,” <http://www.lawschool.cornell.edu/library/whatwedo/researchguides/basics.cfm>

PART II: LAW AND IDENTITY

September 10th

Law and Life

- Coombe, Rosemary. “Critical Cultural Legal Studies,” *Yale Journal of Law and the Humanities* 10 (1988), 463-486.
- deCerteau, Michel. *The Practice of Everyday Life* (University of California Press, 2011), xi-xxiiv (Recommended).

September 12th

NO CLASS

September 17th

Understanding Rhetorical Study of Law

- Sarat Austin and Kearns, Thomas. “Editorial Introduction,” in *The Rhetoric of Law*, eds. Austin Sarat and Thomas Kearns (Ann Arbor: University of Michigan Press, 1996), 1-28.

September 19th

Rhetoric, Identity, Culture

- Charland, Maurice. "Constitutive Rhetoric: The Case of the *Peuple Quebecois*." *Quarterly Journal of Speech* 73, no. 2 (1987): 133-150.
 - Bruner, M. Lane. *Strategies of Remembrance: The Rhetorical Dimensions of National Identity Construction* (Columbia: University of South Carolina Press, 2002), 1-11.
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PART III: CASE STUDIES

September 24th

Owning Scarlett

- *Suntrust v. Houghton Mifflin Co.*, 252 F. 3d 1165 (11th Cir. 2001) (Excerpts).
- Declaration of Toni Morrison
- Declaration of Henry Louis Gates, Jr.

September 26th

Law and Literature

- King, Lovalerie. *Property Matters in African American Literature: Race, Theft, and Ethics* (New Orleans: Louisiana State Press, 2007), 1-40.
 - Foucault, Michel. "What is an Author?" in *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon Books, 1984), 113-124 (Recommended).
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October 1st

Legislating Sexual Relations

- *Lawrence v. Texas*, 539 U.S. 558 (2003) (Excerpts).
- "Racial Equality," in *Understanding Constitutional Law*, 361-371.
- "Equal Protection for Other Groups and Interests," in *Understanding Constitutional Law*, 451-452, 460-462.
- "Homosexuality," in *Understanding Constitutional Law*, 344-348.

October 3rd

Legal Standards and Queerness

- Campbell, Peter Odell. "The Procedural Queer: Substantive Due Process, *Lawrence v. Texas*, and Queer Rhetorical Futures," *Quarterly Journal of Speech* 98 no. 2 (2012), 203-229.
- Jagose, Annamarie. "Introduction," in *Queer Theory: An Introduction* (New York: New York University Press, 1996), 1-7.

*****CASE JUSTIFICATION DUE*****

October 8th

Legalizing Abortion

- *Roe v. Wade*, 410 U.S. 113 (1973) (Excerpts).
- “The Childbearing Decision: Contraception and Abortion,” in *Understanding Constitutional Law*, 322-329.

October 10th

Writing the Feminist Judicial Opinion

- Condit, Celeste. “Enacting ‘Choice’: Public Rhetoric and the Law, 1973-1985” in *Decoding Abortion Rhetoric: The Communication of Social Change* (New York: Remi Books, 1989), 96-122.
- Gibson, Katie L. “The Rhetoric of *Roe v. Wade*: When the (Male) Doctor Knows Best,” *Southern Communication Journal* 73 no. 4 (2008): 312-331 (Recommended).

October 15th

Plundering Pirates

- No Electronic Theft Act of 1997 (1997).
- Himanen, Pekka. “The Hacker Work Ethic,” in *The Hacker Ethic* (New York: Random House, 2001).
- RIAA, “Who Music Theft Hurts,” 2012, http://www.riaa.com/physicalpiracy.php?content_selector=piracy_details_online.

October 17th

Contesting Copyright Law

- Logie, John. “Hackers, Crackers, and the Criminalization of Peer-to-Peer Technologies,” *Peers, Pirates, and Persuasion: Rhetoric in the Peer-to-Peer Debates*. (West Lafayette: Parlor Press, 2006), 22-44.
- Gillespie, Tarleton. “Characterizing Copyright in the Classroom: The Cultural Work of Anti-Piracy Campaigns,” *Communication, Culture & Critique* 2 (2009), 274-280, 283-309.

October 22nd

Military Necessity from World War II to September 11th

- *Ex parte Quirin*, 317 U.S. 1 (1942) (Excerpts).
- 18 U.S.C. § 2340 (2012)

October 24th

Legal Definitions, Torture, and the War on Terror

- Vicaro, Michael. “A Liberal Use of ‘Torture’: Pain, Personhood, and Precedent in the US Federal Definition of Torture,” *Rhetoric and Public Affairs* 14 no. 3 (2011): 401-425.

- Hasian Jr., Marouf. "Introduction," *In the Name of Necessity: Military Tribunals and the Loss of American Civil Liberties* (Tuscaloosa: University of Alabama Press, 2005), 1-9 (Recommended)

October 29th

Locating Citizenship

- California Proposition 187 (1994).
- Minutemen Project (2012)
- Ono, Kent and Sloop, John. "The Proliferation of Enemies to the National Body," in *Shifting Borders: Rhetoric, Immigration, and California's Proposition 187* (Philadelphia: Temple University Press, 2002), 26-43.

October 31st

Bodies and Borders

- Hasian Jr., Marouf and Delgado, Fernando. "The Trials and Tribulations of Racialized Critical Rhetorical Theory: Understanding the Rhetorical Ambiguities of Proposition 187," *Communication Theory* 8 (1998), 245-252.
- Ono, Kent. "Borders that travel: Matters of the Figural Border," in *Border Rhetorics: Citizenship and Identity on the US-Mexico Frontier*, ed. D. Robert DeChaine (Tuscaloosa: University of Alabama Press, 2012), 19-32.

November 5th

The Politics of the Hoodie

- George Zimmerman Trial, Defense Closing Argument, 2013, <http://www.youtube.com/watch?v=7ZIIVkOzwzY> (Excerpts)
- George Zimmerman Trial, Prosecution Closing Argument, 2013, <http://www.youtube.com/watch?v=p2jLnUI0l4E> (Excerpts)
- Photos, Axiom Amnesia, 2013, <http://trayvon.axiomamnesia.com/trayvon-zimmerman-case-photos/>

November 7th

Law and Visuality

- ABC News, "Smithsonian Eyes Trayvon Martin Hoodie for Museum Exhibit," August 1, 2013, <http://abcnews.go.com/US/smithsonian-eyes-trayvon-martin-hoodie-museum-exhibit/story?id=19836962>
- Jeffers, Chike. "Should Black Kids Avoid Wearing Hoodies?" in *Pursuing Trayvon Martin: Historical Contexts and Contemporary Manifestations of Racial Dynamics* (Plymouth: Lexington Books, 2013), 121-140.

*****THESIS STATEMENT AND OUTLINE DUE*****

November 12th	Law, Performance & Popular Culture <ul style="list-style-type: none"> • Sherwin, Richard. “Screening Reality: The Vanishing Line Between Law and Popular Culture,” in <i>When Law Goes Pop</i> (Chicago: University of Chicago Press, 2002), 15-41. • Hariman, Robert. “Performing the Laws: Popular Trials and Social Knowledge,” in <i>Popular Trials: Rhetoric, Mass Media, and the Law</i>, ed. Robert Hariman (Tuscaloosa: University of Alabama Press, 1990), 17-18, 28-30.
November 14th	Thesis Statement & Writing Workshop
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November 19th	Responses to Law and Literature <ul style="list-style-type: none"> • Posner, Richard. <i>Law and Literature: Third Edition</i> (Cambridge: Harvard University Press, 2009), 21-34. • Aune, James Arnt. “On the Rhetorical Criticism of Judge Posner,” <i>Hastings Constitutional Law Quarterly</i> 23 (1996): 658-669.
November 21st	Mini-Conference
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November 26th	***THANKSGIVING BREAK***
November 28th	***THANKSGIVING BREAK***
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December 3rd	Mini-Conference
December 5th	Mini-Conference
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December 10th	Mini-Conference
December 12th	Mini-Conference & Course Wrap Up
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December 16th	***FINAL PAPERS DUE @ 10:00am***