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JUVENILE LAW SEMINAR

Fall 2023

**Professor:** Joe O’Leary (he/him)

**Phone:** 503-319-2356

**Email:** joleary@lclark.edu

**Class:** Fridays 9:00am to 11:00am

**Location:** MacLaren Youth Correctional Facility, 2630 N. Pacific Highway, Woodburn OR

**Website:** [www.allrise-class.com](http://www.allrise-class.com)

**SYLLABUS**

**Course Objective**: The goal of this class is to provide a solid introduction to the legal, political and practical issues around youth involved in the juvenile legal system. We will review the history of the juvenile legal system in the United States and Oregon, cover basic court processes and dispositions in delinquency matters, and spend time exploring the overlay of adult criminal legal issues as they apply to youth. We will also discuss a variety of related topics including racial and ethnic disparities in the legal system; the application of the rights of crime victims in juvenile matters; adolescent brain development and some unique investigative and representation issues.

Classes will be held at the MacLaren Youth Correctional Facility, Oregon’s largest youth correctional facility, and the participants will be both law students from Lewis & Clark Law School and students in the custody of the Oregon Youth Authority. Please keep in mind that OYA residents are largely no different than any other young persons in the community. There should be no disparate or unfair treatment on anyone based on their legal/incarceration status, background, gender, age, race, religion, sexual orientation, and disability. This class is intended to enhance the learning experience for all attendees. Health related restrictions may require some classes to be held online, and at times may require students to wear facial coverings while inside the perimeter of the facility.

Please note that this syllabus is an approximation and subject to change based on availability of several special guest speakers. Specific readings and due dates will be clarified in class and/or by email from me as we go.

**Attendance Policy**: In-class participation is consistently expected. Unexcused absences will result in lowering of for final your final grade by one level (ie A to B). Students are expected to inform me in advance of class (preferably at least 24 hours in advance) if you plan to be absent, or the day of the absence if it is caused by an unforeseen emergency.

**Expectations on Participation** To create a space for open, productive and respectful class discussion and dialogue that encourages learning and growth is a responsibility we all share. For example, ice breakers will be utilized to facilitate appropriate socializing, and we will have small breakout groups throughout the class so that new perspectives from all students can be shared. I will do my best to encourage participation and regulate over-participation, but students play a critical role in making the class environment one in which everyone feels comfortable and safe to engage. We will sometimes cover controversial and sensitive topics that touch on events and circumstances that may be traumatic and triggering- space can be taken as necessary. All views are welcome and constructive and respectful questions and disagreement to aid learning are encouraged. Preparation, attendance and respectful participation is expected of everyone.

All students are expected to abide by the separate Rules of Engagement agreement. Law students must also abide by the OYA Facility Level 1 Access agreement (Form YA 4007). These conditions will be will be applied at all times. Violations could result in a failing grade. More importantly, because of the uniqueness of this learning experience, we have a greater responsibility to follow the rules so that this will not be the last such opportunity for future students. Do not let this discourage you from creating a positive experience for all students participating. Genuine and professional communication is highly valued in this course and recommended.

**Readings:** Required readings are noted for specific classes. Some required readings are for law students only – these are optional for OYA students. All students should be able to demonstrate through discussion that you read and thought about the material. I will also include optional readings that may be of interest or otherwise aid in students’ growth in understanding. You are not obligated to read the items marked optional, but some may help spur ideas for your reflection papers or final paper. Demonstrating your familiarity will be taken into account for class participation.

**Assignments and Grading**: The assignments for this course carry the following grade values for students:

* Reflection Papers: 25%
	+ Two reflection papers will be assigned over the term. These are not a summary of the readings or class discussion, but rather an opportunity to demonstrate that the material was read and digested. Reflection papers should be submitted in Microsoft Word format, and should be no more than 4 pages. Papers should be double spaced 12 -point Times New Roman or Calibri font and have 1-inch top, bottom, left, and right margins. Extra weight will be given to reflection papers that reference specific reading assignments and speaker content from class, but formal citations are not expected.
* Discussion Leaders: 25%
	+ For several classes I will assign “discussion leaders” to help lead the conversation on the week’s topic. These individuals are expected be familiar enough with the week’s reading, or specifically assigned cases, to be able to introduce it, describe key points or takeaways and help facilitate discussion in class.
* Class Participation and In-Class Presentations: 25%
	+ Be present and meaningfully participate in discussion. Unexcused absence will result in the final grade being lowered as referenced above.
	+ Students will be expected to provide a brief class presentation at the end of the term. Details to follow.
* Final Paper: 25%
	+ Law students will be expected to submit a persuasive analysis paper that is a critical exploration of an issue related to juvenile law. Law students’ topics will need to include legal analysis, though not exclusively. The paper should also include independent research on the topic chosen. Paper topics should be discussed with and approved by me no later than November 1. Final papers should be submitted in Microsoft Word format, and no more than 20 pages, but no less than 5 pages. Papers should be double spaced 12-point Times New Roman or Calibri font and have 1-inch top, bottom, left, and right margins. Late submissions will be lowered one third of a grade level (ie: a B will convert into a B-).

**Accommodation**: Law students who have a disability, as defined by the Americans with Disabilities Act, may seek an accommodation through the Office of Student Accessibility (access@lclark.edu), which is located on the undergraduate campus. Students whose religious practices may impact their academic schedule, may seek accommodation through Associate Dean for Student Affairs Libby Davis (eadavis@lclark.edu). Law students, for questions regarding any type of accommodation, please contact Associate Dean Libby Davis. OYA students, see me.

**Support for a Safe and Collegial Learning Environment**: Lewis & Clark Law School promotes a learning environment free of bias and one which allows each student to approach their education to their fullest ability. If you experience a situation in this class that concerns you, please bring the matter to my attention or to the attention of Associate Dean for Student Affairs, Libby Davis (eadavis@lclark.edu). You may also raise concerns through the OYA Professional Standards Office which can be reached at ProfessionalStandardsOffice@oya.Oregon.gov or 1-800-315-5440.

In addition, there are a number of institutional policies that reflect the institution’s commitment to a safe and collegial learning environment. Support and a reporting process is available for any community member who experiences sexual misconduct or harassment, hate- or bias-motivated conduct. You can report matters through the institutional process or through Associate Dean Libby Davis (eadavis@lclark.edu) or the OYA Professional Standards Office at ProfessionalStandardsOffice@oya.Oregon.gov or 1-800-315-5440.

**Support If You Are Struggling**

Our faculty and Law School leadership know that life and law school are difficult at any

time. It is normal for us to have stress and be out of our comfort zones as we learn and

practice law. Often we are able to manage that stress and meet our goals. However, we

also know that many in our profession experience challenges, including challenges with

mental and emotional health. If you are struggling, we can help. The work of Libby Davis, Associate Dean of Student Affairs, includes working with students experiencing personal challenges. Our School has others whose responsibilities include academic and personal support, and Dean Davis or I can direct you to them. Our law school community wants you to be well. If you are struggling academically or personally, please let us know. OYA students, this goes for you too – please raise any concerns with me directly and I’ll help get you connected with the appropriate supports.

**Miscellaneous**: I will primarily rely on e-mail to communicate with students. You can also text me if something is time sensitive. Additionally, I post things to the class website at [www.allrise-class.com](http://www.allrise-class.com), which I encourage you to check between classes. OYA students, you have permission to contact me by phone through any Living Unit Leadership Team member or designated staff at my cell number above. If I haven’t answered your email within 24 hours, please call or text me. You are always welcome to call me or make an appointment to speak before or after class if planned in advance.

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| **SCHEDULE OF CLASSES***Please note: the following schedule is subject to change as the semester progresses.* |
| **CLASS # & DATE** | **#1 (9/1)** |
| **TOPIC** | **Introduction and Context** |
| **DESCRIPTION** | For our first class, the cohorts will meet separately to discuss perceptions, individual expectations and the rules of engagement. An overview of the course will be presented.  |
| **REQUIRED READINGS** | No readings are required for the first class. |
| **CLASS # & DATE** | **#2 (9/8)** |
| **TOPIC** | **History of Juvenile Justice**  |
| **DESCRIPTION** | Overview of the historical and racial justice context of juvenile court and the evolving purposes of juvenile justice. |
| **REQUIRED READINGS** | * Lacey, C. (2013). Racial Disparities and the Juvenile Justice System: A Legacy of Trauma. Los Angeles, CA, and Durham, NC: National Center for Child Traumatic Stress. (<https://www.nctsn.org/sites/default/files/resources/racial_disparities_and_juvenile_justice_system_legacy_of_trauma.pdf>)
* National Research Council. (2013). Reforming Juvenile Justice: A Developmental Approach. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. -- Just chapter 2 please! (<https://www.nap.edu/read/14685/chapter/4> )
* ORS 419C.001-005 (<https://www.oregonlegislature.gov/bills_laws/ors/ors419c.html>)
* Henning, Kristen. The Rage of Innocence – How America Criminalizes Black Youth, Vintage Books, (2021). Chapter 2 Toy Guns, Cell Phones and Parties: Criminalizing Adolescent Black Play.
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| **CLASS # & DATE** | **#3 (9/15)** |
| **TOPIC** | **In Re Gault - Due Process Protections Applied to Juvenile Court** |
| **DESCRIPTION** | Discussion of the constitutional domestication of juvenile court. |
| **REQUIRED READINGS** | * *In Re Gault*, 387 U.S. 1 (1967) (<https://supreme.justia.com/cases/federal/us/387/1/>)
* Holland, John (2017) “A Look Back at the Juvenile Justice System Before There Was Gault,” Juvenile Justice Information Exchange. (<https://jjie.org/2017/05/15/a-look-back-at-the-juvenile-justice-system-before-there-was-gault/>)

Optional Reading: * Reed, Amos E. (1968) "Gault and the Juvenile Training School," Indiana Law Journal: Vol. 43: Iss. 3, Article 7. (<https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2409&context=ilj>)
* HB 2616 (2017) (<https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/HB2616>)
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| **CLASS # & DATE** | **#4 (9/22)** |
| **TOPIC** | **The Rise and Fall of Mandatory Minimums and Automatic Waiver for Oregon Youth** |
| **DESCRIPTION** | The origin of and debate around automatic waiver and mandatory minimum sentencing of juveniles. Overview of juvenile sentencing reform in Oregon.Guest Speakers: Former Oregon Governor Ted Kulongoski; Addie Smith, Attorney at Law and former Counsel to Oregon House and Senate Judiciary Committees |
| **REQUIRED READINGS** | * 1995 Juvenile Justice Task Force Report (<https://www.dropbox.com/scl/fi/751srch0yfpnpfw9mpjz1/JJTaskForce-Final-Report.pdf?rlkey=8y7mux08ykv3e2wmyr0q65gno&dl=0>)
* Measure 11 and Measure 10 voter’s pamphlet (<http://library.state.or.us/repository/2010/201003011350161/S-8V94-2-994-9.pdf>)
* SB 1008 (2019) (<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB1008/Enrolled>)
* SB 1005 (2019) (<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB1005/Enrolled>)

Optional Reading: * Misguided Measures, (<https://safetyandjustice.org/wp-content/uploads/2017/09/Misguided_Measures.pdf>)
* Spare the Jail, Spoil the Child? (<http://www.wweek.com/portland/article-22512-spare-the-jail-spoil-the-child.html>)
* <https://www.registerguard.com/opinion/20190428/reasonable-changes-to-juvenile-punishments-for-serious-crime>
* <https://amp.statesmanjournal.com/amp/1130450001?__twitter_impression=true&fbclid=IwAR3991oUxpS0CTPlnrJ5XDmRHuhb7Sbd4SjEQIA_bsBJt6NIsEaGGYmzi7g>
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| **CLASS # & DATE** | **#5 (9/29)** |
| **TOPIC** | **Statutory Basics in Oregon’s Juvenile Courts** |
| **DESCRIPTION** | Review of Oregon’s Juvenile Code and practices, pre-adjudicative, adjudicative and dispositional processes.Guest Speaker: Clackamas County Juvenile Department Christina McMahon |
| **REQUIRED READINGS** | * ORS 419C.080 - through the end of the chapter (<https://www.oregonlegislature.gov/bills_laws/ors/ors419c.html>) I know this is a lot, but you don’t need to do a detailed review of all of it. I want you to pay closer attention to sections under the following headers: *Custody, Detention, Authorized Diversion Programs, Formal Accountability Agreements, Petition, Criminal Procedure Laws, Waiver, Adjudication, Disposition, and Authority of Court over Parent or Guardian.*
* Youth Faces the Law: A Juvenile Rights Handbook, Multnomah Bar Association Young Lawyers Section (2011) (<https://www.courts.oregon.gov/programs/inclusion/Documents/juvrights.pdf>) pages 31-68
* *State ex rel Juv. Dept. v Reynolds,* 319 Or 560 (1993). (<https://law.justia.com/cases/oregon/supreme-court/1993/317-or-560.html>).
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| **FIRST REFLECTION PAPER DUE: 6th of OCTOBER** |
| **CLASS # & DATE** | **#6 (10/6)** |
| **TOPIC** | **Waiver into “Adult” Court** |
| **DESCRIPTION** | Judicial and Automatic Waver of Juveniles into Adult CourtGuest Speaker: K.O. Berger, Attorney at Law |
| **REQUIRED READINGS** | * *State v. J.C.N-V* (<https://law.justia.com/cases/oregon/supreme-court/2016/s063111.html>)
* ORS 419C.340-374 (<https://www.oregonlegislature.gov/bills_laws/ors/ors419c.html>)
* ORS 137.700-707 (<https://www.oregonlegislature.gov/bills_laws/ors/ors137.html>)

  Optional Reading: * *Kent v. United States*, 383 U.S. 541 (1966) (<https://supreme.justia.com/cases/federal/us/383/541/>)
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| **CLASS # & DATE** | **#7 (10/13)** |
| **TOPIC** | **Constitutional Considerations - Cruel and Unusual Punishment** |
| **DESCRIPTION** | Constitutional limitations on punishment of juveniles and the development of the constitutional doctrine that youth are different from adults for sentencing. |
| **REQUIRED READINGS** | * Garabino, James. “Miller’s Children: Why Giving Teenage Killers a Second Chance Matters for All of Us,” University of California Press (2018). Preface and Chapter 1
* *Roper v. Simmons*, 543 U.S. 551 (2005) (<https://supreme.justia.com/cases/federal/us/543/551/>)
* *Graham v. Florida*, 560 U.S. 48 (2010) ( <https://supreme.justia.com/cases/federal/us/560/48/>)
* *Miller v. Alabama*, 567 U.S. 460 (2012) (<https://supreme.justia.com/cases/federal/us/567/460/>)
* *Montgomery v. Louisiana,* 577 U.S. \_\_ (2016) (<https://supreme.justia.com/cases/federal/us/577/14-280/>)
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| **CLASS # & DATE** | **#8 (10/23 TBD – no class on 10/20)** |
| **TOPIC** | **Miller and Montgomery Get Muddled** |
| **DESCRIPTION** | A conversation with Judge Jim Egan, Chief Judge of the Oregon Court of Appeals and Michelle Egan. |
| **REQUIRED READINGS** | * <https://www.motherjones.com/crime-justice/2019/09/the-beltway-sniper-is-now-the-center-of-a-debate-about-juvenile-lifers/>
* https://www.statesmanjournal.com/story/news/crime/2019/09/17/oregon-attorney-general-supreme-court-review-sentences-salem-murderers/2288045001/
* https://slate.com/news-and-politics/2021/04/brett-kavanaugh-sonia-sotomayor-juvenile-life-without-parole.html
* https://www.huffpost.com/entry/kip-kinkel-is-ready-to-speak\_n\_60abd623e4b0a2568315c62d
* *Kinkel v. Persson*, 363 Or 1 (2018) (<https://law.justia.com/cases/oregon/supreme-court/2018/s063943.html>)
* *White v. Premo*, 365 Or. 21 (2019) (<https://www.documentcloud.org/documents/6111624-WHITESUPRCOURTORRULING.html>)
* *Jones v. Mississippi*, 141 S. Ct. 1307 (2021) (https://www.supremecourt.gov/opinions/20pdf/18-1259\_8njq.pdf)
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| **CLASS # & DATE** | **#9 (10/27)** |
| **TOPIC** | **Adolescent Brain Science and the Developmental Approach** |
| **DESCRIPTION** | Discussion of adolescent brain science as applied to the juvenile legal system.Guest Speaker: Dr. Shannon Myrick, Chief of Oregon Youth Authority Development Services |
| **REQUIRED READINGS** | * Reforming Juvenile Justice, A Developmental Approach chapter 4,
* <https://www.nap.edu/read/14685/chapter/6>.
* Decker, Tim (2015) “Starting From a Different Place: the Missouri Model,” NYU Press (<https://www.dropbox.com/s/8tw7xjttfo5buz7/Starting%20from%20a%20Different%20Place.pdf?dl=0>)
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| **CLASS # & DATE** | **#10 (11/3)** |
| **TOPIC** | **Racial and Ethnic Disparities**  |
| **DESCRIPTION** | A discussion about racial and ethnic disparities and bias in juvenile justice.Co-Instructor: Stephen Fowler, Restorative Roots Project Manager at Insight Alliance |
| **REQUIRED READINGS** | * Marsh, Shawn, “The Lens of Implicit Bias” Juvenile and Family Justice Today (Summer 2009). (<http://www.ncjfcj.org/sites/default/files/ImplicitBias.pd>f)
* Reforming Juvenile Justice, A Developmental Approach chapter 8.
* <https://www.nap.edu/read/14685/chapter/10>
* Bell, James R. (2016) “Repairing the Breach: A Brief History of Youth of Color in the Justice System. (https://www.courts.ca.gov/documents/BTB24-4H-1.pdf)
* Harvard Implicit Bias Test (<https://implicit.harvard.edu/implicit/takeatest.html>)
* Buzzfeed Presents: Do you have racial bias <https://www.youtube.com/watch?v=cykcpqSpVZo>
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| **CLASS # & DATE** | **#11 (11/10)** |
| **TOPIC** | **Juveniles and the Rights of Victims** |
| **DESCRIPTION** | Overview of the history of the role of victims in court processes and the statutory and constitutional rights of victims in juvenile court matters. Discussion of the unique role of prosecutors in handling juvenile matters.Guest Speaker: Rosemary Brewer, Director of Oregon Crime Victims Law Center |
| **REQUIRED READINGS** | * Oregon Constitution Article 1 Section 42 (<https://www.oregonlegislature.gov/bills_laws/Pages/OrConst.aspx>)
* ORS 419C.450 restitution (<https://www.oregonlegislature.gov/bills_laws/ors/ors419c.html>)
* Oregon DOJ Victims’ Rights In Juvenile Justice Guide (<https://www.doj.state.or.us/crime-victims/victims-rights/requesting-your-rights-in-a-juvenile-delinquency-proceeding/>)
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| **SECOND REFLECTION PAPER and FINAL PAPER TOPICS DUE: 17th of NOVEMBER** |
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| **CLASS # & DATE** | **#12 (11/17)** |
| **TOPIC** | **Representing and Prosecuting Kids** |
| **DESCRIPTION** | Practical and ethical issues for lawyers practicing in juvenile court and representing and prosecuting children, and some unique investigative issues applied to youth.Guest Speakers: *Jennifer McGowan*, Supervising Attorney, Youth Rights & Justice; and *Eric Zimmerman*, Senior Deputy District Attorney, Multnomah County District Attorney’s Office. |
| **REQUIRED READINGS** | * Role of Juvenile Defense Counsel in Delinquency Court, National Juvenile Defender Center (Spring 2009). (<http://njdc.info/wp-content/uploads/2013/11/NJDC-Role-of-Counsel.pdf>)
* Specific Standards for Representation in Juvenile Dependency Cases, (June 23, 2017) Oregon State Bar (<https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR3.pdf>)
* <https://www.aclu.org/know-your-rights/what-do-when-encountering-police-youth>
* *J.D.B v North Carolina*, 564 U.S. 261(2011) (<https://supreme.justia.com/cases/federal/us/564/261/>)
* https://www.vice.com/en/article/4av4xd/how-cops-lie-to-kids-in-interrogationsand-get-away-with-it
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| **CLASS # & DATE** | **Class #13 (12/1)** |
| **TOPIC** | **The Finale** |
| **DESCRIPTION** | A conversation with Judge Jim Egan, Chief Judge of the Oregon Court of Appeals and Michelle Egan, and a visit from a former student! |
| **REQUIRED READINGS** | None |
| **FINAL PAPERS DUE: 8th of DECEMBER 5:00 pm** |