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Democratic Policing: Fall 2015 Syllabus (Working Draft)

This seminar will consider how principles of democratic governance can be brought to bear on the various problems facing policing in the United States. The seminar—closely affiliated with the new Policing Project at NYU Law—will also focus on the basics of building a social change organization, from choosing coalition partners to selecting cases for litigation. As the syllabus indicates, we will have several visitors joining us throughout the semester. Class guests will not lecture, but will join in class discussion. This is an early draft of the syllabus, so things may change.

Students in the seminar will be asked to participate in various writing projects, including some combination of writing a blog post, drafting a policing rule (with explanation), working on a model brief, or working on a cost-benefit analysis of a policing rule. Your grade will depend on your writing and your participation in the seminar. We will offer more information about that, as well as about writing for those who want substantial writing credit, at the first session.

September 1: The Problems with Policing

This class will introduce the main themes of the seminar; discussion will focus on the various problems that plague policing, with an emphasis on problems of oversight, standardless discretion, implicit racial bias, and community mistrust.

Readings:

- Atlantic, *Eyes over Compton*
- USA Today, *US Secretly Tracked Billions of Calls for Decades*
- Salon, *One Nation Under SWAT*
- Excerpts from 2015 DOJ Ferguson Report
- Vera Institute, *Coming of Age with Stop and Frisk* -- Excerpts

September 8: The Pitfalls of Existing Governance Models

This class will focus on a variety of governance models, from formal oversight through inspectors general, civilian review boards, and direct political control, to various informal mechanisms that fall under the umbrella of “community policing.”

Class guest: Vanita Gupta, Acting Assistant Attorney General, Civil Rights Division, Dept. of Justice

Readings:

- Schulhofer et al., *American Policing at a Crossroads* – Intro + Parts II & III (re: procedural justice)
- Walker, *The New World of Police Accountability* – Excerpts on CCRBs, Early Intervention Systems, Auditor Model
- Darius Charney, Testimony before the Task Force on Policing re: Civilian Oversight
- Brennan Center, *Proposal for NYPD Inspector General* (Skim)

September 15: Policing Governance: Constitutional and Administrative Law

This class will examine how administrative law deals with problems of discretion, transparency, and accountability in all other areas of executive government, and consider the possible difficulties with applying an administrative model to policing governance.

Readings:

- *EPIC v. Dept. of Homeland Security* (D.C. Cir. 2011)
- Friedman & Ponomarenko, *Democratic Policing* – Parts I, II, IV
- Alschuler & Schulhofer, *Antiquated Procedures or Bedrock Rights* – Intro + Part IV (re defining a “community” to which police accountable)
- Freeman, *Collaborative Governance in the Administrative State* – Part I.A.I (rulemaking critique)

September 22: NO CLASS (Yom Kippur)

September 29: Drafting Legislative Rules

This class considers the difference between rules and standards, as well as the potential difficulties of drafting rules to address the problem of police discretion.

Class guest: Sheldon Krantz, Senior Fellow, Georgetown Law (Mr. Krantz was part of a major rulemaking effort in Boston)

Readings:

- *Ohio v. Robinette* (1996)
- *State v. Carty* (N.J. 2002)
- Kaplow, *Rules vs. Standards – An Economic Analysis* – Intro
- Krantz, *Police Policymaking, the Boston Experience* (Excerpts)

October 6: Conducting Cost-Benefit Analysis

This class will introduce students to the basic principles of cost-benefit analysis and consider how cost-benefit analysis might be applied to the policing context.

Readings:

- Vera Institute, *Advancing the Quality of Cost-Benefit Analysis* – Intro + Sections I & III

- Heaton, *Hidden in Plain Sight*
- Miller et al., *Costs and Benefits of a Community Sobriety Checkpoint Program*

October 13: Assuring Compliance (The Problem of Remedies)

This class will consider proposed alternatives to existing judicial remedies of exclusion and money damages, and consider which if any of these proposals can serve as a model for assuring police compliance with administrative rules.

Readings:

- Estreicher & Weick, *Opting for a Legislative Alternative to the Exclusionary Rule* – Intro + Parts I, III, IV
- Caldwell & Chase, *Unruly Exclusionary Rule* – Part III (International Perspective)
- *Herring v. United States* (2009)
- *Sugar Cane Growers* (D.C. Cir. 2002) – Skim Part I, Read III
- *American Airlines Inc.* (5th Cir. 2000) – Skim Part I, Read III.A.1

October 16: MAKE-UP CLASS: Building a Social Change Organization

This session will examine the various strategic choices involved in building a successful social change organization, from defining the mission to finding partners to work with, picking projects and setting priorities.

Class Guest: Connie Rice, Co-Founder, LA Advancement Project

Readings:

- Rice, *Power Concedes Nothing* – Excerpts
- Additional readings TBA

October 20: The Challenges of Social Change Litigation

This class will consider the advantages and potential limitations of pursuing social change through impact litigation in the courts; topics will include selection of test cases and partners, legal hurdles (standing, mootness, remedy), the use of public advocacy and media, and the relationship between litigation and legislative or executive action.

Class Guest: TBA

Readings:

- Tushnet, *NAACP's Legal Strategy* – Conclusion
- Additional readings TBA

October 27: Effecting Legislative Change

This class will focus on the difficulties for effecting legislative change, and the strategies to be effective.

Class Guest: Katharine Huffman, Raben Group

Readings:

- Donald Dripps, *Criminal Procedure, Footnote Four*
- William Stuntz, *The Political Constitution of Criminal Justice* – Intro + Parts I + II.A
- Rachel Barkow, *The Political Market for Criminal Justice*

November 3: Crafting a Successful Social Media Campaign

This class will consider what it takes to craft a successful social media campaign. We will also discuss writing blog posts and critique the new Policing Project website.

Class Guest: TBA

Readings/Assignment:

- Spitfire, *Discovering the Activation Point* -- Excerpts
- Spitfire, *Digital S.M.A.R.T.S.* -- Excerpts
- Browse Spitfire Pinterest page of successful media campaigns—pick two you think particularly stand out and be prepared to discuss why.

November 13: FRIDAY CLASS: Round Table #1: Model Rules

Discussion of draft model rules. Students who draft model rules as one of their semester assignments will have an opportunity to present their rules and get feedback from a panel of law enforcement personnel.

November 17: Round Table #2: Litigating Policing Governance

Students will have an opportunity to present draft briefs or related projects and get feedback from a panel of attorneys and judges. Class also will discuss potential strategies for advancing through litigation the notion that policing ought to be governed by legislative or administrative rules.

November 24: Round Table #3: Cost-Benefit Analysis

Students working on cost-benefit related projects will have an opportunity to present draft papers and get feedback from a panel of criminologists and experts on regulatory cost-benefit analysis. We will discuss further how cost-benefit principles may be used to evaluate the efficacy and rationality of various policing practices

December 1: The Hardest Problems: Revisited

In this final class we will return once more to the “hardest” problems identified throughout the course (including racial bias, public choice, scaling rulemaking procedures for local communities and remedies. We will discuss

both strategies for overcoming these obstacles as well as specific initiatives that the Policing Project might pursue in the future.