American Criminal Law and Justice

To: Students in the Course

From: Professor Michael Vitiello

I have designed many of the classes to include some lecturing, some discussion, and some simulation activities. During the course, I may make some changes to this syllabus, depending on several factors, including the interest of members of the class in exploring other topics.

Where possible, I have provided links to the reading material. When that is not possible, I have provided documents in a file that you can gain access to.

1. Thursday, May two, class one: an introduction to the American criminal justice system

In advance of class, watch this video about the Italian prosecutor of American college student Amanda Knox. It will make a helpful comparison to the American criminal justice system. The video may be found on YouTube: https://www.youtube.com/watch?v=8GHgaplaIsE

Also, for class, read Danielle Lenth, *Life, Liberty, and the Pursuit of Justice: A Comparative Legal*, 45 McGeorge L. Rev. 347 (2013), which can be found at this link: <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1012&context=mlr>

We will end the class with a short demonstration of a motion to dismiss Amanda Knox’s statement if she were being tried in the United States.

2. Friday, May 3, class two: More on the American criminal justice system and a discussion of punishment in the United States

The first discussion will be about guilty pleas and plea bargaining in the United States. Here is the reading for that topic: Michael Vitiello, *Bargained for Justice: Lessons from the Italians?* 48 U. Pac. L. Rev. 247 (2017), which can be found at this link: <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1298&context=facultyarticles>

Also read Guilty Plea Guidelines, available in the packet of material that I have made available.

Also, during class, you will engage in a simulated plea-bargaining session. Half of the class will serve as defense attorneys and the other half as prosecutors. You will have a case file providing you with information about your case. The goal for defense attorneys will be to get the lowest sentence and for prosecutors to get the highest sentence. There may be a small prize for the best bargainer on each side.

We will also begin discussing criminal sentencing in the United States (other than the death penalty). *Bargained for Justice* and the Supreme Court’s opinion in *Ewing v. California,* which is available as part of the packet of material that I have made available.

3. Thursday, May 9, class three: More on terms of imprisonment

Read Vitiello, *Principles of Punishment,* Chapter One in *Criminal Law Simulations*. It is available in the packet of material that I have made available. Class three will be based on this simulation. Here are the instructions for that exercise: Instead of following the instructions on how to use the material in Chapter One in *Criminal Law Simulations*, assume that you are the law clerk to the judge before whom the hypothetical case, *People v. Weems*, is pending. The judge asks you to be prepared to advise him on what sentence to impose. The judge also explains that he will expect you to justify that decision in light of the purposes of punishment. Also, assume that, in addition to imposing jail or prison time, the judge has the discretion to put the defendant on probation with a suspended sentence (to be served if the defendant violates terms of probation).

4. Friday, May 10, class four: The Death Penalty

The overarching issue for class four is whether a state should have the death penalty and then, if so, who should qualify for the death penalty.

We will start our discussion with the document called “Three murder cases for class four.” It is available in the packet of material that you can access.

In addition to preparing the three murder cases document, also read the excerpt from the United States Supreme Court case *Coker v. Georgia* and the two articles listed below. The excerpt from *Coker v. Georgia* is available in the packet of material that you have access to.

David Gray, *Retributivism, Confrontation, and the Death Penalty: Some Skepticism about David Markel’s Skepticism,*

<http://texastechlawreview.org/wp-content/uploads/51-Book-1_Gray.PUBLISHED.pdf>

Michael Vitiello, *A Healthy Dose of Agnosticism about the Death Penalty,*

<http://texastechlawreview.org/wp-content/uploads/51-Book-1_Vitiello.PUBLISHED.pdf>

5. **Wednesday, May 15, class five**: More on the death penalty (Aula II)

Read the Supreme Court’s opinions in *Payne v. Tennessee.* It is available as a separate document. After we discuss that case, we will use the Victims’ Impact Statement simulation also available as a separate document. The simulation material will give you an idea how victim impact evidence can influence juries to impose the death penalty.

6. Thursday, May 16, class six: The Victims’ Rights Movement in the United States

Michael Vitiello, selected chapters from *The Victims’ Rights Movement: What It Gets Right, What It Gets Wrong* (NYU Press 2023) (Chapters 1, 2, 3, 6, and 8 are available as separate documents)

Michael Vitiello, *Expanding Statutes of Limitations for Sex Crimes: Bad Public Policy,* 49 Diritto pubblico comparato ed europeo 4093 (2021).

7. Friday, May 17, class seven: Sex offenses

Alberto Cadoppi & Michael Vitiello, *A Kiss is Just a Kiss, or Is It? A Comparative Look at Italian and American Sex Crimes*, 40 Seton Hall L. Rev. 191 (2010). It is available at this link: <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1163&context=facultyarticles>

Rachel Van Cleave, *Sudden, Forced, Unwanted Kisses in the #MeToo Era: Why a Kiss is not “Just a Kiss” Under Italian Sexual Violence Law,* 96 U. Det. Mercy L. Rev. 627 (2019), which is also available at this link:

<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1863&context=pubs>

Michael Vitiello, *Punishing Sex Offenders: When Good Intentions Go Bad*, 40 Ariz. St. L. J. 651 (2008), which may also be found at this link: <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1599&context=facultyarticles>

Also, read the material captioned “Competing Views of a Modern Rape statute.” You can also find the document in the packet of material that I have made available.

8. Thursday, May 23, class eight: Modern sex offense statutes in the United States and hot button issues. Read the following two articles and then prepare the various hypotheticals below:

Stephen Schulhofer, *Consent: What It Is and Why It’s Time to Require It,* 47 U. Pac. L. Rev. 665 (2016), which can be found at this link: https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1132&context=uoplawreview

Aya Gruber, *Not Affirmative Consent,* 47 U. Pac. L. Rev. 665 (2016), which can be found at this link: <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1133&context=uoplawreview>

Also prepare the following problems:

I have chosen these examples because they demonstrate some modern trends in definitions of sex offenses and also because they present complex statutory construction problems. In construing the statutes, we will discuss how best to construe statutes considering the purposes of punishment.

1. Consider the following hypo in connection with the following sections of the Alabama sexual assault material. What if a defendant is charged with a violation of Alabama statute §13A-6-61(a)(2)? The defendant wants to introduce evidence that he was not aware that the other person was incapacitated (for example, some severely intoxicated individuals may appear to be able to consent). Is that evidence relevant to negate any element of the offense? The relevant statutory provision states: (a) A person commits the crime of rape in the first degree if he or she does any of the following:

(1) Engages in sexual intercourse with another person by forcible compulsion.

(2) Engages in sexual intercourse with another person who is incapable of consent by reason of being incapacitated.

[Section 13A-6-70 defines consent: (a) Unless otherwise stated, an element of every offense defined in this article is that the sexual act was committed without the consent of the victim. (b) Lack of consent results from either of the following: (1) Forcible compulsion. (2) Being incapable of consent.]

2. Consider the following hypo in connection with Alabama statute §13A-6-65(a)(1): Defendant admits that he engaged in an act of intercourse but believed that he had consent. After the act, he learned that the other person did not consent. Is his mistake legally relevant? Section 13A-6-65(a)(1) provides as follows: (a) A person commits the crime of sexual misconduct if he or she does any of the following: (1) Engages in sexual intercourse with another person without his or her consent.

3. A somewhat similar hypo to the previous example relates to §3124.1 in the Pennsylvania criminal code. Defendant engaged in an act of intercourse with the belief that he had consent. He did not. Is his mistake relevant under §3124.1? The statute provides “\* \* \* a person commits a felony of the second degree [punishable by a term not exceeding 10 years] when that person engages in sexual intercourse with a complainant without the complainant’s consent.”

9. Friday, May 24, class nine: This class will focus on blaming victims of crimes. Here the readings for that class:

Michael Vitiello, *Victim Blaming: When Is It Appropriate?* 41 Quinnipiac l. Rev. 37 (2022); which is also available in the packet of material that I have made available.

Gian Marco Caletti, *Can Affirmative Consent Save “Revenge Porn” Laws?* 25 Va. J.L. & Tech. 112 (2021), which also available at this link: <https://creep.projects.unibz.it/wp-content/uploads/2021/12/usa.Caletti.pdf>

10. Thursday, May 30, class ten: Marijuana in the US

Reading:

Chapter Two from Howard Bromberg, Mark Osbeck & Michael Vitiello, Marijuana Law: Cases and Material (draft from second edition) and Chapter 13, also from Howard Bromberg, Mark Osbeck & Michael Vitiello, Marijuana Law: Cases and Material. Those chapters are in the packet of material that I have made available.

Legal Consequences of Rescheduling Marijuana, <https://crsreports.congress.gov/product/pdf/LSB/LSB11105>

FDA Officials Recommend Reclassifying Pot, <https://hightimes.com/news/fda-officials-recommend-reclassifying-pot-under-schedule-iii-how-that-changes-everything/>

11. Friday, May 31, class eleven: Drug Policy: Beyond Marijuana

This discussion will focus on cutting edge efforts to reverse prohibitions against such drugs as LSD, MDMA (Ecstasy), and Psylocibin

Before class, if you do not have access to Netflix, I will try to set up a way for us to watch Netflix show How to Change Your Mind.

Reading: Dustin Marlan, Beyond Cannabis: Psychedelic Decriminalization and Social Justice, 23 Lewis and Clark L. Rev. 851 (2019), which is available at this link: <https://law.lclark.edu/live/files/28626-lcb233article3marlanwebsite.pdf>

Read these stories: <https://www.npr.org/2021/06/18/1007022652/oregons-pioneering-drug-decriminalization-experiment-is-now-facing-the-hard-test>

It’s Time to Start Studying the Downsides of Psychedelics [March 2022] found here:

<https://www.vice.com/en/article/m7vxm8/its-time-to-start-studying-the-downside-of-psychedelics>

Is the Psychedelic Therapy Bubble About to Burst? [August 2022] found here: <https://www.wired.com/story/psychedelic-hype-bubble/>

The Return of Psychedelics: Still Time to Prevent Tragedy [March 2021] found here: <https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2021.4.8>

Ethical and Legal Issues in Psychedelic Harm Reduction and Integration Therapy [April 2021] found here: <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-021-00489-1>

The Problem at the Heart of Modern Psychedelic Clinical Research [June 2021] found here: <https://newatlas.com/science/placebo-problem-blinding-modern-psychedelic-science/>

12. Thursday, June 6, class twelve: concluding session. In advance, I will solicit the views of members of the class to see if there are other topics that they would like to explore.