

**MOREHEAD STATE UNIVERSITY  
SPRING 2007**

**PLS 340: CRIMINAL LAW AND PROCEDURE**  
10:20 MWF1, 105 Rader

**PROFESSOR WILLIAM GREEN**

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**CRIMINAL JUSTICE IN A FREE SOCIETY**

Murder, the insanity defense, and the *Miranda* rule all testify to our great fascination with criminal justice. Our study of criminal law will be defined by a series of questions. Why is necessary to punish solicitation and conspiracy as inchoate crimes? How are homicide, assault, and rape defined as crimes against the person? What is the meaning of theft, burglary, arson, and robbery as crimes against property? Why does the law provide for the defenses of self-defense, consent, duress, and insanity?

A question of justice raised by Willard Gaylin in *The Killing of Bonnie Garland* will be a bridge between our study of criminal law to criminal procedure. Then we will explore two sets of questions. First, what is the meaning of the law of arrest, search and seizure, interrogations, confessions, preliminary hearings, and grand juries? Second, we will ask why is plea bargaining used to avoid trial, and for the cases that go to trial, what is the meaning of the defendant's trial rights, how are criminal cases tried, and why are they appealed?

A video of the real first degree murder trial of Robert Sandoval will tie the criminal law and procedure questions together by asking: why did Sandoval kill Arnold Botello with a turkey carving knife on Thanksgiving evening? Throughout the course you will also build an understanding of criminal law and procedure by analyzing judicial opinions, solving hypothetical problems, and as a mock jury, deciding the *Sandoval* case. You will also explore the paralegal's role and responsibilities in the criminal justice system.

**READINGS:**

The required readings for this course are the following:

James and Sandra McCord, *Criminal Law and Procedure for the Paralegal*, 3<sup>rd</sup> ed., 2006.

Willard Gaylin, *The Killing of Bonnie Garland*, 1995.

William Green, *Criminal Law and Procedure*, 13<sup>th</sup> ed., 2006. Available on the Blackboard course site.

The contents of Green are identified by an asterisk (\*) in the Assignments section. Other readings are identified with a number sign (#) and available on the Blackboard course site

**ASSIGNMENTS:**

**I. INTRODUCTION TO CRIMINAL LAW AND PROCEDURE: January 19**

McCord, Ch.1: "Foundations of Criminal Law," 3-17; and

Ch.2: "Administration of Justice and the Role of the Paralegal," 28-36.

\*Green, Charts on "General View of Criminal Justice System," "Kentucky Court System" and "Kentucky Felony Process."

\*Green, "Module Penal Code," 696-97, in R. Kent Rasmussen, ed., *Encyclopedia on Criminal Justice in the United States*, Salem Press, 2005.

**II. CRIMINAL LAW: January 23 – February 22**

**A. Classification and Elements of Crimes and Scope of Liability:**

McCord, Ch. 3: "Components of a Crime," 52-69. and *State v. Steenberg Homes*, 69-71

\*Green, Charts on "Degrees of Mental Fault, Proximate Cause or Causation," "Elements That May Be Essential in the Proof of a Crime," "Stages of Crimes," and "Persons Who May Be Held Criminally Liable."

\*Green, Criminal Law Discussion Question No.1.

**B. Inchoate Crimes:**

McCord, Ch. 6: "Inchoate and Organized Crimes," 186-90, 193-96, 197-200, 203-05, and Exhibit 6-3: Increments of Inchoate Crimes, 212-13; *Walters v. Maass*, 191-92; and *State v. Smith*, 201-03.

\*Green, Criminal Law Discussion Question 2 .

C. Crimes Against the Persons:

McCord, Ch. 4: "Crimes Against Persons," 78-88, 93-96, 102-08, and 116-20, Exhibit 4-3: Common Elements of Crimes, 128-30; *Lamb v. State*, 96-102; *State v. Tutton*, 113-14; *State v. Clabo*, 114-16; *People v. MacDonald*, 121; *State v. Butt*, 122-23.

\*Green, Criminal Law Discussion Questions 3&4.

D. Crimes Against Habitation and Property:

McCord, Ch. 4: "Crimes Against Habitation," 123-27; and , Exhibit 4-3: Common Elements of Crimes, 128-30.

McCord, Ch. 5: "Crimes Against Property," 138-46 and 148-50; Exhibit 5-7: Common Elements of Crimes, 176-78; *State v. Lewis*, 147-48; and *State v. Langford*, 150-52.

E. Defenses:

McCord, Ch. 7: "Defenses," 220-29, 232-39, 240-49. Exhibit 7-5: Defenses, 250-52; *People v. Goetz*, 229- 32; and *Pugh v. State*, 239-40.

\*Green, Chart on "When Insanity is Used as a Defense."

\*Green, Criminal Law Discussion Questions 5 & 7.

EXAM #1: February 27

III. CRIMINAL PROCEDURE: March 1 – May 3

A. Introduction

Gaylin, *The Killing of Bonnie Garland*, all.

#James W. McElhaney, "The Theory of the Case," 3-7, in his *Trial Notebook*, 1981.

#Herbert L. Packer, "Two Models of the Criminal System," in his *The Limits of the Criminal Sanction*, 1968.

B. Initial Procedures:

McCord, Ch. 8: "Intake and Drafting the Complaint," 264 and 267--80. *State v. Houck*, 264-67.

C. Arrest, Search, and Seizure:

McCord, Ch. 9: "Search and Seizure," 310-11, 314-16, 320-23, 327-29, 332-37, 339-43, 348-51, 353-57, and 364;

Exhibit 9-3: Exceptions to the Fourth Amendment Requirement for a Warrant, 351-53; *Katz v. U.S.*, 312-14;

*Whren v. U.S.*, 330-32. *Wyoming v. Houghton*, 337-39; *Michigan v. Sitz*, 343-48; and *U.S. v. Leon*, 357-63.

\*Green, *Kyllo v. U.S.*

\*Green, Criminal Procedure Discussion Questions 2 & 3

D. Confessions, Interrogations, and Identification Procedures:

McCord, Ch. 10: "Confessions and Pretrial Identification Procedures," 372-76 and 392-402.

\*Green, *Miranda v. Arizona Brewer v. Williams*, and *Arizona v. Fulminante*.

"Green, :*Miranda v. Arizona* (1966)," in R. Kent Rasmussen, ed., *Encyclopedia on Criminal Justice in the United States*, Salem Press, forthcoming, 2005.

\*Green, Criminal Procedure Discussion Question 4.

E. Pre-Trial Procedures:

McCord, Ch. 11: "Pretrial: Initial Appearance to Preliminary Hearing," 410-430 not including check lists; Application Assignment, 439; and Case 1: Kate Lamb, 18-19.

McCord, Ch. 12: "Pretrial: Grand Jury to Pretrial Conference" 444-47, 450-53, and 457-64; Application Assignment, 439; and Case 1: Kate Lamb, 18-19.

\*Green, *Brodenkircher v. Hayes*.

F. Trial Procedures:

McCord, Ch. 13: "Trial: Rights Procedures, and Tasks," 486-508.

The First Degree Murder Video: *Sandoval v. State*.

\*Green, *Sandoval v. State* Video Questions and *Sandoval v. State* Jury Instructions.

G. Post-Trial Procedures:

McCord, Ch. 14: "Sentencing, Punishment, and Review" 520-23, 528-39, and 543-52; *Gregg v. Georgia*, 524-28; and *Payne v. Tennessee*, 539-43.

IV. COURSE REVIEW: May 5

\*Green, "Self Assessment of Discussion Group Form," "Assessment of Discussion Group Member's Participation Form," and "Course Information Questionnaire Form."

EXAM #2: May 9 at 10:15.

## GENERAL COURSE STRUCTURE AND PROCEDURES:

This course will require you to analyze appellate court opinions, solve hypothetical legal problems, decide a first degree murder case, and then demonstrate these skills on exams. The use of these learning activities is based on Multiple Intelligences (MI) theory and learning strategies. To understand how MI will be used in this course, read my "The Bourgeois Gentlemen, Multiple Intelligences Theory, and Public Law Courses," *Law and Courts*, 11(2): 9-13 (2001) on page K-3-5. You will attend class on a prompt and regular basis and take attendance at every class meeting. You may not tape record any class meeting without my prior approval which will be limited to cases of documented medical necessity.

## COURSE GRADE:

There are 2 bases of your course grade. First, case analysis, answers to questions on readings, and group discussions are each 1/9 (11%) for a total of 1/3 of your course grade. Second, 2 exams, each 1/3 of your course grade. I will use a plus/minus scale to grade your course work and determine your course grade: A+=4.3, A=4.0, A-=3.7, B+=3.3, B=3.0, B-=2.7, C+=2.3, C=2.0, C-=1.7, D+=1.3, D=1.0, D-=.7

1. CASE ANALYSIS AND GROUP DISCUSSIONS: The first basis for your course grade is two activities: your analysis of judicial opinions and your participation in discussion group activities.

A. CASE ANALYSES: To develop your skill at legal analysis and your understanding of criminal law and procedure, you will be individually author briefs of several cases before the classes for which they are assigned. Then you and other students assigned the cases will discuss them with me in class on the assigned days. Case brief assignments will be made at the beginning of classes. Generally I will make case assignments in alphabetical order and a week before the classes during which they will be discussed.

Case Briefs: You will author your briefs in conformity with the format for briefs. See: "Primer on Case Briefing and Opinion Writing" in Green, *Criminal Law and Procedure*. Your brief must provide a statement of the facts, issue(s), decision, reasoning, holding, and other opinions in the case. You must individually author your brief and comply with the following requirements: 1) type your briefs; 2) type or write your name in the upper right hand corner of each page; 3) staple the pages together if your brief is more than one page; 4) do not paper clip or dog ear the pages; and 5) do not use a cover sheet or plastic binder.

Case Participation: You will discuss your cases on the days they are assigned. After you are assigned a case, if you know you will be absent on the day you are assigned to discuss it, you must inform me as soon as possible. If you do not, you will receive a failing grade on your case. Make plans now to discuss your cases when they are assigned. I will allow a make-up case only in the most exceptional circumstances. Even though you are not assigned to discuss a case, you must attend class, read all the cases, and participate in and take notes on the discussions.

Case Analysis Grade: Your case grade will be based on your in-class discussion of the cases you are assigned and the material in McCord text related to your cases. You will receive a grade for your case analysis, not your case briefs, but you must hand in your briefs at the end of the classes at which they are discussed. If you do not, you will not receive a grade for your case analysis. I will determine your case analysis grade on the basis of your ability to pay attention to and follow the discussion; your ability to answer my questions about the facts, issue, reasoning, and holding of the case in a clear, concise, and thorough manner with only minimal reference to your brief; and your willingness to volunteer answers to my questions about the case and related material in the McCord.

B. QUESTIONS ON THE READINGS: You will read and study the McCord text assignments. I will provide you with questions for each assignment. To receive credit for these assignments, you must 1) answer the questions before class, 2) attend the entirety of the class, and 3) hand in your assignments at the end of the class for which they are assigned. If you substantially answer the questions I have asked, you will receive a check for an assignment. A check is 1 point. I will not accept excuses for late assignments, because the credit you receive on your assignments will be based on 3 less than the total number of assignments.

C. GROUP DISCUSSION ACTIVITIES: At the beginning of the course I will create several discussion groups and you will complete the "Discussion Group Membership Form" in Green, *Criminal Law and Procedure*. The groups will discuss hypothetical criminal law and procedure problems, the Gaylin book, and the Sandoval case

Hypothetical Problems and Gaylin Book. Prior to the classes devoted to the hypothetical criminal law and procedure problems, you will research the problems and summarize the your work using the "Hypothetical Case Form" in Green, *Criminal Law and Procedure*. Prior to the classes devoted to the Gaylin book, you will read and answer the questions on each assignment. In class, you will work with your group to discuss the hypothetical problems and Gaylin book and then you will participate in class discussions of them.

Mock Jury. The discussion groups will also function as mock criminal juries in *Sandoval v. State*. You will watch and take notes on a four part video of this real first degree murder trial using the "*Sandoval v. State* Video Questions" in Green, *Criminal Law and Procedure*. Then you will use the "*Sandoval v. State* Jury Instructions" in Green, *Criminal Law and Procedure* to deliberate and decide what crime(s), if any, Sandoval committed. Thereafter, you will participate in a class discussion of each group's reasoning and verdict in comparison with the real jury's.

Discussion Group Membership Responsibilities. In discussing the hypothetical problems, the Gaylin book, and the hypothetical problems, you will be responsible for suggesting how to address issues, directing attention to relevant cases and legal principles, and evaluating the workability of alternative solutions. You will also be responsible

for encouraging participation by all members, being open, friendly, and responsive to the opinions and ideas of other members, and persuading members to analyze their differences and search for common ground.

**Group Participation Grade.** Group participation will require your attendance and active involvement. You cannot participate if you are not in class and, if you are in class, you cannot participate effectively if you are not prepared. Credit for your group participation will depend on your attending the entirety of the classes devoted to group activities. I will assess your participation on the basis of your completed hypothetical problem forms, and your answers to the questions on the Gaylin book and the *Sandoval v. State* video which I will collect at the end of the classes devoted to their consideration, my observation of your group performance, and your assessment of group participation. To make your assessment you will use the "Discussion Group Self-Assessment Form" and "Assessment of Discussion Group Members' Participation Form" in Green, *Criminal Law and Procedure*.

2. **EXAMINATIONS:** The second basis for your course grade will be 2, one hour in-class exams. Each exam will require you to know and use legal principles to solve criminal law and procedure problems. The first exam will deal with criminal law and the second exam with criminal procedure. There will be no comprehensive final exam. Plan to take these exams when they are scheduled. Attendance is mandatory. Make-up exams will be given solely at my discretion only in the most extraordinary circumstances and with a verifiable excuse provided prior to the exam.

### **PLAGIARISM NOTICE**

This course involves both individual and group learning. Individual learning is governed by university rules prohibiting plagiarism. You are required to individually author your case briefs, hypothetical problem forms, answers to the Gaylin and *Sandoval v. State* questions, and exams. Two practices are prohibited and will result in a failing grade on the assignment in which they are discovered. First, copying from another student's case brief, hypothetical problem form, Gaylin and *Sandoval* answers, or exam and submitting it as your work. Second, collaborating with another student in writing a case brief, completing a hypothetical problem form, writing the Gaylin and *Sandoval* answers, or taking an exam and submitting it as your work. Third, copying material from books, articles, court cases, course readings, and Internet sites without citing the source and, thereby, representing it as your own work.

**COURSE ASSESSMENT:** At the end of the semester, you will assist me in assessing the value of the panel analyses and group discussion activities and in making suggestions for their use the next time I teach the course by completing the "Course Information Questionnaire" in Green, *Criminal Law and Procedure*.

**OFFICE HOURS AND ADVISING AVAILABILITY:** You may discuss any course-related matter during my office hours which are 9:15-10:15 and 11:30-12:30 MWF1. My office phone is 783-2128. If I am not in my office, you may leave a message in my office door folder, on my voice mail, with the GGH Department secretary in 350 Rader (783-2655), or contact me at [w.green@morehead-st.edu](mailto:w.green@morehead-st.edu) or 859-233-7513.

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### **HOW TO ACCESS THE MSU BLACKBOARD COURSE SITE**

1. At the MSU Blackboard page, <http://moreheadstate.blackboard.com>, left-click on the "Login" button.
2. At the Blackboard "Welcome" page, enter your "Username" and "Password" and then left-click the "Login" button.
3. After you have entered your Username and Password, left-click the "Login" button.
4. At the "Welcome" page and within the box "My Courses," click on "Criminal Law and Procedure."
5. At the course page, you will find 5 green buttons on the left hand side. Click on the "Syllabus" button to access the syllabus; on the "Assignments" button for the assignments, and on the "Course Documents" button for the readings.
6. If you have trouble with access to Blackboard, contact the MSU Blackboard Help Desk: 606-783-2082.