

# **LEGAL ETHNOGRAPHY**

UMass School of Law

**Professor Lisa Lucile Owens**

---

## **COURSE DESCRIPTION**

This course focuses on the study of legal ethnography, exploring how the law transforms, how lay people think about and use law, how legal organizations operate, and how the law may reinforce inequality. The readings central to this course are focused on these matters, and alongside in-class discussion, seek to deepen understanding of how the law functions within a complex web of social relationships.

Ethnography is a research method which is used as a basis for understanding social relations and the cultural diversity of everyday life. The ethnographies we will read and discuss in this class result from researchers' deep and observational participation in a field of research, as well as critical reflection and historical contextualization. Integral to the social sciences, ethnography is deployed wherever human knowledge and social interaction are relevant. Because of its usefulness and centrality in understanding the social world, ethnography is a key method of understanding in many fields of study, especially including the study of law, lawyers, and legal institutions.

The course will first explore the research "methodology" of legal ethnography--what is it and why is it done? For what reasons does legal ethnography emerge as a legitimate method of the study of law? The course will then turn to explorations of powerful and influential legal ethnographies.

The course meets once per week for a period of two hours. You will be evaluated in this course by an in-class presentation on assigned reading (10%), a paper proposal (10%), a final topic presentation (10%), ethnographic field notes based on your own observations (20%) and a 20-page final paper (50%) due at the end of the semester. Students do have the option to use their final papers to satisfy the Upper Level Writing requirement if they follow the process outlined in the handbook. In addition to our class time, you will be required to attend meetings in which we will discuss the progress you've made on your research paper and any dilemmas you've encountered.

## COURSE MATERIALS

- I. You should acquire the following texts, which we will read in full:
  - A. Heather Hlavka & Sameena Mulla's (2021)  
[Bodies in Evidence: Race, Gender and Science in Sexual Assault Adjudication](#)
  - B. John Flood's (2013)  
[What Do Lawyers Do? An Ethnography of a Corporate Law Firm](#)
  - C. Sally Engle Merry's (1999)  
[Colonizing Hawai'i: The Cultural Power of Law](#)
  
- II. Additional book chapters and articles will be made available or linked on the syllabus.

## LEARNING OBJECTIVES

The objectives of this course involve the following:

*First* and foremost in this course, you will deepen your knowledge of the operation of law and gain new perspectives on the practice of law. Studying the law through ethnography is different than studying the law through case law. While both often attempt to show law from a point of complexity, social justice, and analytical reason, ethnography can add texture to understandings of how the law works.

*Second*, you will gain practical skills in observation of the law in practice. This course will study why judges do what they do, why lawyers do what they do, why clients do what they do, and why legal rules evolve as they evolve. The frameworks and practical skills of observation studied in the course can be applied to future legal practice.

*Third*, you will contextualize legal rules, maxims, and practices within a social and historical milieu.

*Fourth*, finally, you will apply the concepts, skills, frameworks and references studied in the course to your own research and writing project.

## ASSIGNMENTS & GRADING

Course grades will be based on the following components:

- 1. In-Class Presentation: 10%**
- 2. Paper Proposal: 10%**
- 3. Ethnographic Field Notes: 20%**
- 4. Presentation of Final Paper Topic: 10%**
- 5. Final Paper: 50%**

In-Class Presentation. Each student will be assigned reading(s) to present to the class. Graded *pass/fail*, students will be asked to informally present the reading to the class, and develop discussion questions around that reading.

Paper Proposal. At the date specified below, you will be required to submit a paper proposal which outlines the intended focus of your final paper. Graded *pass/fail*, a template for the proposal will be distributed in class.

Ethnographic Field Notes. You are expected to write four sets of field notes (Around 500 words each) over the course of the semester. Graded *pass/fail*, your field notes will document observations you've made firsthand at the law school or in a legal setting.

Presentation of Final Paper Topic. During the final two weeks of class, you will present your topic to the class and seek feedback to integrate into your final paper. Your presentation will be graded *pass/fail*.

Final Paper. The majority of your grade will rest on your research paper. Over the course of the semester, you will develop a 20-page research & writing project focused on a subject matter developed by you. As mentioned above, students have the option to use their final papers to satisfy the Upper Level Writing requirement if they follow the process outlined in the handbook. The final paper will be graded on a scale of 100 points.

## COURSE POLICIES

Individual Meetings: You are required to meet individually with the professor regarding your project. Details will follow during the semester.

Class Progression: When looking at the Syllabus please remember that its Schedule of Topics is subject to modification in both content and timing, depending on the amount of material we are able to cover in each session.

Attendance: Class attendance and participation are a vital part of your learning experience. According to the School of Law's attendance policy, there are no excused versus unexcused absences. It is also the law school's policy that attendance be taken at each class meeting. The maximum number of absences for a semester in any class is, instead, limited to two weeks' worth of class meetings.

Class Participation: You are expected to come to class prepared to participate in discussion. The practice of law is a discipline requiring skill in advocacy (regardless of whether one goes on to become a litigator or not), and advocacy requires the ability to discuss and analyze complex legal questions orally. Everyone, thus, has a valuable contribution to make to the class. While recognizing that there cannot be a one size fits all approach to what counts as good participation given the ways we all differ as individuals, if it is apparent that you are not preparing for class your final course grade will likely suffer. Substantively excellent class participation may also be considered in the final grade. Finally, this class is a small seminar and requires presence and participation. To facilitate this, no tablets or laptops are allowed in class without specific accommodations.

General UMass Law Policies: All students in this course should review and are subject to the policies detailed [here](https://www.umassd.edu/law/academics/omnibus-syllabus-language/) (<https://www.umassd.edu/law/academics/omnibus-syllabus-language/>). Some of the most important topics you will find further information on at this link are touched on more briefly below.

Plagiarism and other Violations of Academic Integrity: All UMass Law students are expected to maintain high standards of academic integrity and scholarly practice. A high standard of academic integrity promotes the pursuit of truth and learning and respect for the intellectual accomplishments of others. These are values that are fundamental to the mission of UMass Law and UMass Dartmouth. Such values are undermined by academic dishonesty. For more details about violations of the norm of academic integrity and their implications see the above link. Also, as this is a paper course, I feel it is important to note that your grade will suffer if your paper is obviously or substantively written by artificial intelligence. The central objective of the paper in this course is your own personal engagement with the law and legal research.

Disability Accommodations: As per section 28 of the student handbook any students who feel they may need an accommodation based on the impact of a documented disability should set up a meeting with Wendi Chaka, Director of UMass Dartmouth's Center for Access and Success, 508-999-8711 or [wchaka@umassd.edu](mailto:wchaka@umassd.edu). For more details see the above link.

Emotional Health, Violence, Sexual Harassment, and Title IX: The purpose of a university is to disseminate information, as well as to explore a universe of ideas, to encourage diverse perspectives and robust expression, and to foster the development of critical and analytical thinking skills. In many classes, including this one, students and faculty examine and analyze challenging and controversial topics. If a topic covered in this class elicits post-traumatic stress or other emotional distress, please discuss the matter with the professor or seek out confidential resources available from the Counseling Center (<https://www.umassd.edu/counseling/>), 508-999-8648 or - 8650, or the Victim Advocate in

the Center for Women, Gender and Sexuality (<https://www.umassd.edu/cwgs/>), 508-910-4582. In case of an emergency, contact the UMass Dartmouth Police Department at 508-999-9191 24 hrs./day. For more details see the above link.

.....

SCHEDULE OF TOPICS

.....

**Week 1**

Starr & Goodale - Legal Ethnography: New Dialogues, Enduring Methods (p.1-8)  
Griffiths - Doing Ethnography: Living Law, Life Histories, and Narratives from Botswana (p. 160-181)

**Week 2**

Cheesman - Rule-of-Law Ethnography (p.167-84)  
Wilson - The Digital Ethnography of Law: Studying Online Hate Speech Online and Offline (p. 1-20)

**Week 3**

French - Ethnography in Ordinary Case Law (p.127-142)  
Li - How to read a case: Ethnographic lawyering, conspiracy, and the origins of Al Qaeda

**Week 4**

Latour - The Making of Law, p. 1-69

**\*\*Paper Proposal is Due\*\***

**Week 5**

Black Letters, 173-208  
Colonizing Hawai'i Text, Chapter 4, 86-114

## **Week 6**

Colonizing Hawai'i Text, Chapter 6 & Chapter 8

## **Week 7**

What do Lawyers Do? Text, p. 1-88 (Part I)

## **Week 8**

What do Lawyers Do? Text, p. 89-178 (Part II)

## **Week 9**

Bodies in Evidence Text, p. 1-106 (Intro, Ch. 1 & 2)

## **Week 10**

Bodies in Evidence Text, p. 179-264 (Ch. 5, 6, Conclusion)

## **Week 11**

Conley & Barr - Fundamentals of Jurisprudence: An Ethnography of Judicial Decision Making in Informal Courts (p. 467-507)

## **Week 12**

In-Class Presentations, No Additional Reading

## **Week 13**

In-Class Presentations, No Additional Reading

# DISCUSSION GUIDE - WEEK 2

## Rule-of-Law Ethnography

Cheesman

### Concepts to define:

#### 1. Rule of law

Rule of law is a principle under which all persons, institutions, and entities are accountable to laws that are:

- i. Publicly promulgated
- ii. Equally enforced
- iii. Independently adjudicated
- iv. And consistent with international human rights principles.

2. Counter-hegemonic practice
3. Constitutive theorizing
4. Critical proximity
5. Empiricism
6. Grounded Theory
7. Hegemonic/hegemonic doctrinalism
8. Rule of law orthodoxy
9. Parochial
10. Universality v. Particularity
11. Positivist/non-positivist
12. Epistemological
13. Situatedness
14. Formalism
15. Boundaries
16. Normativity
17. Law and order

## QUESTIONS FOR DISCUSSION

1. How would you describe the status of rule of law in the US? Are there different views?
2. What does it mean to adopt an interpretive mode and embrace an ethnographic sensibility? (p. 168)
3. IS the rule of law a “preeminent legitimating political ideal”? What is meant by that?
4. How central is empiricism to legal scholarship? Why might empiricism have “returned”?
5. What is hegemonic about the “rule of law”?
6. Does doctrinal (case law) study of the law concerned with how knowledge is historically constructed and entangled in power relations? (p. 170)
7. What does it mean to interpret the rule of law ethnographically? (p.171)
8. What does it mean to say “ethnographically informed researchers tend to pose questions at boundaries” of a research site or of a topic?
  - a. -Latour example
9. Why is nuance valuable in describing the rule of law? How does this change understanding of its “inherent normativity?”
10. What is meant by “ethnographic work on the rule of law dwells in an “unresolvable tension between universality and particularity?”
11. What role does confirmation bias play? How does the author describe it?
12. How much can ethnography tell us about the rule of law?
13. Why is ethnography a counter hegemonic practice?
14. Why are surprising and counterintuitive observations important for ethnography?
15. Why does ethnography allow one to do constitutive theorizing?
16. How might ethnography clear up “conceptual murkiness”? (p. 177)
17. Why might rule of law be in conflict with law and order?



Digital Ethnography of Law  
Richard Ashby Wilson

Concepts to define:

1. Adaptation of ethnographic techniques
2. Rules v. norms
3. Normative v. Legal
4. On Stage/Back stage (Goffman)
5. Boundary Making
6. Panel Regression (Statistical Analysis Method)
  - a. <https://towardsdatascience.com/a-guide-to-panel-data-regression-theoretics-and-implementation-with-python-4c84c5055cf8>
7. Statistically significant

QUESTIONS FOR DISCUSSION

1. Is regulation by social media platforms “law”?
2. How does law operate on three levels online? (p. 4)
3. Why is the “dog whistle” so problematic for social media companies? Discuss in terms of backstage, onstage, and medium.
4. When using software tools/algorithms to analyze social behavior, what are some of the things that need to be considered first?
5. Should digital ethnography require an offline component as a matter of methodological rigor?
6. Why is establishing the relationship between online and offline hate speech/action so difficult?
7. In Wilson’s study on hate speech in Guatemala, why were there differences in the effects of stigmatization between lawyers, for example, and indigenous political activists?
8. What was the central effect of hate speech online that Wilson found in terms of the violence that happened offline?
9. Why might Wilson’s findings have contrasted with the Edwards and Rushin (p. 14) study mentioned?

# DISCUSSION GUIDE - WEEK 3

Ethnography in Ordinary Case Law

Rebecca French

Concepts to define:

1. Legal Pluralism
2. Formalistic
3. Politicization
4. Post-modernity

## QUESTIONS FOR DISCUSSION

1. How do the methodological concerns of this paper differ from the Cheesman article?
2. How do you perceive changes between the relationship between religion and law--if you could describe it from your perspective (i.e. the assumption you would have made about it).
3. What happened to the new age religions? Why is it important to find out?
4. Do you think the author would say that the way religious beliefs are used in a legal context is different (I.e. he's not an episcopalian, he has a sincere belief in god). What does this mean for the law in terms of separation of church and state?
5. Do you agree that an increase in cases about internal church affairs means that a church is exercising less autonomy?
6. Is there something about personal identity that means more cases are coming forward that involve religion?
7. Why might lawyers be using religion in criminal appeals?
8. Are there other ways to study the idea that asylum seekers to the US are increasingly christian/seeking asylum based on claims of christian persecution?

# How to Read a Case: Ethnographic Lawyering, Conspiracy, and the Origins of Al Qaeda

By Darryl Li

Concepts to define:

1. Ethnographic lawyering
2. Law as social relation
3. Subjectivity and Relationality
4. Conspiracy (Legal)
5. Agnosia
6. Notice Pleading

## QUESTIONS FOR DISCUSSION

1. What is the “method” used here?
2. What does the author mean when he refers to the “parodies” of trials he has witnessed? (p. 561)
3. What does the author mean about the role of the “awkwardness of translation”? (p.561)
4. What makes conspiracy different than other criminal law?
5. What role did the court’s use of Arabic terms play? (p. 564)
6. What is “notice pleading” and what role does it play in civil litigation?
7. How do material concerns animate conspiracy charges?

# DISCUSSION GUIDE - WEEK 4

The Making of Law  
Bruno Latour

## Ch.1 - In the Shadow of Bonaparte

Concepts to define:

1. Counsel d'Etat (Council of Estate, Supreme Court for administrative law)
2. Administrative Law
3. Le Commissaire du Gouvernement
4. Robespierrian virtue (Robespierre, french revolutionary, equality under the law)
5. Form v. formalism (p.32)

## QUESTIONS FOR DISCUSSION

1. The very first inscription on p. 1 is doing something important. Let's read it. What is it saying, in your own words, about what Latour is describing in this Chapter?
2. Latour refers to himself in the third person a lot. Did this seem strange to you?
3. What is Latour's method here? How long was he in the field (p.6)

### I. The Role of Symbols

1. Why does Latour have such a big problem with the counsel's romanticization of history and historical figures like Bonaparte as illustrated by Figure 1.2 (p.4) on the greeting card?
2. Is law, as the counsel seemed to want to say, immune to the passage of time? Is it a united front?

### II. The Pigeons

1. What is interesting about such a revered and literally polished body discussing pigeons?
2. Why is this case in this court? What are some ways that the French court is different than the American one?
3. What is the legal error that Latour identifies? (p. 10/11) p. 17
4. Why is the role of le commissaire du gouvernement interesting to Latour? (p.7-8)

5. Why does code interpretation v. precedent interpretation make things complicated in terms of the pigeons? (p. 11)
6. What might you think about analogically to American law in terms of the Grands Arrêts or “the Detton Conclusions”? P. 13
7. What does having “200 years of phantom counselors” mean in terms of law? What point is Latour making here? (p. 15)
8. What is interesting about the idea that the litigant can be vindicated in terms of the legal error, but not his original claim? P. 18-19 (read dr. phrase)
9. Is this law? - Read last paragraph of section p. 20-1

### III. In Informal and Liminal Spaces

1. How is the review meeting a place where law are made, despite a lack of formality? (p.21) Read p. 22 end of first paragraph (kitchens of law)
2. What does the ethnographer admit is beyond his interpretation here? P.23 (allusions among colleagues, personal history)

#### The Missing Signature

- i. What does the missing signature point out about law? P.24, 31
  - ii. Reading p. 28 bottom paragraph, What is this saying about how law is made, beyond the law as a monolith?
3. What role does the cafeteria play? What is interesting about the structure of power?

#### The Case that brings all three french supreme courts together

1. What is happening with the illegal Moroccan passengers? (34)
2. How does Latour describe the French Supreme Courts? 36
3. What point does Latour make about fairness on p.37?
4. When is law “weak” or “strong”? P. 41
5. Back to the column on p.44 - continuing the symbolism.

### IV. Flexibility of Law

1. What does risk of litigation mean for law? p. 47-49
2. How does the court get to a LEGAL meaning of “substantial”? P. 51
3. Why invent a legal fiction for renewing the concession on p. 55-7?
  - a. What does it say about Law?

THOUGHT: Example of parking maid, why was I so frustrated? How would I explain flexibility of law to her in a way that validated her existence?

4. On p. 62 we reference the “back stage” of politics. Where have you seen this before?  
Can you describe the other stages?
5. What does the conclusion on chapter (read aloud some) mean to you?

# DISCUSSION GUIDE - WEEK 5

Black Letters - Chapter 7

Randy Cauthen

## Concepts to define:

1. 1L by Scott Turow (The 'Bible')
2. What is data methodology? (p.2)
3. Who is "Don"? (Ph.D. dissertation advisor)
4. BLS - Basic Legal Skills (the writing class)

## QUESTIONS FOR DISCUSSION

1. Does this seem familiar to you? Author is a grad student observing law students. What does he miss? What does he see?
2. P. 176 - Would more opportunity for revision work? Did any of this resonate?
3. Why would someone have the mentality that a "C-" is passing? As on p. 176
4. P. 177 - Nice person v. nice professor. What do you think about the assertions about gender the author makes?
5. How did you experience grading criteria as a 1L?
6. Did the stereotyping "exceptional work ethic" or "already an expert legal thinker" seem familiar? P. 182
7. How did you experience first getting to "practice"? P. 184
8. How does AI factor in, for example to Alesha's experience on p. 187?
9. Note point about code and language on p. 188
10. How do you compare the students' denial of "interpretive agency" on p. 195 to what Latour rights about in the Conseil d'etat?
11. What about the last part of last paragraph p. 201 - How does this compare with what Latour sees lay people doing?

## Colonizing Hawai'i - Chapter 4

Sally Engle Merry

### Concepts to define:

1. Maka'ainana - commoners
2. Haoles - foreigners
3. Fee simple land ownership
4. ali'i

### QUESTIONS FOR DISCUSSION

1. We start with a description of a clock. Why is this symbol important?
2. Unpack paragraph p. 89 starting "this is the sovereignty paradox".
3. We see a theme of letters/correspondence used in ethnography p. 90. What opportunities/problems do letters introduce methodologically?
4. What happens to Hawaiian law during the second transition? P. 91
5. How did the system of title wedge out the maka'ainana? P. 94
6. What happened to women during this time of transition?
7. How are economic degradation, racialization, and women's status related in terms of the cultural power of law?
8. Why does Merry note the use of the "language of infancy"? P. 99
9. How does the criminal code discipline and control in disempowering ways?
10. Why didn't a dual system of law emerge as in the paper we read about the dual legal systems in Botswana (another colonized land)? P. 113
11. What does it mean to become "civilized" and why did Hawaiian leaders want to become civilized? P. 109
12. How did Christianity lead to women's disempowerment even though it was most often women leading their families to convert? P. 111
13. What does the loss of the "communal system" of law or the rule of "kapu and distinction" mean for native Hawaiians?



# DISCUSSION GUIDE - WEEK 6

Colonizing Hawai'i

Chapter 6

Judges & Caseloads in Hilo

Define:

1. Luna - overseer
2. Mo'i - monarch

Questions

1. What kind of ethnography is this?
2. What does legal surveillance (145) look like in a contemporary context? 162
3. Why did adultery, fornication and prostitution decline after the 1850's?
4. How did the same people come to serve in so many positions of power? 155
5. How did language continue to be an access to justice issue? 155
6. How did ideas about the relationship between labor characteristics and nationality evolve?
  - a. How was this interlinked by the way law prosecutes?
7. What was the relationship between money/status/power/race?
8. Why is it significant that Pitman was so concerned about law & order? Unpack statement p. 160
9. With increasing incarceration, why was there a stronger call for law & order?
10. How did white residents keep their children from intermingling with Hawaiians?
11. What role did the decline of the Hawaiian population play? 170
12. Was there a kind of masculine wound about non-Hawaiian men marrying Hawaiian women? How did this affect the way the law was created/used? 171, 203
13. Why were women fined less for adultery than men? 180
14. Why are newcomers always the focus of law and order strategies? What is their relation to labor? 189
15. How did the lack of access to courts by workers lead to conflict between them and lunas? P. 185
16. What do you think about the photos as a source of ethnographic data? 190
17. What is the relation between economic powerlessness and legal powerlessness?
  - a. What is the role of evidence? 205
18. Why did other normative social orders have a greater effect than law, according to the author? 206

Colonizing Hawai'i  
Chapter 8  
Sexuality, marriage and the Management of the Body

1. Why was sexual behavior such a central concern of law? 221
2. Why is it significant that Armstrong (as an example) merges the concept of “licentiousness”? 228
3. How significant is it that the king is brought under the ‘civilizing’ power of law? 229
4. How did ‘elite’ conceptions of marriage and sexuality differ from common ones, and how did that feed into the christian conversion (ch. 4)?
5. How was Hawaiian culture fundamentally at odds with capitalism? 237
6. Why did you need to be civilized to be christian and vice versa? 238
7. How was the anti-licentiousness movement also a pro-motherhood movement?
8. Describe the change in european perception of hawaiians from bright to dull intellectually? P 250
9. P. 252 -unpack quote from supreme court reports
10. Did the fact that foreigners married Hawaiian women have anything to do with how much women needed to be controlled by law? 255
11. How would you describe the deep connections between the control over the body and the control over the state? P 257

# DISCUSSION GUIDE - WEEK 7

What Do Lawyers Do?

Part I

John Flood

Define:

1. Gemeinschaft (community)
2. Gesellschaft (society)

Questions:

1. How has corporate law practice changed?
2. Why are there so many lawyers? Why do so many want to be lawyers?
3. What is the structure of corporate law firms generally? (6)
4. What do large law firms do?
5. P. 16 Alexander Hamilton - What about the law allows this? To what effect?
6. Summarize section p. 18?
7. Can the law be taught or must it be “done”?
8. Unpack p. 24 - “guardians of the translation process”. How does it relate to previous readings?
9. What does economic theory’s concern with transaction costs mean? P. 24
10. Describe where Flood is doing research.
11. How is the Tischman firm structured? What is its history?
12. What do lawyers spend their time doing? Did it surprise you?
13. What might arguments over “support” look like today? P. 33
14. What happened during the merger? P. 34
15. Why is recruiting new lawyers so important?
16. Do you identify with the interview experience?
17. Why are the interns treated so gently?
18. How does one become a partner under the Cravath system? Why was this valuable?
19. How are specialty areas chosen and why? At Tischman, then at Cravath?
20. P. 51 - Where is loyalty more important? The firm or the client?

21. Do you identify with the songs? P 54
22. How does one become a partner?
23. What does it mean to be a member of the firm?
24. What is a rainmaker exactly? Why are they important?
25. How do you get clients?
26. What are some tactics for retaining clients?
27. Did anything surprise you about how to actually make it rain?
28. Why was Tischmann in crisis before their merger?
29. How did they address competition for employees with other firms?
30. How did Tischmann become part of “big law”?

# DISCUSSION GUIDE - WEEK 8

Class 8

Legal Ethnography

What Do Lawyers Do? Part II

Questions:

1. What does it mean to portray people as real people v. types (91)?
2. What is the role of uncertainty in lawyering? (92)
3. Does law as a place “where solutions are not always found but often created” resonate with you?
4. What does the lawyer do when he has a gap in his knowledge? How does this make him a better lawyer? (98)
5. We see Goffman again -- p. 98 -- we saw this in the digital ethnography of law. How do they compare?
6. How is dialogue used on p. 102?
7. What does “reasonable” mean? P. 113
8. Why is the transaction in example 2 odd? (113)
9. Why does substantial v. material matter? 122
10. What effect does the lawyers arguing, with the clients as spectators, have on the attorney client relationship? 127
11. P. 127 - unpack what is happening here...
12. What is the specter of the disingenuous client and how is it dealt with? 129
13. Are lawyers transaction cost engineers or technicians? 130
14. How does the lawyer create disputes? P. 132
15. How was the engineering professor’s problem conceptualized and then addressed?
16. Does it matter if clients are repeat players or one shot players? 143
17. Why is the conversation “without clients” and with so different?
18. Is proof irrelevant here? WHY? 145
19. What happens in the negotiations between John Brown and A&B? Why does it proceed to litigation?
20. Why are the two examples in the “shadow of law”? 152
21. What is litigotiation?
22. Would the engineer have been better off not seeking help from lawyers?

23. Why are attorneys more “culture carriers” than accountants, for example? P 155
24. Do you agree that lawyers are concerned not by who calls the shots but by how the shots are called? P 157
25. What does all this mean for the concept and role of fiduciary? 158
26. Why is the client the “wild card” in meetings? 160
27. How is the public and private face of lawyering different? Have we seen that play out in the book? 167
28. Why is it hard to build “long term structures” in law practice? 168
29. Why does the law firm move away from the partner model to a more hierarchical model in a global economy? 174
30. What are the pros and cons to law firms “going public”? 175

# DISCUSSION GUIDE - WEEK 9

Class 9

Discussion Guide

Bodies in Evidence

Intro, Chs. 1&2

Questions:

1. P. 10 - What is the “public secret”?
2. What is the nomos of sexual violence?
3. What is the connection Merry drew? 15
4. What is sexual respectability? How does it come into play here? And also intersect with theories of patriarchy more generally? 15
5. How do we reconcile carceral expansion v. Prevention of sexual violence? P. 19
6. What do we mean (methods) by generalizability? P. 20
7. What is intersectionality & the prostitution defense w/ local context? P 21
8. Why might court transcripts diverge from ethnographic notes? P. 28
9. What is team ethnography? What do you think of it methodologically?
10. P. 34 - emotion as a type of knowing. Discuss.
11. How do attorneys navigate the biases they assume a jury will have?
12. What role does the CSI effect have?
13. Is jury selection a “crapshoot”? P. 50
14. How does the race of the victim come into play in jury selection?
15. How do prosecutors rely on rape myths even as they challenge them?
16. How does voir dire prime jurors to rely on their personal experience and how does this legitimate rape myths?
17. How do rape victims “act like a victim”?
18. How do prosecutors make victims seem believable?
19. Why was Mary’s rapist acquitted?
20. What is the “trap of loyalty” experienced by Black women? P. 104
21. What are respectability politics and how do they work here? P. 104

# DISCUSSION GUIDE - WEEK 10

Bodies in Evidence  
Ch. 5, 6, Conclusion

## Terms:

*Racial Surveillance* - “a system of behaviors, norms, laws and technologies ostensibly put in place to maintain public order but is most often directed against people Victorian-era authorities called the “dangerous classes” — minorities and the poor, who are treated as a persistent threat to the established social order. In the U.S., this system of structural surveillance emerges from a history of racism and white supremacy that links the use of deadly force by police against young black men and women to our systems of criminal justice, social programs and public health. Its reach, as well as its near invisibility to those privileged enough to escape its gaze, makes it especially difficult to address in its entirety, and we are often left to deal with its effects in piecemeal, incident by sickening incident.”<sup>1</sup>

## Questions:

1. Does ch. 5 disrupt how you conceptualize the use of DNA evidence at trial?
2. How does “expertise” come into play? What is its impact?
3. Why are scientific processes simplified for the jury? What is the effect of this?
4. P. 183- “juries are not more or less likely to convict...” unpack...
5. How does DNA take on mystical qualities even though it is “scientific” (like ‘floating DNA’)
6. What is troubling about cross examination of forensic experts?
7. How does the presentation of DNA evidence construct race?
8. Quote p. 208 - Are juries equipped to deal with this information?
9. How does use of “simplistic racial markers” feed into carceral logic?
10. Unpack quote p, 214 - racial surveillance
11. P. 222 - how is the “specter of reasonable doubt” continually invoked by defense counsel?
12. How is paternal authority used in trials and sentencing?
13. P. 245 - How is marking Black sex offenders as insufficiently fathered part of racial surveillance?
14. Victims are “prostitutes”, perpetrators are “clients”. Is there a way to prevent this?
15. How is the prostitute defense related to the specter of reasonable doubt in a way that recognizes ‘racial surveillance’ as well as intersectional disadvantages? P. 256-57
16. Why are cases still reliant on character, reputation, and questions about a victim’s behavior? P. 270-72
17. How might a court offer support or reparations in cases like Maya’s?

---

<sup>1</sup> <https://thehill.com/opinion/op-ed/264710-racial-surveillance-has-a-long-history/>



# DISCUSSION GUIDE - WEEK 11

## Fundamentals of Jurisprudence (Conley & Barr) Discussion Guide

### Define:

1. Jurisprudence
2. Legal Formalism
3. Legal Realist
4. Critical Legal Theorist

### Questions:

1. P. 469 - Discuss the pervasive use of “case method”
2. Methods Discussion. Data is always flawed
  - a. What is the problem with self reported data? (470)
  - b. What about questionnaires? P. 471 Quote ...when a man acts as an informant
  - c. Statistical models?
  - d. What about simulations?
  - e. What is the solution?
3. How was the study conducted? (method)
4. We use recordings for group focus after in person observations. They don't note this, but what do we know might be true of recordings? P. 478
5. Why are these judgments characterized as informal in terms of linguistics? What about in terms of the role they play and how they are conducted?
6. P. 481 - Which one are you?
7. Discuss Types:
  - a. The Strict Adherent
  - b. The Law Maker

- i. IS this what a legal education forecloses?
  - c. The Mediator
  - d. The Authoritarian
  - e. The Proceduralist
8. How do these correlate to legal types defined above?
9. Which type of decision maker best advances justice?