This seminar will try to answer one of the most sensitive questions facing Americans today: Why are African Americans grossly over-represented in the American criminal justice system? Some answer this question with a simple accusation that the system is racist in design and implementation, and point to familiar statistics to buttress their claim. African Americans are eight times more likely to be incarcerated than whites. At the end of the first decade of the 21st century, over 12% of African American men between the ages of 25 and 29 were in custody. For under-educated young black men, the incarceration rates are simply astounding: in 2000, nearly one in five African-American men under 41 who had not attended college were in prison or jail. Yet these statistics, as dispiriting as they are, must open the debate, not end it. While no one credibly doubts the persistence of racially biased decision-making throughout the criminal justice system, careful empirical research strongly suggests that overt discrimination plays a relatively modest role in producing the current state of play. The explanations for the disparities that haunt the criminal justice system are nuanced and complex, and therefore deserving of careful study. Absorbing lessons from a wide variety of disciplines, including history, sociology, political science, economics, psychology, and law, this seminar will try to shed light on this vexing American problem.

Attendance, preparation, and participation are mandatory. Because the literature on this topic is voluminous, the readings for each class will range across a wide field. I expect the time commitment to be substantial. Still, there are no special course requirements. Grades will be based on class participation (15%) and a research paper (85%) due at the end of the term. As part of the course, we will try to tour the Maximum Security Prison in Auburn, New York, the timing of which will be determined once registration is complete and we have a roster of students. To accommodate the visit, the reading schedule will be adjusted as needed.

As for more general matters, I have two offices, one in the Government Department at 117 White Hall, and another at the Law School at 238 Myron Taylor Hall. During the 2014-15 school year, I anticipate being at the Government Department MTW, and the law school ThF.
I have not yet settled on office hours for spring 2015, but I will be in one of my offices regularly, and you are encouraged to stop by anytime (though you should probably email first, just to make sure I’m not in a meeting), with whatever questions you might have. If the door is open, feel free to wander in, and the door will always be open unless I am with a student who has specifically asked that it be closed, or I am discussing attorney-client information in one of my cases.

WEEK 1: INTRODUCTION: THE SCOPE AND NATURE OF THE PROBLEM: GETTING BEYOND THE NUMBERS

Film: THE FARM: LIFE INSIDE ANGOLA PRISON


WEEK 2: RACE AND EARLY CRIMINAL LAW: SLAVE CODES, BLACK CODES, CONVICT LABOR, & CHAIN GANGS, Part I

Kennedy, *Race, Crime, and the Law*, Chapter 3


WEEK 3: RACE AND EARLY CRIMINAL LAW: SLAVE CODES, BLACK CODES, CONVICT LABOR, & CHAIN GANGS, Part II


WEEK 4: A DETOUR INTO SYMBOLIC POLITICS AND SOCIAL CONSTRUCTIONS

Stuart Scheingold, The Politics of Rights: Lawyers, Public Policy, & Political Change (Yale 1974, 2d ed.), Prefaces to First and Second Editions, 1-22; 83-96

Joseph Margulies, What Changed When Everything Changed: 9/11 and the Making of National Identity (Yale 2013), Chapters 1 & 2


Sen. Strom Thurmond (D-SC), “Usurpation of Power” (1964)


WEEK 6: THE RISE OF LAW & ORDER, Part I

Film: THE CHOICE (GOLDFWATER CAMPAIGN FILM)

**WEEK 7: THE RISE OF LAW & ORDER, Part II**


**WEEK 8: RACE AND THE WAR ON DRUGS, I**

Film: THE HOUSE I LIVE IN


**WEEK 9: RACE AND THE WAR ON DRUGS, II**

James Hawdon, “The Role of Presidential Rhetoric in the Creation of a Moral Panic: Reagan, Bush, and the War on Drugs,” 22 Deviant Behavior 419 (September 2001)

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (Free Press 2012), ch. 2

Kennedy, *Race, Crime, and the Law*, ch. 10

Selections from key criminal procedure cases representative of the Supreme Court position vis-à-vis the war on drugs, including, among others: *United States v. Montoya-Hernandez; California v. Hodari D.; Illinois v. Wardlow*

**WEEK 10: THE POLITICAL ECONOMY OF THE WAR ON DRUGS**


**WEEK 11: RACE, DISCRETION, AND EQUAL PROTECTION IN THE CRIMINAL LAW**


Michelle Alexander, The New Jim Crow, ch. 3


WEEK 12: RACE AND CIVIL DEATH: COLLATERAL CONSEQUENCES


WEEK 13: RUMINATIONS ABOUT THE FUTURE: COMING OUT OF THE TURN?

Todd R. Clear & Natasha Frost, The Punishment Imperative: The Rise and Failure of Mass Incarceration in America (NYU Press 2013), chapter 1


Attorney General Eric Holder, “Memorandum to the United States Attorneys and Assistant Attorney General for the Criminal Division