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# Teaching "Ferguson"

Chad Flanders

## Introduction

What we now refer to simply as "Ferguson" erupted in August of 2014 and immediately raised a cluster of legal issues. What crime had Michael Brown allegedly committed? Did Officer Darren Wilson commit a crime when he shot at Brown? Protests ensued, and they in turn inspired a police response, a response that seemed to many more violent than the protests themselves. What of the First Amendment rights of the protesters and of the journalists covering them? What laws were they-protestors and some journalists-supposedly breaking?<sup>1</sup>

As the days and weeks passed, the legal issues multiplied, and the layers of the city of Ferguson slowly unraveled. ArchCity Defenders, a local nonprofit organization, reported that the town made money by fining its residents, and then fining them again when they didn't show up in court to pay their fines—which led to warrants being issued for their arrests.<sup>2</sup> *The Washington Post* painted a picture of Ferguson residents as fugitives in their own city.<sup>3</sup> Broader legal issues were now being raised about the political organization of the city—where the mayor was mostly a figurehead, and a shadow "city manager" ran the show—and about the byzantine structure of St. Louis County, which had about 90 municipalities and 60 police departments, a confusing structure that led citizens to mistrust the government.<sup>4</sup> Soon, police conduct and misconduct,

**Chad Flanders** is an Associate Professor of Law at St. Louis University School of Law. Thanks to Marcia McConnick, John Inazu, Roger Goldman, Pete Salsich, Molly Wilson, and Kate O'Neill for comments on an earlier draft. Thanks also go to Joe Wdling for his usual excellent research and editing help and to Falethia Hawthorne for expert proofreading.

- 1 See Chad Flanders, *Ferguson and the First Amendment*, in FRANCIS FAULT LINES: LEGAL AND SOCIAL REVERBERATIONS (Kimberly Norwood, ed. forthcoming 2015); see also John Inazu, *Unlawful Amenity* (unpublished manuscript) (on file with author).
- 2 THOMAS HARVEY ET AL., ARCH CITY DEFENDERS: MUNICIPAL COURTS VIOLATION: A WHITE PAPER (2014), <http://www.archcitydefenders.org/wp-content/uploads/2014/11/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf>.
- 3 Radley Balko, *How Municipalities in St. Louis County, Mo., Profit from Poverty*, WASH. POST (Sept. 3, 2014), <http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/> [hereinafter Balko, *How Municipalities*].
- 4 See, POLICE EXEC. RESEARCH FORUM, OVERCOMING THE CHALLENGES AND CREATING A REGIONAL APPROACH TO POLICING IN ST. LOUIS CITY AND COUNTY 16-17 (2015), <http://www.policeforum.org/assets/stlouis.pdf>. See, e.g., *id.* at 2 ("St. Louis County contains a patchwork

training, and discipline became running themes not only in Ferguson, but all across the United States.

As these events unfolded, I was teaching at St. Louis University School of Law ("SLU Law"), a short drive away from Ferguson. Ferguson was inescapably "our" problem. Faculty members routinely fielded phone calls from reporters and producers.<sup>3</sup> Our legal clinic became involved in litigation and community outreach. Law students made regular trips to Ferguson: to protest, to act as legal observers, to register people to vote, or simply to help out in any way they could. During a conversation with a fellow faculty member, it occurred to me Ferguson needed its own place in our curriculum, and Ferguson the class was born.

My colleague Sue McGraugh and I organized the class, which was taught in spring 2015, but it turned out to be a collaborative effort, featuring more than a dozen guest speakers. Below, I explain how we structured the class, what went well, and what didn't go well. I also try to draw some broader lessons about teaching a class like Ferguson.

### I. Ferguson: An Overview of the Course

When I first pitched the class to our faculty, the response was overwhelmingly positive. Sue McGraugh volunteered to co-teach the class with me. Many faculty members volunteered to teach an individual class session. We decided, early on, to integrate the class with two other law school events. The first was a lecture by Radley Balko of *The Washington Post* about his story on Ferguson and municipal courts.<sup>6</sup> He also gave a lunchtime talk to a standing-room-only audience on police use of force.<sup>7</sup> The second event was our *Public Law Review's* symposium on policing,<sup>8</sup> which featured St. Louis County Prosecutor Bob

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of police departments, many of which have jurisdiction over very small areas. About one-third of the municipalities in the County that have a police department occupy less than one square mile. This has led to confusion and distrust among residents, who often feel targeted and harassed by police officers and the municipal court system.").

5. See generally, *Teaching the Headlines*, 16 ST. LOUIS BRIEF, no. 1, 015, at 12-17, [http://law.slu.edu/sites/default/files/print\\_pdf/print\\_pdf\\_mpdf/slb\\_v16i1\\_online.pdf](http://law.slu.edu/sites/default/files/print_pdf/print_pdf_mpdf/slb_v16i1_online.pdf) (cover story from the St. Louis University School of Law Alumni magazine discussing the course) [hereinafter *Teaching the Headlines*].
6. Radley Balko, Millstone Lecture at St. Louis University School of Law: The Criminalization of Poverty: How Structural Racism, Petty Fines and Municipal Courts Create Anger, Fatalism and Despair (Jan. 12, 2015), <http://law.slu.edu/millstone2015>.
7. Radley Balko, Speech at St. Louis University School of Law: Rise of the Warrior Cop: The Use of Force by Police (Jan. 13, 2015), <https://www.facebook.com/events/ro44862888873331/> (co-sponsored by St. Louis University School of Law Student Chapters of the Federalist Society, the American Constitution Society, and the Criminal Law Society).
8. The symposium was divided into a keynote, a morning panel, and an afternoon panel. Students had to attend (or watch online) at least one of the three. Most ended up attending or watching the entire symposium.

McCulloch, who oversaw the grand jury that decided not to indict Darren Wilson, and St. Louis County Chief of Police Jon Belmar.<sup>9</sup>

For practical reasons, we decided to organize our class as a one-credit "mini-course" for upper-level law students that met once a week at lunch: This made it possible for students to add Ferguson without disturbing their course planning. The class filled to capacity one minute after registration opened; because of the intense interest, we decided to double enrollment. We even had a few faculty members and one staff person audit our class each week. Including our speakers, our classroom of thirty-five was filled to capacity most weeks, and more listened to the class online.

Students' main written work in the class consisted of four three-page response papers to the lectures. Many students ended up writing responses that were much longer than required. The class was essentially a lecture-based class—there was not enough time during the lunch hour to have discussion as well—although at the end of the course we held a closing roundtable, which evolved into a deep and wide-ranging discussion about lawyers, law school, and the public interest.

What follows is a week-by-week summary of the speakers and the topics we covered.

**Class 1: John Ammann on the Municipal Court System.**<sup>10</sup>

John had been dealing with Ferguson before "Ferguson" became a thing. He knew the background of police-community relations within Ferguson, why tensions were at a boiling point, and why the Brown shooting was not just an isolated event but pointed to much deeper problems in the way legal institutions interacted with the wider community. The clinic had clients who were facing fine upon fine, stemming from relatively trivial traffic violations. Residents would get fined, would not show up in court because they didn't have money to pay their fine (and feared the consequences), and then would be fined for *that-then* have a warrant put out for their arrest. John showed, early on, that Ferguson meant much more than what happened on that hot August day between Michael Brown and Wilson. He set the tone for the rest of the course.

**Class 2: Pete Salsich, Municipal Home Rule**<sup>11</sup>

Pete, who teaches property, talked about the structure of St. Louis County government—why the County has more than 90 municipalities, how and why

9. St. Louis University Public Law Review Symposium: The Thin Blue Line: Policing Post Ferguson, (Feb. 20, 2015), <http://law.slu.edu/cvnt/thin-blue-line-policing-post-ferguson> [hereinafter Thin Blue Line Symposium].
10. John Ammann is the McDonnell Professor of Justice in American Society and the Supervisor of the Litigation Clinic at St. Louis University School of Law. John J. Ammann, Sr. Louis Univ. Sch. of Law, <http://law.slu.edu/people/john-j-ammann> (last visited Sept. 22, 2015).
11. Pete Salsich is Professor Emeritus at St. Louis University School of Law. Peter W. Salsich, Jr., Sr. Louis Univ. Sch. of Law, <http://law.slu.edu/people/peter-w-salsich-jr> (last visited Sept. 22, 2015).

charter cities sprang up, and how they fit into the state constitution. He also talked about the Ferguson mayor's lack of power and how the city was really controlled by a city manager. Finally, he discussed the link between police practices and municipal budgets. All these municipalities need to raise funds *somehow* if they are to provide social services and make sure municipal employees get paid. And the way they do this is through traffic fines and court fees.

**Class 3: Roger Goldman, Police Departments-Regulation and Reform<sup>12</sup>**

Roger, who teaches criminal procedure and constitutional law, gave a powerful lecture on how police officers are disciplined, or more often how they aren't. Referencing not only Ferguson, but also police shootings in Cleveland (famiir Rice) and New York (Eric Garner), Roger showed how, depending on the state, police may not face any employment repercussions for bad behavior. Their record does not follow them, in part because there is no national record-keeping system for police misconduct. Police officers who are disciplined by one department in one city may freely move to another city and get a job. Again, the municipal structure of St. Louis County facilitates this: Officers who get fired in one municipality can go next door and ask for a job-and get it.

**Class 4: Jane Darst, Beth Orwick-The GrandJury.<sup>13</sup>**

Beth and Jane are attorneys with the Circuit Attorney's Office of St. Louis City; they are in charge of shepherding charges through the grand jury. Many of the students in the class were upset that the St. Louis County grand jury had not approved charges against Darren Wilson, so Beth and Jane had an uphill climb trying to dispel myths about grand juries and how easy it is to get an indictment (resisting the idea that you can prosecute a ham sandwich). Having Beth and Jane there to represent the prosecutor's side of the story was also helpful in correcting the largely pro-defense narrative that was emerging in the course.

**Class 5: Chad Flanders, Law Enforcement Officer Use of Forcc<sup>14</sup>**

Because the previous classes had largely been lectures, I decided to incorporate discussion into my class. I presented the facts of four "use of force" cases to the students. In each case, a police officer was being sued for excessive use of force, and the question was whether the use of force was "reasonable."

Students split on the cases-sometimes in surprising ways. The discussion brought *to* light radically different views of how police should behave in tense

12. Roger L. Goldman is the Callis Family Professor Emeritus at St. Louis University School of Law. Roger L. Goldman, *ST. LOUIS UNIV. SEU. OF LAW*, <http://law.slu.edu/pcople/rogcr-l-goldman> (last visited Sept. 22, 2015).
13. Jane Darst is First Assistant Circuit Attorney at the City of St. Louis Circuit Attorney's Office and Adjunct Professor at St. Louis University School of Law. Jane Darst, *LINKEDIN*, <https://www.linkedin.com/pub/jane-clarst/20/573/7r2> (last visited Sept. 2, 2015); Beth Hensley Orwick is Assistant Circuit Attorney and Chief Trial Assistant at City of St. Louis Circuit Attorney's Office.
14. Chad Flanders is Associate Professor at St. Louis University School of Law. Chad W. Flanders, Sr. *LOUISIANA STATE UNIV. SEU. OF LAW*, <http://law.slu.edu/pcople/chad-w-flanders> (last visited Sept. 22, 2015).

situations and how people should behave when approached by the police. In one case I showed a video of a police chase, and students seemed to disagree at a fundamental level about what they were seeing. Was the officer behaving too aggressively, or was he reasonably responding to a threat?

**Class 6:** Marcia McCormick, Civil Rights Suits<sup>15</sup>

Marcia, who teaches criminal law and employment law, talked about civil rights suits. The timing was perfect because this class coincided with increased discussion of civil remedies in the *Brvvn* case, and preceded the forthcoming Department of Justice report on Darren Wilson's conduct. Marcia gave a sense of the extent to which towns and cities could be liable when police officers used excessive force.<sup>16</sup> She also discussed potential claims protesters in Ferguson might have against police departments—an aspect of the Ferguson crisis that we had already touched on in Roger Goldman's class. As it turned out, the DOJ report<sup>17</sup> was almost entirely sympathetic to Wilson's point of view—ruling out a civil rights suit by the federal government against Wilson—but the Brown family's subsequent civil lawsuit against Wilson was coming, and similar suits would soon be filed in other cities by those claiming to be victims of police violence and abuse.

**Class 7:** Sue McGraugh, Racial Profiling<sup>18</sup>

Sue, who supervises the Criminal Defense Clinic, discussed the well-established fact of racial profiling by police officers: the statistics show that African-Americans are stopped more regularly by police, even though the "hit" rate for finding illegal activity is much lower for African-Americans than it is for whites. She showed graphs of how poorer minority communities have to rely for more of their revenue on traffic fines than richer communities, which can rely on property taxes. If fines are the way you pay the bills, then minor violations that lead to fines will be more aggressively prosecuted, and many times prosecuted in racially discriminatory ways. Sue's presentation also made clear how ostensibly race-neutral criteria for stops and frisks (furtive movements, being in a high-crime area, walking away from police) can be used as pretexts for racially discriminatory policing. The *DOJ* report on

15. Marcia L. McCormick is Director of the William C. Wefel Center for Employment Law and Professor in the Center for Employment Law at St. Louis University School of Law. Marcia L. McCormick, ST. LOUIS UNIV. SCH. OF LAW, <http://law.slu.edu/pcopl/marcia-l-mccormick> (last visited Sept. 22, 2015).

16. Marcia also had experience defending the state of Illinois in various 1983 actions.

17. U.S. DEPT OF JUSTICE, MEMORANDUM, DEPARTMENT OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON (iwr5), [http://www.justice.gov/sitcs/default/files/opa/prcss-rlcascs/attachmcs/20rso3/04/doj\\_rport\\_on\\_shooting\\_of\\_michael\\_brown\\_r.pdf](http://www.justice.gov/sitcs/default/files/opa/prcss-rlcascs/attachmcs/20rso3/04/doj_rport_on_shooting_of_michael_brown_r.pdf).

18. Susan W. McGraugh is Supervisor of the Criminal Defense Clinic and Professor at the St. Louis University School of Law. Susan W. McGraugh, ST. LOUIS UNIV. SCH. OF LAW, <http://law.slu.edu/pcopl/susan-w-mcgraugh> (last visited Sept. 22, 2015).

Ferguson<sup>9</sup>-which I now assign in my criminal procedure class-confirmed Sue's assessment of the state of racially motivated policing in the St. Louis area.

**Class 8** Justin Hansford, Ferguson and Human Rights<sup>10</sup>

Justin, who specializes in civil rights and critical race theory, had already been out front in dealing with and discussing issues related to Ferguson. He participated in many of the clinics' lawsuits against the police and himself had a run in with the police while observing a protest at Wal-Mart.<sup>21</sup> Justin also traveled with Michael Brown's family to Geneva to present a report on Ferguson and Human Rights to the United Nations.<sup>22</sup> Justin's presentation was based on that U.N. report. He discussed Ferguson in the context of America's history of racial discrimination and the civil rights movement, but also urged us to take a broader view of Ferguson. Ferguson involved not just a question of local police behaving badly, or mismanaging the situation-although it certainly was that. Instead, Justin encouraged us to look at Brown's shooting, the treatment of his body after the shooting, and the police's aggressive response to protesters as matters of *human rights*. Ferguson was not just a local issue, or even a national issue. It was also an international issue. The world was watching, and Ferguson showed how violations of international law were not just things that happened in far-off countries. They were happening in our neighborhood.

**Class 9** William Freivogel, The Media and Ferguson<sup>23</sup>

Bill is a longtime St. Louis reporter-first with the Post-Dispatch, then with the St. Louis Beacon, and now with St. Louis Public Radio. He also has a J.D. from Washington University, and teaches journalism at Southern Illinois University. Bill's work on the Ferguson grand jury was path-breaking and, in one case, may have even led the prosecutors to reinstruct the jury on the

19. U.S. DEPT OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (2015), [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/031704/ferguson\\_police\\_department\\_report\\_r.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/031704/ferguson_police_department_report_r.pdf).
20. Justin Hansford is Assistant Professor at the St. Louis University School of Law. Justin Hansford, ST. LOUIS UNIV. SCH. OF LAW, <http://law.slu.edu/people/justin-hansford> (last visited Sept. 22, 2015).
21. Justin Hansford, *I Went to Ferguson to Protect the Protesters. I Got Arrested Instead*, Vox (Oct. 24, 2014), <http://www.vox.com/2014/10/24/7033567/ferguson-protest-arrested-michael-brown>; Jeff Redding, *Police Arrest SLU Law Professor and Legal Observer During Saint Louis Protests*, THE FACULTY LOUNGE (Oct. 27, 2014, 1:43 PM), <http://www.thcfacultylounge.org/2014/10/police-arrest-slu-law-professor-and-legal-observer-during-saint-louis-protests.html>.
22. Justin Hansford & Meena Jagannath, *U.S. to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States After Ferguson*, 12 HASTINGS RACE & POVERTY L.J. 101 (2015); Josh Lewis, *Michael Brown's Parents Address U.N.: "I'll Need the World to Know"*, CNN (Nov. 12, 2014), <http://www.cnn.com/2014/11/12/us/ferguson-brown-parents-u-n/>.
23. William H. Freivogel is professor of the School of Journalism at Southern Illinois University Carbondale and at the Paul Simon Public Policy Institute. William Freivogel, ST. LOUIS PUBLIC RADIO, <http://ncws.stlpublicradio.org/people/william-freivogel#stream/0> (last visited Sept. 22, 2015).

standard of law.<sup>14</sup> Bill spoke to us about the many missteps the media made in reporting on Ferguson. In an effort to be the first to break a story, local and national networks sometimes got the facts wrong, or the law wrong, usually in an effort to find the "smoking gun" that would prove Wilson's guilt or innocence. But mixed with this was praise for some of the reporting, including the reporting of Bill's former employer, the Post-Dispatch, which ended up winning a Pulitzer for its photographs of Ferguson.

**Class 10: Molly Wilson, Ferguson and Social Science<sup>25</sup>**

The last lecture in the Ferguson course was given by Molly Wilson on the ethics of prosecutorial behavior, and what social science can say about it. Molly, who has a background in psychology, researches the incentives prosecutors work under-how various institutional and personal factors lead prosecutors to push cases even in the face of exculpatory evidence. Prosecutors tend to be in the same "in group" as police officers, and this may frame how they see cases-and once they see cases a certain way, it can be hard for them, psychologically, to shake their belief. Molly's talk led to conversation about how to reduce bias in the criminal justice system and about the phenomenon of non-prosecution. Did the fact that there were no charges against Darren Wilson show that McCulloch had overcome the inherent incentives toward prosecution? Or were there other, more subtle influences at work, such as the need for the prosecutor to remain on good terms with the police? Here, being on the same "team" as the police meant there was pressure to refuse to charge rather than to charge.

**Final Class: Roundtable**

The final class brought together a number of speakers we wished we could have had for a whole session but, for scheduling or other reasons, weren't able to: Brendan Roediger,<sup>26</sup> from our own clinic; Aaron Banks,<sup>27</sup> an SLU graduate now working at a top St. Louis firm that did some pro bono Ferguson work;

24. William Freivogel, *Wilson Could Go Free Even if Convicted, Legal Experts Say*, ST. LOUIS PUB. RADIO (Nov. 17, 2014), <http://news.stlpublicradio.org/post/wilson-could-go-free-even-if-convicted-legal-experts-say>; William Freivogel, *Grand Jury Halted with Confusing Instructions*, ST. LOUIS PUB. RADIO (Nov. 26, 2014), <http://news.stlpublicradio.org/post/grand-jury-wrangled-confusing-instructions>.
25. Molly J. Walker Wilson is Associate Professor at the St. Louis University School of Law. Molly J. Walker, ST. LOUIS UNIV. SCHOOL OF LAW, <http://law.slu.edu/people/molly-j-walker-wilson> (last visited Sept. 20, 2015).
26. Brendan Roediger is Associate Professor in the Legal Clinics at the St. Louis University School of Law. Brendan Roediger, ST. LOUIS UNIV. SCHOOL OF LAW, <http://law.slu.edu/people/brendan-roediger> (last visited Sept. 22, 2015).
27. Aaron W. Banks is an Associate in the business litigation practice at Thompson Coburn, LLP. Aaron Banks, THOMPSON COBURN, L.L.P., <http://www.thompsoncoburn.com/people/find-a-professional/aaron-banks.aspx> (last visited Sept. 22, 2015).

Kira Hudson Banks<sup>8</sup> a psychology professor at SLU; Julia Ho<sup>9</sup> from MORE (Missourians Organized for Reform and Empowerment), a local community activist group; and Thomas Harvey<sup>30</sup> of ArchCity Defenders, a legal defense nonprofit organization. Each explained how Ferguson related to their work. They also talked, sometimes hopefully, and sometimes despairingly, about the possibilities for change.

A question by one student structured much of the discussion: Why don't we talk about the issues raised by Ferguson more in our law school classes? Harvey, a graduate of SLU Law, said that he, too, was frustrated by this: His classes included dry doctrine but did not get into the structural impediments to change such as racism and social class. These should be part of a person's legal education, too, he said, even if they were not tested on the bar. Other members of the panel agreed. The conversation was a fitting end to the semester: a sort of metareflection on the place courses like Ferguson occupy in the legal curriculum.

## II. What Worked and Didn't Work in the Course—and Some Broader Lessons

### *a. Interdisciplinarity*

One of the more general goals of the Ferguson class was to show how different areas of law and scholarship fit together and interact with one another, and also how other disciplines can inform the law and help the law better do its job. The class demonstrated the extent to which research in social science can explain how prosecutors and police officers work. Seemingly unrelated decisions about where to draw property lines—between city and county, and between municipality and municipality—can affect how local governments are able to raise revenue, which, in turn, influences how police do their jobs.<sup>31</sup> International law norms suggested ways in which local laws and practices can be reformed. The Ferguson class was therefore not just about criminal law; it was about the structure of local governments, rules governing police behavior, the municipal court system, and the role of protest.

The class also broke down the border between "doctrinal" and "clinical" teaching. One of the great things about the class is how it brought clinical and

28. Kira Hudson Banks is Assistant Professor of Psychology at St. Louis University. *D.* Kim Hudson Ball, KIRILLU.L.KS.COM, <http://kirabanks.com/> (last visited Sept. 22, 2015).

29. Julia Ho is Organizer at Missourians Organizing for Reform & Empowerment (MORE). *Contact Us*, MORE, [http://www.organizcrno.org/contact\\_us](http://www.organizcrno.org/contact_us) (last visited Sept. 22, 2015).

30. Thomas Harvey is Executive Director and Founder of Arch City Defenders. *Who We Are*, ARCH CITY DEFENDERS, <http://www.archcitydefenders.org/who-we-arc/st:aff/> (last visited Sept. 22, 2015); Thomas Harvey, LINKEDIN, <https://www.linkedin.com/pub/thomas-harvey/14/778/51a> (last visited Sept. 22, 2015).

31. Cash-strapped municipalities that can't raise enough money through property taxes are forced to get revenue through writing traffic tickets, which leads to aggressive police enforcement of minor municipal ordinances. See generally Balko, *How Municipalities*, *supra* note 3.

doctrinal faculty together on a regular basis to share expertise and perspectives. Both groups would benefit from collaborative teaching along these lines (I say more about this below).

#### *b. Response Papers*

The response papers were outstanding. Students offered thoughtful personal reflections, going beyond summaries of what happened in class. They explained personal experiences they had with the police, or with poverty. They critiqued speakers and connected the class with the reasons they decided to study law. In the responses, students used the Ferguson course to reflect on their studies and their budding careers. They wondered why things we talked about in the Ferguson course were not present in their other classes, why this was the first time that they had been exposed to the problems and pathologies that Ferguson exposed in the law.

#### *c. Discussion*

Early on, we settled into a format of lecture followed by questions. As it happened, there was usually precious little time for Q & A. In their evaluations, several students suggested making the class two hours long, with the first hour being lecture and the second hour devoted to discussion. I like this idea and plan on pursuing it in future classes of this type. One hour may be enough to raise the relevant issues; it is not enough to have a conversation about them.

But there is another big reason there probably wasn't much discussion: the nature of the subject matter. Two of our constant themes were race and the police—both hot-button issues that make many students uncomfortable. More conservative or "law-and-order"-oriented students probably felt pressure to keep their opinions to themselves. Although no one dominated the conversation, the opinions that were expressed tended to be critical of the police, or to express negativity about race relations in America. Those who disagreed might not have wanted to take the chance of being called racist, or of being accused of defending aggressive police tactics. Indeed, it's possible that given the issues we were addressing, no one—no matter the political persuasion—wanted to be on the record.<sup>32</sup>

#### *d. Orientation*

The class had a certain orientation that seemed to be baked in from the beginning. I and those who volunteered their time wanted to teach the class and were inspired to do so because we thought Ferguson pointed to much larger issues and, frankly, much deeper problems in American society. Ferguson the city and Ferguson the class were not only about an isolated police shooting; they pushed us to think about police-community relations, about race, about

32. At various points, students in the class wanted to live "tweet" the class to a wider audience. Because of the sensitivity of our subject matter, we asked them not to tweet about any particular student comment, and certainly not in a way that the student speaker could be identified.

poverty, and about the combination of the three. If we thought the shooting of Michael Brown was just a one-time tragedy, we might have had enough for a lecture, but we certainly wouldn't have had enough for a semester-long class. Students attracted to the class also tended to see Ferguson as pointing to more general social problems. Speakers had a similar orientation. Actively recruiting students, faculty, and speakers who approached Ferguson from a different stance might have helped us better refine and defend our points of view. The one thing that did balance out the course, though, was the *Public Law Review* symposium on policing, which students were required to attend.<sup>33</sup> This provided valuable perspective that we plan to augment in future classes of this type.

*e. Broader Lessons*

Ferguson was a type of class very infrequently seen in law schools, at least in my experience. Sue and I tried hard to integrate the clinical and the doctrinal dimensions of the law school, and we tried-both in the content of the course and the speakers invited-to make the class timely and relevant. And we wanted it to have an impact beyond the classroom. I don't mean to suggest that law school does not aim for these goals. But too often it misses. There is a great deal of pressure to "teach the black-letter law," which too easily gets translated into "teach students what they need to know to pass the bar exam." This way of teaching is inherently conservative. Doing well on the bar exam, especially on the multiple-choice portion, is not about critiquing the law; it is about sticking to the law. Creativity is discouraged. I hoped that a class like Ferguson would be more dynamic, more critical, and more reflective than the run-of-the-mill law school class. It was.

The great benefit of the class is that it built bridges-in a satisfying and constructive way-between the clinical and the doctrinal faculty, between the students and the faculty, and between the law school and the community. The result was that in many ways faculty and students were more on the same level in the Ferguson course. It wasn't the faculty members teaching the students, as it usually was. Rather, we were all working together to figure out what was happening. Sometimes this led to tension, as when a presenter's view of events contrasted sharply with what a student knew about what happened that day. Sometimes it led to insights: students sharing their experiences outside of the classroom (on race, on the police, and the combination of the two) and how that shaped what they saw happening in Ferguson. They spoke for more than just themselves; they spoke for how communities in and around St. Louis saw Ferguson as confirming much of what they knew all along was going on.

The class also built links between the school and the community. Teaching this class sent a signal: that we took Ferguson seriously, that our law school felt there was something there worth talking about, thinking about, and responding to. The clinic got a lot of press about its involvement with Ferguson, but having a class on top of that gave our law school's commitment to Ferguson a special

<sup>33</sup> Thin Blue Line Symposium, *supra* note 10.

imprimatur. We also heard back that students shared materials from the class with people outside the law school, and we are confident the class helped them to make more informed and educated contributions to conversations about Ferguson, which, *in* and around St. Louis, are practically unavoidable. The course probably got the law school a little good PR, but that, to me, was secondary.<sup>34</sup> I didn't want us to *appear engaged* with the community and the issues it was facing. I wanted us to *actually be engag-ed*, smartly and effectively.

### Conclusion

I'm glad we offered the Ferguson course, even though it wasn't perfect. It brought students and faculty together in unique ways, and helped to foster conversation on sensitive yet vital issues. In the roundtable, we saw what the course at its best could be: an open and critical discussion on topics from many perspectives, accommodating many points of view, and showing students that *law matters* and that it involves things worth devoting your life to studying and practicing. I wish every class could have been like that roundtable, but maybe in the end the previous classes created the climate for our final discussion: We were educated enough in the issues to talk intelligently with people who had spent years of their lives dedicated to working on them.

Am I teaching the class again? My original impulse was not to. It was a great thing to do, but we didn't need to do it again—we struck while the iron was hot. Sue and I also had other commitments planned: Sue planned to expand her work in the clinic, and I planned to teach a mini-course on human trafficking in addition to my other classes. But at the one-year anniversary of the Brown shooting, I changed my mind. The anniversary brought a reconsideration of the original events that started it all, as well as more protests, and more clashes between protesters and police. We are not over Ferguson, and as long as we are not over it, we should continue to talk about it, and teach it.

What Ferguson means, of course, will change—there will be new reports and new legislative changes and more police shootings.<sup>35</sup> And there will still be persistent problems of race and poverty and policing and crime, which will probably endure as long as America endures. We'll have to cover these again.

34. A reporter from *Missouri Lawyers Weekly* sat in on one of our classes, and later wrote about it. Catherine Martin, *Teaching Ferguson: A Missouri Law School Delves into the Issue*, Mo. L.W. WKLY. (Mar. 16, 2015), <http://rnolawyersmedia.com/2015/03/16/teaching-ferguson-missouri-law-schools-delve-into-the-issue/>. Our class was also featured in our law school's magazine, the *St. Louis Brief*, as part of a story on how our law school classes dealt with current events. Andrew Bouquet, *Ferguson in the Classroom*, in *Teaching the Headlines*, supra note 6, at 12.
35. E.g., Mark Urycki, *Cleveland DOJ Reaches Agreement Over Police Conduct*, NPR (May 27, 2015:04AM), <http://www.npr.org/2015/05/27/409939097/cleveland-doj-reach-agreement-over-police-conduct>; Jennifer S. Mann, *Muni Court Reform Law Takes Effect Today*, ST. LOUIS POST-DISPATCH (Aug. 23, 2015, 7:45 AM), [http://www.sltoday.com/news/local/crime-and-courts/municipal-court-reform-takes-effect-this-week-across-st-louis/article\\_a790197b-b58b-548a-96i6-934a36\(-i49358\).html](http://www.sltoday.com/news/local/crime-and-courts/municipal-court-reform-takes-effect-this-week-across-st-louis/article_a790197b-b58b-548a-96i6-934a36(-i49358).html); Matt Pearce, *N.C. Officer Didn't Face Second 'Fialfar Shooting Unarmed*, M011.1jter Car Crash, L.A. TIMES (Aug. 28, 2015, 2:13 PM), <http://www.latimes.com/nation/la-na-north-carolina-shooting-2or50828-stor.html>.

Several faculty members have already volunteered to take the lead in teaching and organizing the course, and I am grateful and pleased they are willing to step in. It looks more and more certain that Ferguson will be taught again this spring, and if that goes well, the odds increase that it-or something like it-will become a fixture at the law school.

But even if we don't end up teaching Ferguson again, there were lessons here about the benefits of collaboration across clinic and doctrinal lines, about teaching classes from multiple angles, and using many different areas of law. Ferguson provided a template for a class that needs to happen on a more regular basis, in more law schools. It suggests what legal education at its best can be: intelligent, practical, and relevant.

### **Appendix: Ferguson Course Syllabus**

#### **Ferguson**

The events in Ferguson have raised a series of troubling and pressing legal questions-about the relationship of police to the community, about the role of the municipal courts, about prosecutors and the grand jury system, about the excessive use of police force, and about city-county relations. This course aims to explore these issues and others and bring together faculty from SLU from many diverse subject areas and backgrounds.

#### **Basic Information (Please Read Carefully):**

This class will meet most Wednesdays (occasional exceptions listed below) from 11-12:50 in Room 1234. You can bring your lunch.

This class will be graded pass/fail. You are allowed 2 unexcused absences. Beyond this, you need a very good excuse and will still be required to do a make-up writing assignment. Those who have 4 or more unexcused absences will receive a failing grade.

You are also responsible for writing 4 three-page response papers. These papers should be in response to the readings and the speaker for the week; they are not to be general ruminations on Ferguson. In other words, they should show that you have done the reading, paid attention to the speaker, and given the issue some thought before you started writing.

Two of those papers should be completed and handed in before March 6 (the last day before spring break). The other two need to be completed and handed in by April 24 (the last day of the last week of classes). If you miss these deadlines, you will receive a failing grade for the class.

If you are worried about the deadlines, then you should do the papers sooner in the semester rather than later.

#### **Readings:**

Readings will be available in a course packet, which will be emailed to you the first week of classes. Printed-out copies will also be available at the organizational meeting.

**Tentative Agenda:**

Please note that two required events do not occur on Wednesdays: The Millstone Lecture (Monday, Jan. 12) and the PLR Symposium (Friday, Feb. 20). Attendance at these is mandatory.

Thursday, Jan. 8, Noon: Organizational meeting (Chad Flanders and Sue McGraugh lead)

Monday, Jan. 12, 7 p.m.: Millstone Lecture, Radley Balko of *The Washington Post*, "The Criminalization of Poverty: How structural racism, petty fines, and municipal courts create anger, fatalism, and despair." (Required attendance for students enrolled in the class)

Wednesday, Jan. 14: John Ammann, The Municipal Court System

- 1). Radley Balko, *How Municipalities in St. Louis Co. Profit From Poverty*, WASH. POST, Sept. 3, 2014
- 2). ArchCity Defenders, *Municipal Courts "Wzitepaper"* (optional, but highly recommended)

Wednesday, Jan. 21: Pete Salsich, Municipal Home Rule

- 1). Ferguson City Charter, Article II. Powers & Article III, The Council, Sec. 3.1 (Powers vested), Sec. 3.7 (Mayor) (SKIM)
- 2). Mo. CONSTITUTION, Article VI (Local Government), Sections 15 - 17, 18 (a) - 18(r), 19 - 22, 30(a) & (b), 31-33- (SKIM)
- 3). *Missouri Legislature Acts to Make It Harder to Fire Police Chiefs; Cities Want Nixon Veto*, POST-DISPATCH, June 15, 2014
- 4). *Who's In Charge Here? For Ferguson and St. Louis County Police, Not Elected Officials*, POST-DISPATCH, August 27, 2014
- 5). *Amid Anger Over Brown's Death, Structuralfy Limited Mayor Vows To Make Changes*, POST-DISPATCH, Sept. 1, 2014
- 6). *Cape Motor Lodge v. City of Cape Girardeau*, 706 S.W.2d 208 (Mo. 1986)

Wednesday, Jan 28: Roger Goldman, Police Departments-Regulation and Reform

- 1). Roger Goldman, *A Model Decertification Law*, 32 ST. LOUIS U. PUB. L. REV. 147 (2012), <http://ssm.com/abstract=2215090>
- 2). Roger Goldman, *Police Officer Decertification*, POLICE CMEF MAG. (forthcoming 2015)

Wednesday, Feb. 4: Jane Darst, Beth Onvick-The Grand Jury

- 1). Jeffrey Fagan and Bernard Harcourt, FACT SHEET: QUESTIONS AND ANSWERS FOR COLUMBIA LAW STUDENTS ABOUT GRAND JURIES
- 2). 19 Mo. PRAC, Criminal Practice & Procedure § 12:2 (3d ed.) (Function of the grand jury)

Wednesday, Feb. 11: Chad Flanders, Law Enforcement Officer Use of Force

- 1). *Tennessee v. Garner*, 471 U.S. 1 (1985) (majority opinion only)
- 2). Envin Chemerinsky, *How ttle Supreme Court Protects Bad Cops*, N.Y. TIMES, Aug. 26, 2014
- 3). Model Penal Code § 3.07, Comment

Friday, Feb. 20: PLR Symposium, Speakers TBA (Required attendance for students enrolled in class)

Wednesday, Mar. 4: Sue McGraugh, Racial Profiling

- r). CTR. FOR CoNSTIT. RIGHTS, REPORT: RACIAL DISPARITIES IN NYPD STOPS AND FRISKS

Week of Mar. 16: No class, Spring Break

Wednesday, Mar 18: Marcia McCormick, Civil Rights Suits

- 1). *Monroe v. Pape*, 365 U.S. 167 (1961) (excerpts)
- 2). *Monell v. Dep't of Soc. Svcs.*, 436 U.S. 658 (1961) (excerpts)

Wednesday, Mar. 25: Justin Hansford, Ferguson and Human Rights

- 1). WRITTEN STATEMENT ON THE POLICE SHOOTING OF MICHAEL BROWN AND ENSUING POLICE VIOLENCE AGAINST PROTESTORS IN FERGUSON, MISSOURI

Wednesday, Apr. 1: Steve Hanlon, Race and the Criminal Law (canceled)

- r). Michelle Alexander, *The New Jim Crow*, 9 Omo ST. J. CRIM. L. 1 (2011).

Wednesday, Apr. 8: Bill Freivogel, The Media and Ferguson

- r). Bill Freivogel, *Hard Choices for Journalists Covering Ferguson*, GATEWAY JOURNALISM REV., Aug. 12, 2014
- 2). Bill Freivogel, *The Myths of Ferguson's Media Coverage*, GATEWAY JOURNALISM REV., Aug. 22, 2014
- 3). Bill Freivogel, *Ferguson Aftermath, Two Months Later*, GATEWAY JOURNALISM REV., Oct. 10, 2014
- 4). Bill Freivogel, *Grand Jury Halted with Confusing Instructions*, ST. LOUIS PUB. RADIO, Nov. 26, 2014
- 5). Arturo Garcia, *Lawrence O'Donnell Rips St. Louis Prosecutor for Making It "Impossible for Darren Wilson to Fail,"* RAW STORY, Nov. 17, 2014

Wednesday, Apr. 15: Molly Wilson, Ferguson and Social Science

- 1). Lawton P. Cummings, *Can an Ethical Person Be an Ethical Prosecutor?* 31 CARDOZO L. REV. 2139 (2010)

Week of Wednesday, Apr. 22: Concluding roundtable discussion (speakers TBA)