

Silence & Justice
LJST 32, Spring 2010
Monday, Wednesday & Friday, 11:00-11:50
Converse Hall, Room 302

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What is the role of silence in matters of justice? When considered in the verbally and textually based contexts of legal processes, silence seems an odd phenomenon on which to focus, and yet the silences of the court and its various actors form a crucial aspect of legal proceedings and their legacies; in larger and more general contexts, silence — as a marker for what is absent, what is not said, what cannot be said, etc. — conditions some of our most important instincts about the justness of human conduct. Is silence a force for justice or against it, or does it exist in some other relation to justice? If the answer to this question changes with context, then what sort of concept is silence? How do deliberate, voluntary, coerced, unintentional, or emergent silences differ on practical and moral levels? In this course, we will examine answers to these questions in case law, legal theory, and critical perspectives drawn from philosophy, literature and political science.

Required texts:

at Amherst Books:

Louis Seidman, *Silence and Freedom* (Stanford) (*this text is also on reserve in Frost*)

e-reserves (please see course site)

course packet (available for purchase from Ms. Megan Estes-Ryan in the LJST department office, beginning Friday, Feb. 5; before then, please access all packet readings on the e-reserves page)

Course requirements: Two essays (6-8 pgs. each), four short response papers, and a take-home final examination. You will also be responsible, with a partner, for a discussion-leading exercise: on prearranged days, different pairs of students will be responsible for initiating and guiding class discussion — we will pair everyone off, establish a schedule and provide guidelines for these exercises during the first few sessions.

Attendance: Deriving the greatest benefits from this course involves class participation to some extent — while you are not graded on such participation, you will find that regularly asking questions and becoming a part of the discussions will improve your experience in the class, in writing your papers, etc.. Keeping this in mind, you are allowed miss seven sessions without penalty; each subsequent absence will result in a deduction of 2 points (of 100) from your final course grade. (Extraordinary circumstances aside, the seven absences are intended to include illness, etc., so you should pace yourself)

If you do miss class, please make yourself responsible for catching up through classmates on what we did during that session. Generally, you will have the option of checking this course's web site, where you can read/download most announcements, hand-outs, etc. (please be sure to examine all areas when looking for materials you may have missed). Occasionally, I may also post additional announcements or other items not mentioned in class, so it's a good idea to check the course site once or twice a week even if you have been attending consistently.

Grading:

Two essays: 50% (25% each)
 Four response papers: 20% (5% each)
 Discussion-leading exercise: 10%
 Take-home final exam: 20%

Syllabus:

(p) - in course packet

(e) - on electronic reserve

AUSTIN'S COLLECTION???

whistleblower laws?

Riggs v Palmer, when the law is silent?

Adorno, no poetry after Auschwitz (in ND?)

silence and consent cases?

**PREPARATION:
 THEORIES AND
 PHILOSOPHIES
 OF SILENCE**

Jan. 25: Introduction
 Jan. 27: Franz Kafka, *The Trial* (excerpt) (p/e)
 Jan 29: Marianne Constable, "Prologue: Signs of Silence," from *Just Silences* (p/e)

Feb. 1: Peter Tiersma, "The Language of Silence" (e)
 Feb. 3: Ludwig Wittgenstein, *Tractatus Logico-Philosophicus* (excerpt) (p/e)
 Maurice Merleau-Ponty, "The Body as Expression, and Speech," from *Phenomenology of Perception* (p/e)
 Martin Heidegger, "Being-there and Discourse. Language" and "Conscience as the Call of Care," from *Being and Time* (p/e)
 Feb. 5: Søren Kierkegaard, "Problema III," from *Fear and Trembling* (p)

FIRST RESPONSE PAPER DUE

Feb. 8: Theodor Adorno, "Expressing the Inexpressible," from *Negative Dialectics* (p)
 Shane Weller, "Nothing to Be Said" (e)

**EVIDENCE AND
 LAWYERS**

Feb. 10: Federal Rules of Evidence (e)
 Feb. 12: Federal Rules of Evidence
consultations begin for self-made essay topics

Feb. 15: Stefan Krieger, "A Time to Keep Silent and a Time to Speak: The Functions of Silence in the Lawyering Process" (e)
 Feb. 17: Daniel Fischel, "Lawyers and Confidentiality" (e)

**FIFTH
AMENDMENT**

Feb. 19: Fifth Amendment, U.S. Constitution (e)

first essay topics distributed

Feb. 22: Louis Seidman, "Introduction: The Strangest Right,"
"Some Useful Dichotomies"

Feb. 24: *Miranda v. Arizona* (e)

Feb. 26: *Doyle v. Ohio* (e)

March 1: *Jenkins v. Anderson* (e)

FIRST ESSAY DUE

March 3: Constable, "Brave New Words: The *Miranda* Warning as Speech Act,"
from *Just Silences* (p)

Seidman, "Silence and Self-Incrimination: 'Fuck This Shit'"

March 5: Seidman, "Silence and Intimacy in the Station House"

March 8: *Brewer v. Williams* (e)

March 10: *Chavez v. Martinez* (e)

Alan Dershowitz, "What is the Right Against Self-Incrimination?"

"The Supreme Court's Recent Decision" (p)

March 12: Dershowitz, "The Limits of Textual Analysis in Constitutional
Interpretation," "The Case for a Vibrant Privilege in the
Preventive State" (p)

SECOND RESPONSE PAPER DUE

(Spring break!)

**FIRST
AMENDMENT**

March 22: First Amendment, U.S. Constitution (e)

New York Times v. U.S. (e)

March 24: *In re: Grand Jury Subpoena, Judith Miller* (e)

March 26: *Texas v. Johnson* (e)

March 29: Constable, "Flags, Words, Laws, and Things,"
from *Just Silences* (p)

March 31: *Roth v. United States* (e)

April 2: Catherine MacKinnon, "Equality and Speech," from *Only Words* (p)

consultations begin for self-made essay topics

April 5: Lawrence Soley, "SLAPPING Citizens," "Muzzling David: Corporate
Media Goliaths," from *Censorship Inc.* (p)

April 7: *Beauharnais v. Illinois* (e)

April 9: Racial and Religious Hatred Act 2006 (U.K.) (e)

THIRD RESPONSE PAPER DUE

second essay topics distributed

April 12: Seidman, "Free Speech and Free Silence"

April 14: Wendy Brown, "Freedom's Silences," from *Edgework* (p)

April 16: *West Virginia v. Barnette* (e)

**INTERNATIONAL
CONCERNS**

April 19: Elaine Scarry, "Introduction" (from *The Body in Pain*) (p)

SECOND ESSAY DUE

April 21: Seidman, "Torture's Truth"

- April 23: Military Commissions Act 2006 (U.S.) (e)
Kevin Lanigan, "Military Commission Trial Observation" (e)
- April 26: Robert Faurisson, "The 'Problem of the Gas Chambers'" (e)
April 28: Pierre Vidal-Naquet, "History, Myth, and the Holocaust" (p)
April 30: Jean-François Lyotard, "Result," from *The Differend* (p)
- May 3: *Truth and Reconciliation Commission of South Africa Report*,
vol. 1, ch. 5: "Concepts and Principles" (e)
- May 5: Archbishop Emeritus Desmond Tutu, "Nuremberg or National
Amnesia? A Third Way," "This is My Brother. I Know Those
Shoes.," "We Did Not Know" (excerpt), from *No Future Without
Forgiveness* (p)
- FOURTH RESPONSE PAPER DUE**
- May 7: Mark Sanders, "Literature and Testimony" (excerpt), from *Ambiguities
of Witnessing* (p)

TAKE-HOME FINAL EXAM, DUE WEDNESDAY, MAY 12, 12 P.M.