

LAW 6112 - Criminal Procedure – Adversary System

Course Policies: Spring 2018

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Criminal Procedure – Adversary System
Room 285C
M, T, W 1 pm
Office Hours: T, 2-3 pm

Coverage & Course Objectives: This course is the criminal analogue to civil procedure, covering the criminal process from arrest through sentencing. The class will focus on federal constitutional case law, but we will also consider Florida law where it differs significantly from the norm.

Student Learning Outcomes: Key objectives of the course include:

- Familiarization with the criminal justice process;
- Knowledge and understanding of criminal procedure;
- Understanding of and appreciation for the values underlying the criminal justice system; and
- Legal analysis and reasoning.

Assessment of Student Learning: I will assess your attainment of competency in these learning outcomes through an in-class examination at the end of the semester.

Textbook: The textbook will be Yale Kamisar et al, Advanced Criminal Procedure (14th ed. 2015). You may also use Modern Criminal Procedure (14th ed. 2015), by the same authors. I believe the page numbers are identical in both books.

TWEN: You will need to sign up for the TWEN site for this course.

Workload and Assignments: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Criminal Procedure-Adversary System has 3 “classroom hours” of in-class instruction each week, requiring at least 6 hours of preparation outside of class. This requirement will be met through your completing the assigned reading in the case book and assigned practice materials.

Assignments: All assignments will be from the Kamisar book and supplementary materials on federal and Florida law. We will not cover all assigned material in class, but we will discuss those points that I consider to be most important. The exam will cover all assigned material.

Actual Syllabus: Tentative assignments for the first two weeks of class are included in a separate document, titled “Actual Syllabus.” I will update this document weekly on TWEN. In the syllabus, I will list the cases, rules, and statutory provisions on which we will focus in class.

Florida Law: Because Florida criminal procedure may be tested on the Florida bar exam, I have included relevant statutory and rule provisions in the syllabus. I will expect you to read these provisions and will answer questions about them in office hours. We may not discuss these rules in class, however, and the only area of Florida law that may be tested on the exam for this course includes Florida law on discovery.

Tentative Course Outline: In case you want to read ahead or are curious as to the direction of the course, I have posted a tentative course outline on TWEN.

Attendance Policy: Attendance is required. On the first day of class, I will circulate a seating chart. Your seat that day will be your seat for the semester. At the beginning of each class meeting, students must sign an attendance roster. Missing more than six classes is grounds for dismissal from the course. Please make sure you are present and prepared on your on-call day (see “classroom preparation and conduct” below). An unexcused absence on your on-call day may lower your grade.¹ Please plan accordingly.

Classroom Preparation & Conduct: Each student is required to be fully prepared to discuss the assigned material once a week. I will divide the room into students who will be “on call” one day a week (i.e., either on Mondays, Tuesdays, or Wednesdays). If we do not finish a case on a given day, the students on call the next day should be prepared to discuss that case. If, on occasion, you would like to deviate from the norm, I am willing to be flexible, so long as you email me 30 minutes prior to class on Monday and identify the day of that week that you would like to be on call.

You are welcome to take class notes on a laptop computer. No other use of computers during class is authorized unless I specify to the contrary. No class may be recorded by any means without my prior written permission.

Accommodations for Students with Disabilities: Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565,

¹ University recognized religious holidays are exempt. Please provide me with advance notification of such absences.

www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to Dean Rachel Inman when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

The Honor Pledge: UF students are bound by The Honor Pledge, which states: “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honesty and integrity. On all work submitted for credit by students at the university, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’”

The Honor Code (<https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel (i.e., Dean Rachel Inman). If you have any questions or concerns, please ask me or Dean Inman.

Final Exam: The final examination will be an open book, limited-space examination. It may include multiple choice, short answer, and essay questions. The exam will be graded anonymously by exam number. To aid in your studying, I have posted copies of several past exams, along with model answers. The law school policy on delay in taking exams can be found at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

Grading Policy: Your grade for the course will be based predominately on the grade you receive on your final examination. Superb class participation may result in an increase in grade of up to 0.33 grade points; failure to participate when called on may result in a decrease in grade of up to 0.33 grade points.

I adhere to the College’s posted grading policy (<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies>). Grades carry the following point equivalents:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67

D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

Office Hours: My office hours are on Tuesdays, from 2-3 pm. You may also speak to me by appointment. My office is in Holland 305.

Online Course Evaluation: Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

Criminal Procedure – Adversary System

Tentative Course Outline: Spring 2018¹

This outline presents what I aspire to cover in this course. It may be useful as a general guideline for reading assignments and as a study aid. Depending on the pace of the class and students' interest in particular topics, we may cover more or less of the material listed below. Actual assignments will be posted on TWEN in two-week increments.

<u>Date</u>	<u>Topic & Key Cases</u>	<u>Assignment</u>
INTRODUCTION		
Jan. 8	Overview	3-5 (to § B), 9 (booking) - 21(to end of n.2); 22 (bottom) – 24, 42-43 (Dripps), 51-54 (Garrett)
Jan. 9	Incorporation and Federal Courts' Supervisory Power a. <i>Payner</i> (1980) b. <i>Hasting</i> (1983)	25-27 (top), 33-37 (skip note 1); <u>New York Times</u> editorial on <i>Brady</i> violations (on TWEN)
THE RIGHT TO COUNSEL		
Jan. 10	The Right to Trial Counsel a. <i>Betts</i> (1942) b. <i>Gideon</i> (1963) c. <i>Argersinger</i> (1972) d. <i>Rothgery</i> (2008)	60-69 (to end of n.6), 70-71 (mid), 73 (n.5), 76-79 (stop at Thomas's dissent), 80-81 (nn.1-4); FL ST RCRP 3.111
Jan. 16:	[no new assignment]	
Jan. 17	The Right to Counsel, cont'd a. <i>Griffin</i> (1956) b. <i>Douglas</i> (1963) c. <i>Ross</i> (1974) d. <i>Ake</i> (1985)	88 (mid) - 95; 170-72 (nn.1-3)
Jan. 22	Right to Proceed Pro Se; Counsel of Choice	96-103 (to end of n.8),

¹ Abbreviations: Unaccompanied numbers are page numbers from the 14th edition of *Advanced Criminal Procedure* (and of *Modern Criminal Procedure*). "FRCP" refers to the Federal Rules of Criminal Procedure. "FL ST RCRP" refers to the Florida Rules of Criminal Procedure. Federal and state rules are accessible through Westlaw. "FL ST" refers to Florida Statutes. The Florida Statutes are also accessible through Westlaw.

- a. *Faretta* (1975)
- b. *Martinez* (2000)
- c. *McKaskle* (1984)
- d. *Gonzales-Lopez* (2006)

Jan. 23 Effective Assistance of Counsel 119-35 (**but SKIP** n.4
on pp.120-21); 160 (bottom) – 164(mid)

- i. *Strickland* (1984)
- ii. *Cronic* (1984)

Jan. 24 Right to Assistance of Experts; Conflicts of Interest 173 (mid) – 182 (to end
of n.4)

- a. *Holloway* (1978)
- b. *Sullivan* (1980)
- c. *Wood* (1981)
- d. *Mickens* (2002)

Jan. 29 [no new assignment]

Jan. 30 Disqualification of Counsel; Client Control 183 (mid) – 188 (to end of n.1), n.4 (189),
190-98 (top)

- a. *Wheat* (1988)
- b. *Florida v. Nixon* (2004)
- c. *Flores-Ortega* (2000)

Jan. 31 [no new assignment]

PRETRIAL RELEASE

Feb. 5 Bail 876-80 (to end of n.4), nn.6-7 (881-82); Bail Reform Act,
18 U.S.C. § 3142(a, b, c, g, h); FL ST RCRP
3.131(a), (b), (d); Gainesville Sun article on varying bond
amounts (on TWEN)

- a. *Stack v. Boyle* (1951)
- b. *Kinney* (9th Cir. 1970)

Feb. 6 Bail (cont'd) & Preventative Detention **Problem 1 (on TWEN)**; 884-95(mid); Bail
Reform Act, 18 U.S.C. § 3142(e, f, i, j); FL
ST RCRP 3.132; FL ST § 907.041

- a. *Salerno* (1987)

Feb. 7 [no new assignment]

THE DECISION TO PROSECUTE

- Feb. 12** Challenging the Charging Decision 915 (mid) – 917 (top), 921-29 (to end of n.1), 941-45 (nn.5-6)
- a. *Inmates of Attica Correctional Facility* (2d Cir. 1973)
 - b. *Armstrong* (1996)
 - c. *McCleskey* (1987)
 - d. *Blackledge v. Perry* (1974)
 - e. *Goodwin* (1982)
- Feb. 13** The Preliminary Hearing **Problem 2**; read N.1 (947-49) and N.6 (951-52); skim N.2-5 & 7 (949-52); read 952 (bottom) – 957 (to end of n.9), 960-62, 966-68, 971 (mid) - 973, FRCP 5.1
- a. *Coleman* (1970)
 - b. *Clark* (Utah 2001)
- Feb. 14** Grand Jury Review 974-79
Guest Speaker: Professor Bob Dekle
- Feb. 19** Challenges Related to Grand Jury **Read** 988-94 (top); **skim** 994 (starting at n.1) – 995; **read** 995 (bottom) - 1003, n.1 (1004-05), n.4 (1005-06), 1007 (starting at n.6) – top of 1010 (to end of n.2), 1011- 1012 (to end of n.7)
- a. *Costello* (1956)
 - b. *Williams* (1992)
 - c. *Bank of Nova Scotia* (1988)
 - d. *Mechanik* (1986)
- Feb. 21** The Charging Instrument **Problem 3**; **skim** 1014-18; **read** 1018-34; FRCP 7; FRCP 12(a), (b)(3); FL ST RCRP 3.134, 3.140
- a. *Russell* (1962)
 - b. *Resendiz-Ponce* (2007)
- Feb. 26** [no new assignment]
- Feb. 27** The Charging Instrument, cont'd **Problem 4**; bottom of 1040-46 (to end of n.4)
- a. *Ex Parte Bain* (1887)
 - b. *Stirone* (1960)
 - c. *Miller* (1985)

- Feb. 28** Joinder and Severance 1062-68 (top); n.2 (1077-78), 1089 (mid) – 1092;
FRCP 8, FRCP 13, FRCP 14; FL ST RCRP
3.150-3.152
- a. *Pereira* (R.I. 2009)
 - b. *Schaffer* (1960)
 - c. *Lane* (1986)
- Mar. 12** Venue 1048-61; FRCP 18, FRCP 21; skim
FL ST §§ 910.005, 910.01-910.03, 910.04-910.06,
910.09-910.10 (**will not discuss FL law in class**)
- a. *Rodriguez-Moreno* (1999)
 - b. *Cabrales* (1998)
- Mar. 13** Speedy Trial 1103-19 (top); Speedy Trial Act, 18 USC §§
3161-62, 3164; FL ST RCRP 3.191
- a. *Barker* (1972)
 - b. *Lovasco* (1977)

DISCOVERY

- Mar. 14** By the Defense **Skim** 1122-38, FRCP 15, FRCP 17; **Read carefully** FRCP 16(a);
Jencks' Act, 18 USC § 3500; FL ST RCRP 3.220(a), (b), (e)-(n);
Defense Discovery hypotheticals on TWEN (for jeopardy
game!)
- Mar. 19** By the Defense, cont'd **Problem 5 (may not cover in class)**
- Mar. 20** By the Prosecution 1138-52 (top); FRCP 12.1-12.3, FRCP 16(b);
FL ST RCRP 3.220(c)-(d); FL ST RCRP 3.200,
3.201, 3.216
- a. *Williams* (1970)
 - b. *Wardius* (1973)
- Mar. 21** Remedies and Sanctions 1152-62 (top)
- a. *People v. Taylor* (Mich. App. 1987)
 - b. *Noe* (11th Cir. 1987)
 - c. *Taylor v. IL* (1988)
- Mar. 26** Defendant's Constitutional Right to Evidence 1164-78 (**but skip n.3 on p.1174),
1185-87
- a. *Bagley* (1985)
 - b. *Youngblood* (1988)

NEGOTIATED PLEAS

- Mar. 27** Perspectives and Unrealized Expectations 1188-95 (top)
- Mar. 28** Perspectives and Unrealized Expectations, cont'd 1195- mid-1214 (*but skip nn.2e-f on p.1212)
- a. *Bordenkircher* (1978)
 - b. *Santobello* (1971)
- Apr. 2** Video: Frontline – The Plea <http://video.pbs.org/video/2216784391/>
- Apr. 3** Unrealized Expectations and Professional Responsibility 1221-46 (top)
- a. *Frye* (2012)
 - b. *Lafler* (2012)
 - c. *Padilla* (2010)
 - d. *Newman* (D.C. Cir. 1967)
 - e. *Ruiz* (2002)
- Apr. 4** Receiving Plea and Withdrawal 1246-58 (top); FRCP 11; FL ST RCRP 3.170-3.172 (will not review in class)
- a. *Henderon* (1976)
 - b. *Alford* (1970)
 - c. *McCarthy* (1969)

TRIAL

- Apr. 9** The Right to a Jury Trial 1262-73 (mid)
- a. *Apodaca* (1972)
 - b. *Schad* (1991) and *Richardson* (1999)
- Apr. 10** Jury Selection 1273-82
- a. *Taylor* (1975)
 - b. *Ham* (1973), *Ristaino* (1976), and *Turner* (1986)
 - c. *Tanner* (1987) (*might not discuss in class)
- Apr. 11** Jury Selection, cont'd 1283-96
- a. *Batson* (1986)
 - b. *Miller-El* (2005)
- Apr. 16** Rights of Presence and Confrontation 1335-54 (*but skip n.4 on pp. 1340-42)
- a. *Allen* (1970)

- b. *Stincer* (1987)
- c. *Bryant* (2011)

Apr. 17 Rights to Remain Silent and Testify; Closing Arguments 1356 (bottom) – 1368
(but skip n. 4 and n.6 on pp.1360-61)

- a. *Griffin* (1965)
- b. *Darden* (1986)

DOUBLE JEOPARDY

Apr. 18 Double Jeopardy 1369-73, 1385-89

- a. *Somerville* (1973)
- b. *Scott* (1978)

[OR, if have time:

DOUBLE JEOPARDY

[day 1] Reprosecution after Mistrial 1369-85

- a. *Somerville* (1973)
- b. *Washington* (1978)
- c. *Lett* (2010)
- d. *Kennedy* (1982)

[day 2] Reprosecution after Acquittal & Conviction 1385-97

- a. *Scott* (1978)
- b. *Serfass* (1975)
- c. *Lockhart* (1988)

Apr. 23 Review Spring 2011 exam