

Incarceration Law, Law 6930 (3 credits)
Fall 2025
Syllabus v. 1.0 (3/18/2015)

Professor Mark Fenster
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Office: Holland Hall Room 371

Class meetings and classroom:

- T & Th 10:30-11:55, HH 285D

Office hours:

- T & Th 1:30-2:30 &
- by appointment (in person or online, <https://ufl.zoom.us/j/3415941766>).

Texts:

- SCHLANGER, BEDI, SHAPIRO, BRANHAM, INCARCERATION AND THE LAW, CASES AND MATERIALS (10th ed.).
- 2024 UPDATE MEMO TO INCARCERATION AND THE LAW (available from Canvas site)
- Any additional assignments will be available for download from the course's Canvas site. Please be sure to register for the Canvas course and have any required materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

Course Description and Student Learning Outcomes: Incarceration is both a pervasive element of society and a hidden aspect of our criminal justice system. This course studies the conditions of confinement, the constitutional and statutory basis for challenging them, and the remedies, limited though they may be, that litigation offers. It also considers other avenues for reform. The objective of this course is for you to develop a greater understanding of incarceration as a set of institutions and practices that the federal, state, and local governments have created, operate, and can better control. The course is descriptive, critical, and prescriptive. We will cover the law, politics, and sociology of incarceration, justifications for its existence and the problems it creates, and avenues for its reform, including but not exclusively litigation.

Among other objectives, at the end of this course, students should:

- learn about how the various carceral institutions in the U.S. punish, incapacitate, and rehabilitate their subjects, and how well they do so;
- gain understanding of the various constitutional provisions that the judiciary has applied to prisoner complaints about prison conditions and prison officials' action, and gain facility in using those provisions and the doctrines that courts developed to make arguments on prisoners' and officials' behalf;
- obtain a deeper understanding and appreciation of specific constitutional provisions, including the First and Eight Amendments, and consider the extent to which prisoners continue to enjoy those rights while incarcerated;
- appreciate some of the basic dynamics and realities of civil rights litigation practice on behalf of indigent clients;

- understand the continually evolving politics of criminal justice reform; and
- continue to develop close reading and critical thinking skills.

Office Hours: My office hours are listed above. I am teaching two courses this semester and will share my office hours with both sets of students. Normally, I will invite multiple students from the same course to share their time to facilitate discussion and use our time more efficiently. Depending on the state of COVID-19 spread, I may hold in-person office hours outside or request that everyone attending wear masks. I encourage you to use appointments outside of office hours to discuss matters unrelated to the class materials. I will hold individual appointments outside of office hours in-person or remote by agreement.

In Person/ Zoom: Although most class periods this semester will be in-person, I will occasionally hold classes on Zoom, especially when we have visiting speakers. I have not yet decided how I will decide which class will be held in each modality, but I will endeavor to make that decision at least a week in advance. Certain extenuating circumstances about the progress of infection on campus, in the city, and among us may well force us to retreat to Zoom. *Note: Unless you receive permission from me prior to class, I will expect that you will leave your camera on if you are joining the class via Zoom, and I will mark absent those who fail to do so.*

Common Courtesy (late arrivals, getting up during class): Please do not arrive late to class or leave class early absent extenuating circumstances. Please be certain to obtain essential items or relieve yourself before class begins. If you think you will need to get up on a regular basis during class, *including because you anticipate that you will need to go to the bathroom*, please choose a seat near one of the exits. I reserve the right to deduct points from your final grade if you engage in behavior that significantly disrupts the learning environment for your classmates. I also reserve the right to lock the doors at the beginning of class and to remove anyone from class who is being disruptive.

Class Preparation and ABA Out-of-Class Hours Requirements: You should arrive in class having read the materials closely. You should expect to spend, on average, approximately two hours preparing for every hour of class; therefore, expect to spend four hours each week to prepare for class. Reading assignments are posted below and I will announce specific class assignments in class and posted on the Canvas page. You should expect to have between 60-100 pages of reading each week.

Attendance/ Participation: Attendance is required, as per the requirements of both the ABA and the Law School. Each day, I will have at the front of the classroom an attendance chart for you to initial before class begins, and will employ a similar system for classes held remotely.

- **If you are “prepared,” I can cold-call on you.** Before I may not review the attendance chart before class, feel free (and without shame) to respond to a cold-call by saying that you did not sign in that day.
- To be “prepared” you must have read the assignment and have made a good faith effort to think through the materials so that I may cold-call on you. You do not have to have perfect answers to the questions we might pose, but you must be willing to discuss the assigned reading (and prior readings) and work through the questions with the class. If I call on you and I believe you are not prepared even though you have signed in as prepared, I reserve the right to lower your final grade. Also, I will consider it a violation of the honor code if you have someone else sign you in and you are not present, and I reserve the right to dock your final grade.

- If you are not “present and prepared” for 4 or more of our regularly scheduled classes, your grade for the semester will be adversely affected. If you are absent for 7 or more regularly scheduled classes, I will administratively drop you from the course, no matter your excuse. Conversely, I reserve the right to increase your final grade for superior classroom participation, both when I call on you and for voluntary participation.
- *You may not sign in as present and prepared if you arrive late for class or if you forget to sign in before class.*
- If you have a medical reason for missing class, you must contact me ASAP before or soon after class and provide documentation for your absence to be excused. To be excused from class for religious holidays, students must contact me beforehand by e-mail.

Seating: I will circulate a seating chart at the beginning of the first class. You must occupy the same seat each day. It will help me learn your names—a skill with which I was not born, sadly—and provide some order to the class sessions.

Evaluation, Class Participation: Assessments for this course will be based on four writing assignments submitted over the course of the semester: two brief papers during the first half of the semester (500 words, worth 15% each), when we are focused more on case law, and two longer papers during the second half of the semester (1500 words, worth 30% each), when we will be covering more policy-related and social issues. Participation, based on the quality and to a lesser extent the quantity of your contributions to the class, accounts for the final 10% of your grade.

You will be able to choose the dates for the first two assignments and the topics (or dates) for the second two assignments. I will give you prompts for the first two assignments; it will be up to you either to come up with your own prompt for the second two or to request one from me. The assignments will be due by 9AM on the day when we will be discussing the material in class.

Facilities Tours: I hope that we will be able to take tours of the Alachua County jail and a state prison. The jail is located across the street from the Gainesville Airport on NE 39th Avenue, and the tour takes about 60-90 minutes. We will tour a prison that is probably about an hour’s drive from Gainesville, and the tour is likely to take no more than two hours, and probably less. Last year, the students who attended one or both tours uniformly found the experience enlightening, and I strongly urge all of you to attend at least one. I will coordinate a schedule with the class and with the facilities, but they are most likely to occur on Fridays. I will try to schedule the jail tour before spring break and the prison tour after break.

Use of Computers in Class: I expect and encourage the use of computers in class for activities related to class, including taking notes and referring to readings from Canvas. I will not, however, tolerate the use of computers for activities unrelated to the class (e.g., e-mail, instant messaging, web surfing, game playing, shopping). I reserve the right to call on people whom I sense are engaging in unauthorized computer use during class, and to lower their final grades, *even if they have not signed in as present and prepared.*

Class Cancellation Policy: I may have to cancel class during the term. If I do, I will plan make-up classes later in the semester that will likely be held on Zoom. I will not take attendance for make-up classes and will make certain they are recorded.

UF Levin College of Law Standard Syllabus Policies: Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at [this link](#).

Reading Assignments

The specific assignments listed below cover the weeks prior to Spring Break. Some of the remaining five weeks are generally accounted for but with dates TBA. The other class periods will cover subjects that interest you as a group. I have listed at the end possible topics, many of which are covered in the casebook.

Week 1:

- Tuesday 8/19: The History and Current State of Incarceration in the U.S.
 - Sharon Dolovich, “Teaching Prison Law” (Canvas)
 - Casebook, pp. 1-40
- Thursday, 8/21: Overview of Prisoner Rights Litigation
 - Visit of [Dante Trevisani](#), Legal Director, Florida Justice Institute
 - *Hoffer v. James* and Motion for Preliminary Injunction in *Hoffer v. James* (Canvas)
 - History of Prisoners’ Rights movement, pp. 41-54
 - Prison Policy Initiative, [Mass Incarceration: The Whole Pie 2025](#)

Week 2:

- Tuesday, 8/26: Conditions of Confinement – Cruel and Unusual Punishment of Prisoners with Conviction
 - pp. 57-101
- Thursday, 8/28: Conditions of Confinement – Cruel and Unusual Punishment of Prisoners with Conviction (continued)
 - pp. 101-135; Casebook Update, pp. 5-9

Week 3:

- Tuesday, 9/2: Cruel and Usual Punishment, doctrine, theory, critique: Visit of Prof. John Stinneford, Levin College of Law & State Constitutional Provisions
 - pp. 135-138
 - Stinneford, “Original Meaning of Cruel” (Canvas)
 - State Court Reporter, [“Using Constitutional Protections to Improve Life Behind Bars”](#)
 - *Dexter v. Bosko*, 184 P.3d 592 (Utah 2008)
 - *Lanson v. Cain*, 524 P.3d 529 (Or. 2023)
- Thursday, 9/4: Due Process: Pretrial Detainees
 - pp. 138-175

Week 4:

- Tuesday, 9/9: Due Process: Pretrial Detainees (2) and Solitary Confinement 1

- pp. 176-185; Casebook Update, pp. 9-10; review of federal constitutional challenges to prison conditions; 187-211
- Thursday, 9/11: Solitary Confinement 2: after *Madrid*
 - pp. 211-251, Casebook Update, p. 10-11

Week 5:

- Tuesday, 9/16: Injunctive Litigation 1: Before the PLRA
 - pp. 705-734, 747-763, Casebook Update, pp. 16-19
- Thursday, 9/18: Injunctive Litigation 2: PLRA, and *Brown v. Plata*
 - pp. 763-813, Casebook Update, p. 19

Week 6:

- Tuesday, 9/23: Assessing the PLRA and Damages 1: § 1983, *Bivens*, and Qualified Immunity
 - pp. 813-855; Casebook Update, pp. 20-22
- Thursday, 9/25: Damages 2: FTCA and other issues
 - pp. 855-886

Week 7:

- Tuesday, 9/30: Litigation Process
 - pp. 887-914; Casebook Update, pp. 23-25
 - Florida's [grievance form](#) and grievance [process, as outlined in its Administrative Code](#).
- Thursday, 10/2: First Amendment: Freedom of Expression and Religion (1)
 - pp. 335-376

Week 8:

- Tuesday, 10/7: First Amendment: Freedom of Expression and Religion (2)
 - pp. 386-412, 421-432, Casebook Update, pp. 12-14
- Thursday, 10/9: Thursday: Women Prisoners (1)
 - pp. 575-614, Casebook Update, p. 14

Week 9:

- Tuesday, 10/14: Women Prisoners (2), visit of Bonnie Ernst, Dept. of Criminal Justice, Indiana University.
 - pp. 614-622
 - Introduction and Chapter 3 of BONNIE ERNST, CHALLENGING CONFINEMENT: MASS INCARCERATION AND THE FIGHT FOR EQUALITY IN WOMEN'S PRISONS (2023).
- Thursday, 10/16: Procedural Due Process: Parole and Discipline
 - pp. 461-472, 484-516

Week 10:

- Tuesday, 10/21: Race, National Origin, and Incarceration
 - pp. 541-574
- Thursday, 10/23: Sexual Abuse and the Prison Rape Elimination Act

- pp. 283-331, Casebook Update, pp. 11-12

Week 11:

- Tuesday, 10/28: Immigration Detention: Introduction (visit of Prof. César Cuauhtémoc García Hernández, Ohio State University Law School)
 - *Migrating to Prison* (New York: The New Press, 2023 edition preferred), Introduction, Chapters 4 & 6, Epilogue
- Thursday, 10/30: Immigration Detention 2 (visit of Professor Juan Caballero)
 - *Shughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) (edited)
 - *Zadvydas v. Davis*, 533 U.S. 678 (2001) (edited)
 - *Demore v. Kim*, 538 U.S. 510 (2003)
 - Felipe Jesús Hernández, [*Extrajudicial Segregation: Challenging Solitary Confinement in Immigration Prisons*](#), 137 HARV. L. REV. F. 175 (2024) (skim, but skim Part III more carefully)

Week 12

- Tuesday, 11/4: Programming, Work, Reentry, and Restoration of Civil Liberties
 - pp. 253-281
 - *Burrell v. Staff*, 60 F.4th 25 (3d Cir. 2023) (Canvas)
- Thursday, 11/6: Private Prisons and Prison Contractors
 - pp. 915-949
 - David S. Rubenstein & Pratheepan Gulasekaram, *Privatized Detention & Immigration Federalism*, 71 STAN. L. REV. ONLINE 224 (2019) (Canvas) (skim)

Week 13

- Tuesday, 11/13: Youth and Incarceration
 - Readings TBD
- Tuesday, 11/18: Access to Courts
 - pp. 439-459
 - *Rivera v. Monko*, 37 F.4th 909 (3d Cir. 2022) (Canvas)