

University of Florida Levin College of Law

COURSE SYLLABUS: INTRODUCTION TO PROSECUTION

LAW 6930 (23093) - 1 credit

Spring 2024

INSTRUCTOR'S CONTACT INFORMATION:

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Office Hours: Wednesdays 1:30-3:30 pm. If this time does not work for you, please contact me to set up a meeting at another time or drop by my office. Students should feel free to contact me anytime to discuss legal issues or ask questions about their cases. You are welcome to contact me via email, text, or phone.

MEETING TIMES AND LOCATIONS:

Classroom location: Bruton-Geer Hall, room 220D

This course will meet on the following dates and times:

Mon, January 8 - 10 am-noon and 1-3 pm

Tues, January 9 - 10 am-noon and 1-3 pm

Wed, January 10 - 9 am-1 pm @ SAO8 120 W. University Ave. and 2-4 pm in room 220D Bruton-Geer Hall

Thurs, January 11 - 10 am-2 pm @ Florida State Prison 23916 NW 83rd Ave. Raiford, Florida 32083

Fri, January 12 - 10 am-noon

COURSE DESCRIPTION AND OBJECTIVES:

This week-long, 1-credit course is designed to introduce students to the art and craft of prosecution. Prosecutors must learn to wield the power of the state ethically and deliberatively. Students will become familiar with the practices and procedures of prosecutors in the 8th Judicial Circuit so that they are prepared to hit the ground running when the Prosecution Field Placement Clinic begins. Students will trace the life of a criminal case, learn essential case preparation, and discuss the challenges they will face in the courtroom and the criminal justice system more broadly. Students will develop insight into the strategy and logic of preparing and presenting cases in this arena.

In this compressed course, students will also tackle the multiplex ethical issues that define prosecutors' fundamental duty to seek justice. Selected readings and recordings will explore the institutional strengths and weaknesses of the players in the criminal justice system and the impact of race, gender, and class on the quality of justice.

Finally, students will begin to think about or refine their professional identity, recognizing a criminal justice system in crisis and becoming motivated to do something about it. Prosecutors have enormous power to make real and lasting changes, and this introductory course will challenge students to think critically about how to solve problems in this system.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to:

Demonstrate an understanding of the life of a criminal case—from investigation and charging to interviewing, motion-writing, jury selection, and argument;

Negotiate with opposing counsel in the spirit of a just resolution of cases, with an understanding of Adverse Childhood Experiences (ACEs) and Restorative Justice alternatives to prosecution;

Identify and work to address brokenness within the criminal justice system, including bail reform, prosecution of misdemeanors, implicit bias, police training and resources, extreme prison sentences, racism, and over-criminalization;

Make timely and appropriate legal objections;

Develop or refine a professional identity that reflects the legal profession's core values and embraces ethical problem-solving in the criminal justice arena.

REQUIRED READING AND VIEWING MATERIALS:

Olwyn Conway, *Beyond Binary Thinking: Addressing the Biases That Threaten the Progressive Prosecution Movement* (2022)

Victims' Rights from a Restorative Perspective by Lara Bazelon & Bruce A. Green in *Canvas* under "Restorative Justice"

Darrell Jackson, *Coming to Terms with a Lifetime of Trauma While in Prison* (11/12/2023) in *Canvas*

Lisa Deaderick, *It Takes More Than Just Punishment to Repair Harm; USD Prof on Restorative Justice Work* (12/17/2023) in *Canvas*

Angelo Sedillo, *Prison Journalism Project: NM Lifers' Requests for Education Rebuffed-Year After Year* (12/7/2023) in *Canvas*

Courtney Duchene, *A Criminal Justice Success Story? Right here in Philly?* (12/12/23) in *Canvas*

Nicholas Turner, *Impact Over Orthodoxy* (12/6/23) in *Canvas*

Patrick Anderson, Forecast: RI Prison Population Will Grow Almost 30% by 2034. What's Driving the Increase? (12/5/23) in Canvas

Eric Umansky, The Failed Promise of Police Body Cameras (NYT 12/13/23) in Canvas

Sarah Stillman, Sentenced to Life for an Accident Miles Away (The New Yorker 12/11/2023) in Canvas

David Alm, From a Life Sentence to Freedom; The Rahsaan Thomas Story (11/13/2023) in Canvas

Ronald Brownstein, Why California Wants to Recall Its Most Progressive Prosecutors (The Atlantic, April 2022)

Billy Binion, Prosecutors Shouldn't Be Above the Law (Reason, January 2023)

Darcy Covert, The False Hope of the Progressive-Prosecutor Movement (The Atlantic 06/14/21)

Derald Wing Sue, Microaggressions: Death by a Thousand Cuts (Scientific American, March 2021)

Allegra M. McLeod, Prison Abolition and Grounded Justice, 62 UCLA L. Rev. 1156 (2015)

Zach Weissmueller, Can Larry Krasner Fix Philly's Crime Problem? (Reason, February 2023)

David Graham, The Murders in Memphis Aren't Stopping (The Atlantic, November 2022)

Gretchen Casey, Restoring Justice: Repairing the Harm After Sexual Assault, TedxUF <https://www.youtube.com/watch?v=eGzjM1JEbwo> (12:02)

Florida Statutes 960.001 and 960.0021

<https://implicit.harvard.edu/implicit/takeatest.html>

Billy Binion, Keri Blakinger Is a Figure Skater and a Felon (Reason, January 2023)

US District Court Western District of Washington-unconscious bias video <https://www.wawd.uscourts.gov/jury/unconscious-bias> (10:54)

Criminal Jury instructions <https://www.wawd.uscourts.gov/sites/wawd/files/CriminalJuryInstructions-ImplicitBias.pdf>

Alec Karakatsanis, The Punishment Bureaucracy: How to Think About "Criminal Justice Reform" https://www.yalelawjournal.org/pdf/Karakatsanis_vahc6bgb.pdf

Jarrell Daniels TedTalk: What prosecutors and incarcerated people can learn from each other <https://www.ted.com/talks/>

jarrell_daniels_what_prosecutors_and_incarcerated_people_can_learn_from_each_other?
language=en (11:54)

Restorative Justice: A Best Practice Guide for Prosecutors in Smaller Jurisdictions (2022) <https://static1.squarespace.com/static/5c4fbee5697a9849dae88a23/t/61f18ead2f9f040ed03aa1f1/1643220659137/FINAL+Restorative+Justice+Paper+2022.pdf>

RECOMMENDED READING:

I. Eagly, G. Fisher, and R. Tyler, *Criminal Practice: A Handbook for New Advocates* (2021)

Richard J. Crawford and Charlotte A. Morris, *The Persuasive Edge* (2nd ed. 2011)

Ibram X. Kendi, *How to be an Antiracist* (2019)

Angela J. Davis, *Arbitrary Justice* (2007)

Catharine Wells, *Microaggressions in the Context of Academic Communities*, <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1692&context=sjsj>

Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2020* | Prison Policy Initiative, March 24, 2020

Richard Uviller, *The Neutral Prosecutor*, 16 *Ford. L. Rev.* 1695 (2000)

Avanindar Singh and Sajid A. Khan, *A Public Defender Definition of Progressive Prosecution in Canvas* and here: <https://www-cdn.law.stanford.edu/wp-content/uploads/2021/03/Singh-and-Khan-Public-Defender-Definition-of-Progressive-Prosecution.pdf>

Collection of readings on *The Police in Canvas* under “files”

Petula Dvorak, *Don’t “Defund the police.” Reimagine the police* https://www.washingtonpost.com/local/dont-defund-the-police-reimagine-the-police/2020/06/11/9d827cd0-abe6-11ea-94d2-d7bc43b26bf9_story.html

Suhail Gharaibeh, *Defund the Pittsburg Police* <https://www.pittsburghcurrent.com/guest-opinion-defund-the-pittsburgh-police/>

Florida Rules of Criminal Procedure

ABA Standards for Criminal Justice: Prosecution and Defense Functions

NDA National Prosecution Standards, 3rd Ed.

ABA Model Rules and Florida Rules of Professional Conduct

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 EXPECTATIONS AND GRADING EVALUATION:

Students will be evaluated based upon:

Timely submission of written assignments in the syllabus: 50% (responses are due before class and should be submitted in Canvas)

Classroom preparation and participation: 50%

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the law school. Attendance at each session of this compressed course is mandatory. Any missed session will result in a 5-point reduction in a student's final grade (on the 100-point scale) for each missed session. The law school's policy on attendance can be found at this link: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies#>

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: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>

ABA OUT-OF-CLASS HOURS REQUIREMENTS:

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Our weekly class time is approximately 18 hours, requiring at least 36 hours of preparation outside of class, including reading the assigned materials and completing the at-home exercises and assignments. Please note that due to the compressed nature of this course, the bulk of your preparation must be done in the days before the start of class.

COMMUNICATION COURTESY AND CIVILITY:

Please follow the rules of common courtesy in all email messages and class discussions. Turn off your cell phone during class. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

INTERNET USE DURING CLASS:

Use of the Internet during class is not permitted unless directed by me. You may not check social media sites, email (even clinic- or career-related emails), or news sites. Consider class a vital client meeting, and schedule your emailing needs accordingly. Your internet use, even for a noble purpose, violates the standards of professionalism. If you have concerns about this policy, please discuss them with me.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS:

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and difficulty of each section and is subject to change. Specific assignments and supplemental reading may be announced in class and Canvas.

MONDAY TOPICS

The role of the prosecutor and the charging decision

Implicit and Unconscious Bias

Microaggressions

Restorative justice

Guest speaker: Gretchen Casey, Former President of the Florida Restorative Justice Association

Due by 9 am Monday, January 8, 2024:

Watch/read and be prepared to discuss:

US District Court Western District of Washington-unconscious bias video <https://www.wawd.uscourts.gov/jury/unconscious-bias> (10:54) and Criminal Jury Instructions <https://www.wawd.uscourts.gov/sites/wawd/files/CriminalJuryInstructions-ImplicitBias.pdf>

Florida Statutes 960.001 and 960.0021

Victims' Rights from a Restorative Perspective by Lara Bazelon & Bruce A. Green in Canvas

Gretchen Casey, Restoring Justice: Repairing the Harm After Sexual Assault, TedxUF <https://www.youtube.com/watch?v=eGzjM1JEbwo> (12:02)

Restorative Justice: A Best Practice Guide for Prosecutors in Smaller Jurisdictions (2022) <https://static1.squarespace.com/static/5c4fbee5697a9849dae88a23/t/61f18ead2f9f040ed03aa1f1/1643220659137/FINAL+Restorative+Justice+Paper+2022.pdf>

Darrell Jackson, Coming to Terms with a Lifetime of Trauma While in Prison (11/12/2023) in Canvas

Lisa Deaderick, It Takes More Than Just Punishment to Repair Harm; USD Prof on Restorative Justice Work (12/17/2023) in Canvas

“Tempering the Law: Problems and Questions” in Canvas

Upload to Canvas your written response to these questions:

Should the prosecutor have tempered the legislature’s judgment regarding the crime of statutory rape? State v. Bartlett, and

Should the prosecutor have respected the legislature’s judgment and proceeded with the prosecution? Commonwealth v. Leno

Reports by Det. Janice Barth and Sgt. Gregory Buckley in Canvas

Upload to canvas your written response to these questions:

Would you, on this evidence, prosecute Steve R. for rape?

Is there probable cause to believe R raped D?

Are you convinced beyond a reasonable doubt that R raped D?

If there is probable cause, is it appropriate to try R for rape and let a jury decide whether the charge has been proved beyond a reasonable doubt? and,

Assume you proceed to charge R with rape. Shortly before the trial, you learn from one of D's doctors that she has a history of "pre-psychotic" disturbance, including occasional hallucinatory symptoms. Must you disclose this information to defense counsel? Would it matter that the defendant has been charged with rape twice before?

Derald Wing Sue, Microaggressions: Death by a Thousand Cuts (Scientific American, March 2021) in Canvas

Upload to Canvas your written response: Describe a microaggression that you have suffered or made and what lessons you took from it (1-2 pages)

TUESDAY TOPICS

Adverse Childhood Experiences (ACEs)

Overcriminalization

Guest speaker: Professor Teresa Drake, Director, Gender Justice Clinic

Due by 9 am Tuesday, January 9, 2024:

Read and be prepared to discuss:

Eric Umansky, The Failed Promise of Police Body Cameras (NYT 12/13/23) in Canvas

Courtney Duchene, A Criminal Justice Success Story? Right here in Philly? (12/12/23) in Canvas

Patrick Anderson, Forecast: RI Prison Population Will Grow Almost 30% by 2034. What's Driving the Increase? (12/5/23) in Canvas

Nicholas Turner, Impact Over Orthodoxy (12/6/23) in Canvas

Upload 1-2 pages to Canvas outlining why crime rates are rising (or aren't rising) in the city or area where you grew up or where you most recently lived. This prompt will require some research on your part!

Please take at least one implicit association test (IAT), which can be found here: <https://implicit.harvard.edu/implicit/takeatouchtestv2.html> Links to an external site.

Upload to Canvas 1-2 pages describing your result(s), your reaction to your result(s), and your view of the effectiveness of IATs in training people who work in the criminal justice system (prosecutors, police, judges, defense lawyers, etc.)

WEDNESDAY TOPICS

Policies and procedures at SAO8

Security/STAC training

Progressive Prosecution

Due by 9 am Wednesday, January 10, 2024:

Read and be prepared to discuss:

Olwyn Conway, *Beyond Binary Thinking: Addressing the Biases That Threaten the Progressive Prosecution Movement in Canvas* (2022)

Billy Binion, *Prosecutors Shouldn't Be Above the Law* (Reason, January 2023) in Canvas

Darcy Covert, *The False Hope of the Progressive-Prosecutor Movement* (The Atlantic 06/14/21) in Canvas

Ronald Brownstein, *Why California Wants to Recall Its Most Progressive Prosecutors* (The Atlantic, April 2022)

Upload to Canvas your 2-3 page critique of the Progressive Prosecution Movement in light of what you've read and discussed so far this week. Is it only a “false hope?”

Billy Binion, *Keri Blakinger Is a Figure Skater and a Felon* (Reason, January 2023) in Canvas

Zach Weissmueller, *Can Larry Krasner Fix Philly's Crime Problem?* (Reason, February 2023)

David Graham, *The Murders in Memphis Aren't Stopping* (The Atlantic, November 2022)

Upload to Canvas your answers to each of these questions:

Think back to the reasons you came to law school. What was your original vision?

What kind of lawyer did you intend to be? If your vision has changed since you've been in law school, what is your current vision?

Imagine yourself in 10 years in your dream job. What do you love about it? What do you do on a day-to-day basis?

What are the attributes, knowledge, and skills possessed by lawyers whom you admire?

THURSDAY TOPICS

Prison reform

Abolition

Due by 9 am Thursday, January 11, 2024:

Watch/read and be prepared to discuss:

Angelo Sedillo, *Prison Journalism Project: NM Lifers' Requests for Education Rebuffed-Year After Year* (12/7/2023) in Canvas

Sarah Stillman, Sentenced to Life for an Accident Miles Away (The New Yorker 12/11/2023) in Canvas

David Alm, From a Life Sentence to Freedom; The Rahsaan Thomas Story (11/13/2023) in Canvas

Jarrell Daniels TedTalk: What prosecutors and incarcerated people can learn from each other
https://www.ted.com/talks/jarrell_daniels_what_prosecutors_and_incarcerated_people_can_learn_from_each_other?language=en (11:54)

Allegra M. McLeod, Prison Abolition and Grounded Justice, 62 UCLA L. Rev. 1156 (2015) excerpted in Canvas

Upload your answer to this question on Canvas: Imagine you were on the City Commission in whichever municipality you wrote about on Tuesday. What three (or more) changes would you make to reduce crime and improve the lives of those impacted by the criminal justice system?

Upload to Canvas your written response to the questions following this prompt: The defendant is charged with vehicular homicide, defined in the jurisdiction to include unintentional killing while driving under the influence of alcohol or drugs. The evidence shows that the defendant had been drinking heavily. Based on his record and the case circumstances, you conclude that the appropriate sentence is two years' imprisonment. Do any of the following facts related to you by defense counsel affect your recommendation? Explain why or why not.

the defendant is the sole support for three children

the defendant is of below-average intelligence

the defendant's father severely abused him

the defendant, who is 18, has been accepted to join the Marines, but imprisonment would disqualify him

the defendant, who is 18, has been accepted to attend Columbia, but imprisonment would disqualify him

the defendant, who is 68, has terminal cancer and less than three years to live

the defendant is HIV positive, and you have read statistics showing that the average HIV-positive prison inmate lives half as long as the average HIV-positive person outside prison

the defendant is 18, slightly built, and appears to be at high risk of being raped in prison, where a substantial portion of inmates are HIV-positive

FRIDAY TOPICS

Criminal justice reform
Objection Workshop

Due by 9 am Friday, January 12, 2024:

Read and be prepared to discuss:

Alec Karakatsanis, The Punishment Bureaucracy: How to Think About "Criminal Justice Reform" https://www.yalelawjournal.org/pdf/Karakatsanis_vahc6bgb.pdf

Upload to Canvas your 2-3pp. critique of and three practical takeaways from Karakatsanis's article.

ADVANCE ASSIGNMENTS FOR PROSECUTION CLINIC:

Due by 6 pm on Wednesday, January 17, 2024:

Please read and be prepared to discuss the following:

Criminal Practice: A Handbook for New Advocates, Chapters 1-4 (pp. 1-52) and Chapter 14 (pp. 259-269)

Due by 11:59 pm Sunday, January 21, 2024:

Prepare a goal statement and upload it in Canvas. This statement should be for the spring semester Prosecution Clinic. See "Developing a Good Goal Statement" in Canvas, and please follow the template outlined in "Prosecution Clinic Fall PDP" in Canvas.

Due by 6 pm Wednesday, January 24, 2024:

Please read and be prepared to discuss the following:

Criminal Practice: A Handbook for New Advocates, Chapters 6-9 (pp. 71-160)

The Persuasive Edge, Chapter 1, "Developing a Practical Approach to Persuasion," and Chapter 2, "Building an Honest Relationship with the Jury"

Due by 6 pm Wednesday, January 31, 2024:

Please read and be prepared to discuss the following:

Criminal Practice: A Handbook for New Advocates, Chapters 10-13 (pp. 161-257)

The Persuasive Edge, Chapters 3-4