

Criminal Procedure – Adversary System

Law # 6112, Class # 16528

Course Policies: Spring 2019

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Criminal Procedure – Adversary System
Room 285B
T, W 9:00 – 10:15 a.m.
Office Hours: W, 10:30 – 11:30 a.m.

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: After completing this course, students should be able to:

- Elucidate the constitutional and statutory foundations of federal criminal procedure;
- Apply the procedural rules and statutes that govern the process of criminal litigation in federal and Florida courts;
- Articulate the purposes animating, and the procedures inherent in, the various stages of the federal and state criminal justice process;
- Identify and establish, from a given fact pattern, possible violations of procedural rules and statutes governing the process of criminal litigation;
- Defend the values underlying the criminal justice system;
- Explain a defense attorney's ethical and legal obligations to his or her client throughout the pendency of a criminal case;
- Explain a prosecutor's ethical obligations to the defense during federal and Florida criminal litigation;
- Apply strategic and practical considerations throughout the process of litigating a federal or Florida criminal case;

- Explain how procedural policy choices have implications for the accuracy, fairness, and efficiency of adjudications; the actual and perceived legitimacy of the criminal justice system; the dignity of the defendant; and victims.

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).

Optional supplemental book: If you wish, you may purchase the supplement to this edition of our case book through West publishing (title: Modern, Basic, and Advanced Criminal Procedure, 2018 Supplement (American Casebook Series) 2018th Edition). This thin book includes all important federal rules and statutes that we'll cover this semester. (Instead of purchasing this book, you may simply print the relevant rules and statutes from Westlaw, Lexis, or a free online legal source.)

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 will 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 four (4) classes is grounds for dismissal from the course.**¹ Please plan accordingly.

Classroom Preparation & Conduct: Each student is required to be fully prepared to discuss the assigned material, including assigned problems, each day. Your grade may be lowered if I call on you and you are unprepared for class. Each student is entitled to email me, up to two times over the course of the semester, to inform me that he or she will be unprepared for class. I will only excuse those two days for lack of preparation.

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, 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

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

exams, along with model answers, on TWEN. 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 adequately 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 Wednesdays, from 10:30 – 11:30 a.m. 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

SPRING 2019 TENTATIVE SYLLABUS

** Florida rules and statutes are included for your information and will often not be covered in class. The only area of Florida law that may be tested on the exam includes Florida law on discovery.*

This outline presents what I aspire to cover in this course. It may be useful as a general guide 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.

You will note that this tentative syllabus anticipates readings by week. I have not attempted to divide the readings between the two days of class each week, but I plan to move through the material in the order listed.

<u>Week</u>	<u>Topic & Key Cases</u>	<u>Assignment</u> ¹
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Week 1: week of Jan. 7

INTRODUCTION

Overview	3-5 (to § B), 9 (booking) – 17 (top), 19-21(to end of n.2); 22 (bottom) – 24, 42-43 (Dripps), 51-54 (Garrett)	
Incorporation and Federal Courts’ Supervisory Power		25-27 (top), 33-37 (skip note 1); <u>New York Times</u> editorial on <i>Brady</i> violations (on TWEN)
a. <i>Payner</i> (1980)		
b. <i>Hasting</i> (1983)		

THE RIGHT TO COUNSEL

The Right to Trial Counsel	60-69 (to end of n.6), 70-71, 73 (n.5), 76-79 (stop at Thomas’s dissent), 80-81 (nn.1-4); FL ST RCRP 3.111; Problem Set 1 (Q.1-3a)
a. <i>Betts</i> (1942)	
b. <i>Gideon</i> (1963)	
c. <i>Argersinger</i> (1972)	

¹ Abbreviations: Unaccompanied numbers are page numbers from the 14th edition of *Advanced Criminal Procedure* (and of *Modern Criminal Procedure*). “FRCRP” 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.

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

PRETRIAL RELEASE

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)

Bail (cont'd) & Preventative Detention 884-95(mid); Bail Reform Act, 18 U.S.C. § 3142(e, f, i, j); FL ST RCRP 3.132; FL ST § 907.041; **Problem Set 3**

- a. *Salerno* (1987)

Week 5: week of Feb. 4

Cont'd: Bail & Preventative Detention 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)

THE DECISION TO PROSECUTE

Challenging the Charging Decision 915 (mid) – 917 (top), 921-29 (to end of n.1), 941-45 (nn.5-6);

Problem Set 4

- a. *Inmates of Attica Correctional Facility* (2d Cir. 1973)
- b. *Armstrong* (1996)
- c. *McCleskey* (1987)
- d. *Blackledge v. Perry* (1974)
- e. *Goodwin* (1982)

The Preliminary Hearing 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, FRCRP 5.1; **Problem Set 5**

- a. *Coleman* (1970)
- b. *Clark* (Utah 2001)

Week 6: week of Feb. 11

Grand Jury Review	<u>Skim</u> : 974-88 (top)
Challenges Related to Grand Jury	988-94 (top); 994 (starting at n.1) – 995; 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); Problem Set 6
	<ul style="list-style-type: none"> a. <i>Costello</i> (1956) b. <i>Williams</i> (1992) c. <i>Bank of Nova Scotia</i> (1988) d. <i>Mechanik</i> (1986)
Joinder and Severance	1062-68 (top); n.2 (1077-78), 1089 (mid) – 1092; FRCRP 8, FRCRP 13, FRCRP 14; FL ST RCRP 3.150-3.152; Problem Set 7
	<ul style="list-style-type: none"> a. <i>Merriman</i> (2014) b. <i>Schaffer</i> (1960) c. <i>Lane</i> (1986)
Venue	1048-61; FRCRP 18, FRCRP 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)
	<ul style="list-style-type: none"> a. <i>Rodriguez-Moreno</i> (1999) b. <i>Cabrales</i> (1998)

Week 7: week of Feb. 18

Speedy Trial	1103-19 (top); Speedy Trial Act, 18 USC §§ 3161-62, 3164; FL ST RCRP 3.191; Problem Set 8
	<ul style="list-style-type: none"> a. <i>Barker</i> (1972) b. <i>Lovasco</i> (1977)

DISCOVERY

By the Defense Act,	<u>Skim</u> 1122-38, FRCRP 15, FRCRP 17; <u>Read carefully</u> FRCRP 16(a); Jencks' 18 USC § 3500; FL ST RCRP 3.220(a), (b), (e)-(n); Defense Discovery hypotheticals on TWEN (for jeopardy game!); Problem Set 9 (may not cover in class)
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Week 8: week of Feb. 25

By the Prosecution 1138-52 (top); FRCRP 12.1-12.3, FRCRP 16(b); FL ST RCRP 3.220(c)-(d); FL ST RCRP 3.200, 3.201, 3.216

- a. *Williams* (1970)
- b. *Wardius* (1973)

Remedies and Sanctions 1152-62 (top)

- a. *People v. Taylor* (Mich. App. 1987)
- b. *Noe* (11th Cir. 1987)
- c. *Taylor v. IL* (1988)

Defendant's Constitutional Right to Evidence 1164-78 (**but skip n.3 on p.1174), 1185-87

- a. *Bagley* (1985)
- b. *Youngblood* (1988)

Week 9: week of Mar. 11 (*watch video on your own on Tues, Mar. 12)

NEGOTIATED PLEAS

Risks of plea bargaining *on your own, watch Frontline – The Plea **no class on Mar. 12**
<https://www.youtube.com/watch?v=K8H14K62a5U>

Perspectives and Unrealized Expectations 1188- mid-1214 (*but skip nn.2e-f on p.1212);
Problem Set 10

- a. *Bordenkircher* (1978)
- b. *Santobello* (1971)

Week 10: week of Mar. 18

Continue unfinished material from last week

Unrealized Expectations and Professional Responsibility 1221-36 (skip nn.1-2 on pp.1228-29),
1241-46 (top); **Problem Set 2 (Q.2 only); on your own, review Problem IV in Problem Set 10**

- a. *Frye* (2012)
- b. *Lafler* (2012)
- c. *Padilla* (2010)
- d. *Ruiz* (2002)

Receiving Plea and Withdrawal

1246-58 (top); FRCRP 11; FL ST RCRP 3.170-3.172 (will not review in class)

- a. *Henderon* (1976)
- b. *Alford* (1970)
- c. *McCarthy* (1969)

The Right to a Jury Trial

1262-73 (mid); **Problem Set 11 - question 1**

- a. *Apodaca* (1972)
- b. *Schad* (1991) and *Richardson* (1999)

Week 11: week of Mar. 25

Continue unfinished material from last week

TRIAL

Jury Selection

1273-96; **Problem Set 11 – questions 2a-d**

- a. *Taylor* (1975)
- b. *Ham* (1973), *Ristaino* (1976), and *Turner* (1986)
- c. *Tanner* (1987) (*might not discuss in class)
- d. *Batson* (1986)
- e. *Miller-El* (2005)

Week 12: week of Apr. 1

Apr. 2: visit by assistant state attorney and assistant public defender

Rights of Presence and Confrontation

1335-54 (*but skip n.4 on pp. 1340-42)

- a. *Allen* (1970)
- b. *Stincer* (1987)
- c. *Bryant* (2011)

Week 13: week of Apr. 8

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

Reprosecution after Mistrial, by Different Sovereigns

1369-85, 1400-03 (top)

- a. *Somerville* (1973)
- b. *Washington* (1978)
- c. *Lett* (2010)
- d. *Kennedy* (1982)
- e. *Heath* (1985)

Reprosecution after Dismissal, Acquittal, & Conviction

1385-97, 1398-99 (note 3), 1217-20
(note 5), 1259 (note 3)

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

Week 14: week of Apr. 15

Continue unfinished material from last week

Double Jeopardy Problems

Problem Set 12

EXAM REVIEW

Exam Review

Spring 2018 exam (on TWEN)