## Criminal Procedure – Adversary System

Law # 6112, Class # 15983

### Course Policies: Fall 2019

Professor Lea Johnston Criminal Procedure – Adversary System

Office: 305 Holland Hall Room 285C

Phone: (352) 273-0794 T, W 1:00 – 2:25 p.m.

Email: JohnstonL@law.ufl.edu 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. The course includes one mandatory visit to the criminal justice courthouse.

**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 (15th ed. 2019).

**Optional supplemental book:** If you wish, you may purchase the supplement to this edition of our case book through West publishing (Kamisar et al., 2019 Supplement to Fifteenth Editions: Modern Criminal Procedure, Basic Criminal Procedure, and Advanced Criminal Procedure (West 2019). 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:**  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. In addition, this course includes one required field trip (see below).

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. A tentative course outline follows the course policies.

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 areas of Florida law that may be tested on the exam for this course include Florida law on discovery and judicial involvement in plea bargaining.

**Field trip to Criminal Justice Center:** Please attend one court proceeding (i.e., a trial or hearing) at the Alachua Criminal Justice Center of the Eighth Judicial Circuit. You should plan on staying for the entire proceeding if it lasts less than 45 minutes. If your proceeding is longer than 45 minutes, you may leave at your discretion if you will not cause a disturbance. In approximately 2 pages (double spaced), describe what you observed and what you learned about the criminal justice system from your observation. You can find a schedule of various court proceedings here: http://www.circuit8.org/calendars (links to an external site; the master calendar is more reliable than the weekly calendar). Please dress nicely (e.g., business casual at least), enter as inconspicuously as possible, and remember that you will be passing through a metal detector. Cell phones are not allowed in courtrooms.

**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]](#footnote-1) **Please make sure you are present and prepared on your on-call days** (see “classroom preparation and conduct” below).

**Classroom Preparation & Conduct**: Each student is required to be fully prepared to discuss the assigned material, including problems, one out of every four classes. I will divide the room into four groups of students and assign on-call days. 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, one time, you would like change your on-call day for that week, please email me one hour prior to Tuesday’s class. Your grade may be lowered if I call on you and you are unprepared for class.

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 in-class, limited-space examination. It may include multiple choice, short answer, and essay questions. You will not have access to the Internet or your hard drive. **You may only bring these materials into the exam room: (a) rules and statutes (and the supplement, if you decide to purchase one), (b) scratch paper, and (c) one page of notes/outline.** 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, 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:

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| --- | --- |
| **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 |
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**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 professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students at https://gatorevals.aa.ufl.edu/public-results/.

## Criminal Procedure – Adversary System

**FALL 2019 TENTATIVE COURSE OUTLINE**

**Week Topic**

**Week 1**

# INTRODUCTION

Overview

# THE RIGHT TO & PERORMANCE OF COUNSEL

The Right to Trial Counsel

**Week 2**

Right to Proceed Pro Se

Counsel of Choice

Effective Assistance of Counsel

Right to Assistance of Experts

Conflicts of Interest

**Week 3**

Disqualification of Counsel

Client Control

# THE COMMENCEMENT OF FORMAL PROCEEDINGS

Pretrial Release

Bail

**Week 4**

 Bail (cont’d) & Preventative Detention

The Decision to Prosecute

Whether to Prosecute

Challenging the Charging Decision

**Week 5**

Grand Jury Review

Grand Jury Review

Challenges Related to Grand Jury

**Week 6**

Joinder & Severance

The Location of the Prosecution

Speedy Trial

**Week 7**

**DISCOVERY**

 By the Defense

By the Prosecution

Remedies and Sanctions

**Week 8**

Defendant’s Constitutional Right to Evidence

**NEGOTIATED PLEAS**

Risks of Plea Bargaining

Perspectives and Unrealized Expectations

 Professional Responsibility

**Week 9**

Receiving Plea and Withdrawal

The Effect of a Guilty Plea

**TRIAL BY JURY**

The Right to a Jury Trial

**Week 10**

Jury Selection

**Week 11**

Right of Presence

Right of Confrontation

 Rights to Remain Silent and Testify

 Closing Arguments

**Week 12**

**DOUBLE JEOPARDY**

Reprosecution after Mistrial

Reprosecution by Different Sovereigns

Reprosecution after Dismissal, Acquittal, & Conviction

**Week 13**

Double Jeopardy Problems

# EXAM REVIEW

1. University recognized religious holidays are exempt. Please provide me with advance notification of such absences. [↑](#footnote-ref-1)