

University of Florida Levin College of Law

COURSE SYLLABUS: PROSECUTION CLINIC

LAW 6942 (13709/13710) - 6 credits S/U, 2 credits graded

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: Wednesdays from 6-8 pm

- *Due to clinical exercises with UPD officers, laboratory tours, and various collaborations with the Defense Clinic, several special meetings may be held throughout the semester, and the Course Schedule will be modified accordingly. Please plan to attend class on the following special date, which is already scheduled:*

Jury Selection Practicum: Friday, February 16, 2024 8:00 am-5:00 pm

COURSE DESCRIPTION AND OBJECTIVES:

In this clinical course students will develop a working knowledge of the criminal justice system and become familiar with all aspects of the art and craft of prosecution. Students will explore the unique lawyering role of prosecutors who must wield the power of the state with compassion and integrity. During classroom exercises and work at the State Attorney's Office, students will become equipped with the practical skills necessary to become great prosecutors, including assessing legal claims, conducting investigations, interviewing witnesses, listening, developing a strategic case plan, identifying ethical issues, maintaining case files, working as part of a team, negotiating with opposing counsel, and representing a party in court. To promote these objectives, students will:

- Demonstrate proficiency in the technical aspects of being a prosecutor, including legal analysis and argument;
- Produce high-quality legal research and writing;

- Examine and put into practice the laws and ethical rules that inform the work of a prosecutor; and
- Review, reflect on, and think critically about the operation of the criminal justice system

STUDENT LEARNING OUTCOMES:

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

- Demonstrate mastery of the nuts and bolts of presenting a case to a judge or jury, including delivering effective opening statements and closing arguments as well as presenting well-organized direct and cross examinations;
- Select a jury with confidence;
- Conduct accurate legal research and write professional quality legal memoranda;
- Resolve evidentiary issues at trial and pre-trial;
- Explain the role of a prosecutor in our criminal justice system and the relationship between prosecutors, police, defense lawyers and the court;
- Capably interview and counsel witnesses and victims;
- Recognize inequities (race, gender, social class, etc.) and disparate outcomes within the criminal justice system, learning how to sensitively address and challenge them;
- Navigate ethical issues and develop the skills to think like a leader;
- Collaborate with classmates and colleagues to explore and resolve legal issues;
- Make timely and appropriate legal objections;
- Prioritize a busy caseload and meet all deadlines;
- Negotiate with opposing counsel to justly resolve cases; and
- Carry out the job of a prosecutor to create a professional identity

REQUIRED READING AND VIEWING MATERIALS:

- Ingrid Eagly, George Fisher, and Ronald Tyler, *Criminal Practice: A Handbook for New Advocates* (2021)
- Richard J. Crawford and Charlotte A. Morris, *The Persuasive Edge* (2nd ed. 2011)
- Jacob Sullum, *Gun Control is Just as Racist as Drug Control* (in Canvas under “Files”)
- Ryan McKinnon and Josh Salman, *Wasted Minds: Inmates Languish in Florida Prisons with Little Access to Education*, <http://gatehousenews.com/wastedminds>
- Scott Shackford, *Innocent Until Proven Guilty, But Only if You Can Pay*, <https://reason.com/2018/07/14/innocent-until-proven-guilty-b/>
- Scott Shackford, *Philadelphia Reduced Use of Cash Bail and the Sky Didn't Fall*, <https://reason.com/2019/02/21/philadelphia-showing-successes-in-reduci/>
- Sarah M. Buel, *Fifty Obstacles to Leaving, aka Why Abuse Victims Stay*, http://www.ncdsv.org/images/50_Obstacles.pdf
- Lara Bazelon, *What It Takes to Be a Trial Lawyer If You're Not a Man*, <https://www.theatlantic.com/magazine/archive/2018/09/female-lawyers-sexism-courtroom/565778/>
- Morris Hoffman, *The Injustice of Extreme Prison Sentences*, <https://www.wsj.com/articles/a-judge-on-the-injustice-of-americas-extreme-prison-sentences-11549557185>

- Nazgol Ghandnoosh, *The Next Step: Ending Excessive Punishment for Violent Crimes*, <https://www.sentencingproject.org/wp-content/uploads/2019/03/The-Next-Step.pdf>
- Kamala Harris and Rand Paul, *To Shrink Jails, Let's Reform Bail*, <https://www.nytimes.com/2017/07/20/opinion/kamala-harris-and-rand-paul-lets-reform-bail.html>
- Noam Scheiber and John Eligon, *Elite Law Firm's All-White Partner Class Stirs Debate on Diversity*, <https://www.nytimes.com/2019/01/27/us/paul-weiss-partner-diversity-law-firm.html>
- Collection of readings in Canvas titled “Clinic Readings-Race and Justice” found in the Files section under “unfiled”
- Irving Younger, *The 10 Commandments of Cross Examination at UC Hastings College of Law*, <https://www.youtube.com/watch?v=dBP2if0l-a8> (43:20)
- Collection of readings in Canvas titled “Clinic Readings-Defense Counsel”
- Collection of readings in Canvas titled “Clinic Readings-Police”
- Collection of readings in Canvas titled “Clinic Readings-Prisons”
- Charlayne Hunter-Gault’s interview with Professor Derald Sue, *How unintentional but insidious bias can be the most harmful*, <https://www.pbs.org/newshour/show/how-unintentional-but-insidious-bias-can-be-the-most-harmful>(7:57)

RECOMMENDED READING:

- Cynthia Alkon and Andrea Kupfer Schneider *Negotiating Crime* (2019)
- Ibram X. Kendi, *How to be an Antiracist* (2019)
- Angela J. Davis, *Arbitrary Justice* (2007)
- Thomas A. Mauet, *Trial Techniques* (8th ed. 2019)
- Paul Butler, *Chokehold* (2017)
- Florida Rules of Criminal Procedure
- ABA Standards for Criminal Justice: Prosecution and Defense Functions
- NDAA National Prosecution Standards, 3rd Ed.
- ABA Model Rules of Professional Conduct
- Florida Rules of Professional Conduct

Additional readings will be posted in Canvas throughout the semester and students are encouraged to draw the attention of the class to current events and issues in the criminal justice system.

COURSE EXPECTATIONS AND GRADING EVALUATION:

For this course, you will earn eight (8) total credits. Six (6) of these credits are pass/fail (Satisfactory/Unsatisfactory), and two (2) of these credits are graded. The aim of this segment is not to focus your attention on grades. Grades can distract from learning, and I hope they won’t shadow your clinical experience. It seems only fair, though, to explain the grading system, as clinical grading differs from grading in standard examination and paper courses. Clinical students will be evaluated in three areas: Clinical Coursework, Clinical Methods, and Clinical Practice.

Clinical Coursework (Weekly Reflections, Class Participation, Law Enforcement Ride-along, Cold Case Review, Supervision Meetings): 50% of final grade

Reflection papers, readings, and in-class discussions challenge you to think and form opinions about the way the criminal justice system works. This kind of critical reflection is essential for any lawyer who wants to be an ethical force in the profession. Clinical coursework also includes the feedback students give one another, class performances, and court appearances. Such feedback need not be exhaustive, but should reflect close attention and thought.

Weekly Reflection Papers: Beginning in the second week of the semester, you must write a paper reflecting on your experiences in the clinic over the previous week or on the criminal justice system more broadly. Reflection papers are due each Sunday by 11:59pm. Delivery via Canvas upload is best, but email is also acceptable. PLEASE INCLUDE YOUR NAME ON YOUR REFLECTION PAPER. You may take off one free week during the semester. It is helpful—but not required—to begin these papers with a brief description of what you did or saw in the previous week. Please do not merely recite events. The purpose of these papers is to encourage you to comment on the justice system as you see it. Ask yourselves whether the system is working, whether the various players are doing their jobs, and whether defendants are getting a fair shake. How could the system work better? Do you like your role?

If it's been a slow week at the office or if something else in the news or in the class readings or in your life experience bearing on the criminal justice system has grabbed your attention, please feel free to discuss these other matters. Again, the aim is to reflect on the justice system. Within that realm you are free to explore widely. These papers also may serve as a forum for you to air suggestions about the Clinic. You may note that you would prefer a different classroom focus; that you would like different kinds of cases; or that you are having difficulties and want extra guidance. There is no page restriction on these papers, but it is unlikely you could reflect well on a week's work in less than three double-spaced pages. Please be sure to include your name and indicate the dates covered in your report.

Supervision Meetings: You must meet with the professor periodically to review your past work and plan your future work. These meetings should take about thirty minutes and will be scheduled individually. Please come prepared to give a progress report on old cases and to set out a plan of action for new cases. Try to become familiar with the facts of your cases and read the relevant law in advance. If you have no pressing cases, this time may be used any way you choose. You may find it useful to practice direct or cross-examinations or other trial skills or to discuss issues that have arisen in the Clinic. Please come to the meetings prepared to say how we should use the time.

Law Enforcement Ride-along: Please schedule a ride-along with a local police agency during this course. Spending time with a law enforcement officer engaged in police work is an invaluable experience and will make you a better prosecutor. Former Clinic students report that this is one of the high points of their Clinic experience. *Note: Gainesville PD (GPD) and the Alachua County Sheriff's Office (ACSO) can be slow about getting back to you for a ride-along. Be tenacious and schedule this EARLY in the semester!*

Case Rounds: In addition to completing the reading/viewing for each class, you should be prepared to discuss your cases during each class. For some classes, I will assign students in advance to discuss particular issues in their cases or deliver opening or closing statements, so students should always be current on their cases. These case rounds will help you quickly master the legal, practical, and ethical aspects of being a prosecutor.

Quest: During the course of the semester, each student will be required to complete a Quest, which is designed to expose you to all the aspects of the State Attorney's office. Further instructions and a blank template are posted on Canvas. Students may team up in groups of 2-4 to conduct the required interviews.

Cold Case Review: During the semester, each student will review at least one cold, or unsolved, case from the State Attorney's Office in the 4th Judicial Circuit as part of State Attorney Melissa Nelson's Cold Case Initiative. Students will complete at least one Cold Case Homicide Review Worksheet and write a Disposition Memorandum for the case.

Clinical Methods (Case Preparation at SAO and in-class exercises): 25% of final grade

A component of this clinic is performance of not less than 21 hours per week satisfactory work as a Certified Legal Intern (CLI) in the assigned State Attorney's Office (SAO). This is 270 total hours of work over the course of the semester. While working at the assigned SAO, the CLI will conform to all canons of ethics and disciplinary rules of the Florida Bar and adhere to all performance requirements set by the supervising Assistant State Attorney(s). Your professor and supervisors at the SAO will assess both the energy you invest in preparing your cases and the initiative you show in setting tasks for yourself and doing them. These tasks include researching the law, contacting and preparing your witnesses, contacting (when appropriate) opposing counsel, filing written materials, reviewing in-car and body-worn camera footage, listening to jail calls, and searching out and weighing ethical issues presented in your cases. We recognize that you are just starting out and can't always know what needs to be done, and we don't expect you to work without guidance. But it's very important that you read the materials and look at the law and try to figure out for yourselves what needs to be done. And it's important that you have the energy and determination to follow through on tasks.

Clinical Practice (Performance on your feet): 25% of final grade

This category addresses your court appearances and your class performances, including our live jury selection and negotiation practicums in conjunction with the Defense Clinic as well as in-class exercises with local law enforcement agencies. In some ways, preparation and on-your-feet performance merge because good preparation almost always improves performance in both court and class. Still, it's true that by crediting good performance, we reward native talent. Some people find it easier to work on their feet than others. Perhaps it's not fair to reward people for native skill. Like all professors, I hope my grades reward effort more than raw talent. But talent is important: we reward test-taking talent all the time, and talent is one thing prospective employers hope your grades reflect.

A Word on the Process: After reviewing all your work, I will confer with your supervisors in the State Attorney's Office. Your final grades will reflect your performance in class, in the office, and

in court. It's a shame that classes have to end with grades. Please keep in mind that grades are an imprecise and heavy-handed tool for judging things that are hard to judge.

CLASS ATTENDANCE POLICY:

You must, of course, attend and participate in class. Please bring the insights you have gained during your courtroom work and from assigned readings, and be prepared to share these. The practical exercises and case rounds conducted during class also make attendance and participation extremely important. Absence will be excused for illness or emergencies and for significant educational or career opportunities. If you need to miss a class, please let me know as soon as possible. Unexcused absence from class will result in a 5-point reduction in a student's final grade (on the 100-point scale) for each missed class. 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 two hours, requiring at least four hours of preparation outside of class, including reading the assigned materials, completing written assignments, and submitting your weekly reflections. Articles and viewing materials relating to current events will be added to your assignments periodically throughout the semester.

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. Reading and supplemental assignments for this course will be posted in Canvas and may be augmented periodically throughout the semester. In addition to completing the assigned reading/viewing, be prepared to discuss your cases during each class. These “case rounds” enable students to form connections with one another and help them analyze legal, ethical, and practical problems more

easily than doing it on their own. Learning by rounds is one of the best aspects of clinical legal education!

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

Please read and be prepared to discuss:

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 Spring 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