**CRIMINAL PROCEDURE - ADVERSARY SYSTEMS**

**COURSE POLICIES & SYLLABUS**

*LAW 6112 Section #063G Class #15246 (3 credits)*

**Fall 2020**

**INSTRUCTOR’S CONTACT INFORMATION:**

Professor Sarah H. Wolking

Office Location: 126 Bruton-Geer Hall

Office Phone: (352) 273-0815

Email: [wolking@law.ufl.edu](mailto:wolking@law.ufl.edu)

Virtual Office Hours: Mondays 4-6pm and by appointment. Please join Sarah Wolking’s Personal Meeting Room <https://ufl.zoom.us/j/9800804098>. Students should feel free to contact the professor at any time to discuss legal issues or to ask questions, but email is not a good vehicle for all substantive questions. If I don’t respond to an email asking such questions, or don’t respond to your satisfaction, I will be happy to discuss the matter during office hours or by appointment.

**CLASSROOM AND CLASS TIME:**

Tuesdays and Thursdays 3:00-4:25pm

MLAC - 106 (HH -283/284 remote)

Due to professor’s prior commitment as a law school representative to UF’s Faculty Senate, we will not meet for class on these dates:

Tuesday, August 25th

Thursday, September 17th

Thursday, October 15th

Thursday, November 19th

Instead, students will be required to complete alternate viewing/reading assignments and problem sets which will be posted in Canvas and available on ChartaCourse.

**COURSE OBJECTIVES AND GOALS:**

This course examines the adjudicatory phase of criminal procedure, beginning after arrest and continuing through to post-conviction matters. We consider federal constitutional provisions and rules of procedure, the policies underlying those requirements, and their impact on the roles of prosecution and defense counsel. By studying pretrial release, case screening (including prosecutorial discretion), pretrial motions (including the disclosure of exculpatory material), the role of counsel, plea bargaining, the trial process (including the jury and confrontation rights), sentencing, double jeopardy, and post-conviction appeals, we ask the ultimate question of whether we have a legitimate system of criminal justice, meaning a system that is accurate and fair, that respects notions of limited government, and that is reasonably efficient.

**LEARNING OUTCOMES:**

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

* Identify the steps in the adjudicatory process and the constitutional principles and legal rules which inform them;
* Recognize inequities (race, gender, social class, etc.) and disparate outcomes within the criminal legal system, learning how to sensitively address and challenge them;
* Describe the power of prosecutors and the constitutional and statutory limits on that power;
* Articulate the right to counsel as well as counsel’s role and scope in a defense;
* Demonstrate an understanding of the strategies and tactics used by the actors in our criminal legal system and the relationship between prosecutors, police, defense lawyers and the court;
* Collaborate with classmates to explore and challenge the procedural rules which shape criminal legal outcomes; and
* Review, reflect on, and think critically about the operation and legitimacy of the criminal legal system with respect to individual rights and liberties.

**REQUIRED READING AND VIEWING:**

All required course material will be posted on ChartaCourse and will be available at [www.chartacourse.com](http://www.chartacourse.com). Please use this link to sign up for a ChartaCourse account before the semester begins. To allow for flexibility, each week’s assignments will be posted on Canvas. I view our classroom as much more than a forum for information transmission and anticipate spending time working hypothetical problems and current events. I encourage students to draw my attention to current events since tackling real-time issues is incredibly enriching as well as great fun!

**CLASS ATTENDANCE AND PARTICIPATION:**

You must of course attend and participate in class (either via Zoom or in person). Simply doing the readings will not get you very far. I will allow five absences, which you may take for any reason, including but not limited to personal (e.g., go to Cancun), professional (e.g., go get a job), or religious reasons (e.g., go pray). Each absence above the allotted number, regardless of reason, may lower your grade by half a letter. I may count tardiness (i.e., not being in your seat at the hour class begins) as an absence. It is the policy of UF Law to excuse absences for religious observances and to provide, without penalty, the rescheduling of required work that may fall on religious holidays. I do so exclusively through the above allotment of five absences.

I will bring my very best effort to every class, and I expect you to do the same. So, arrive for class on time, be prepared and ready to begin, and remain for the duration. Colleagues do not walk out on each other, and an attorney who walks out on a judge during a hearing will find the state providing room and board at the local jail. Therefore, if you leave during class for any amount of time, you will be marked absent. There are of course rare occasions on which you must leave during class— perhaps because you feel ill or because you have an important interview—and likewise rare occasions on which you must arrive late to class. This is why I provide a generous allotment of absences. As a matter of professional courtesy, let me know the reason for such behavior, either before or after as appropriate.

You may use an absence to attend class but “pass” when called upon (at a rate of one absence per pass). I will also let you pass two other times without using an absence. However, your total number of passes (from whatever source) cannot exceed four. If you fail to notify me before class, in person or by email, of your desire to take a pass, and in my sole judgment you evidence poor recollection of the assigned materials when called upon, you will lose two passes. You will also disappoint me. I will debit first from your freestanding passes; if none remain, I will deduct from your number of allowed absences.

Please bring the insights you have gained from assigned readings/recordings, and be prepared to share these. Students participating remotely must be on video in order to be counted as in attendance and should be prepared to participate in class discussion on the same terms as if they were physically in the classroom. The ABA requires that remote participants are actually in attendance and engaged with course material. Further information about UF Law's attendance policy is available here: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3>.

**CLASS PREPARATION AND ELECTRONIC DEVICE USE:**

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This course has three (3) “classroom hours” of in-class instruction each week, requiring at least six (6) hours per week of preparation outside of class. Assignments will be posted in Canvas and available in ChartaCourse prior to the start of class. Current events articles, recordings, and other materials will be added to your assignments periodically throughout the semester.

To encourage discussion and engagement, use of electronic devices will be limited. Students who are physically present in the class may be able to refer to their device when presenting to the class, reading course materials, or searching an issue requested by the professor, but that’s it. Most of the time, ***electronic devices should not be used in class.*** Of course, students attending the class remotely will have to use an electronic device to access the course. Please limit your use to Zoom and as indicated above.

**COVID-19 PROTOCOLS:**

We will have participatory instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of any in-class interactions:

* You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, any noncompliance will be reported to the relevant state board of bar examiners.
* This course has been assigned classrooms with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between one another. Please do not move desks. Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class. Practice physical distancing to the extent possible when entering and exiting the classroom.
* If you are experiencing COVID-19 symptoms (https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html), please do not come to campus or, if you are already on site, please immediately leave. Use the UF Health screening system and follow the instructions about when you are able to return too campus. https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/. Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/.

**PROHIBITION ON STUDENT RECORDING, PHOTOGRAPHY & SOCIAL MEDIA POSTING:**

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online.  Students failing to follow this rule will be referred to the UF Law Honor Code Council and UF’s Office of Student Conduct and Conflict Resolution. “Authority is hardly required to support the proposition that words would be measured a good deal more carefully and communication inhibited if one suspected his conversations were being transmitted and transcribed.” United States v. White, 401 U.S. 745, 787 (1971) (Harlan, J., dissenting). “Freedom of debate might be stifled and independence of thought checked if jurors [students] were made to feel that their arguments and ballots were to be freely published to the world.” Clark v. United States, 289 U.S. 1, 13 (1933) (Cardozo, J., for a unanimous Court). “[P]ublicity hampers communication. When people are speaking freely, they say things that eavesdropping strangers are likely to misconstrue. When they speak guardedly because they are afraid that a stranger is listening in, the clarity and candor of their communication to the intended recipients are impaired. There is a social value in frank communications, including being able to try out ideas on friends or colleagues without immediate exposure to attacks from rivals or ill wishers.” Judge Richard A. Posner, “Privacy, Surveillance, And Law,” 75 U. Chi. L. Rev. 245, 246 (2008). We will have frank discussions about important, and sometimes difficult or uncomfortable, issues in every class session, and therefore cannot permit recording.

**INFORMATION ON GRADING:**

For this course, you will earn three (3) total credits. Your grade will be based primarily on a final exam. Each student will be expected to comment on at least one case or problem during the course of the semester. Extra credit (up to 0.75 grade points on your final grade) may be given for quality class participation and preparation. Negative credit may be given for lack of preparation or poor attendance, as discussed above in the section titled “CLASS ATTENDANCE AND PARTICIPATION." The final examination will be a cumulative, open book, limited-space examination. It will likely contain multiple choice, short answer, and traditional law school essay questions. The exam will focus on material discussed in class, but all material and concepts covered in the course may be tested to some degree. Exams will be graded anonymously by exam number.

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent:

***Letter Grade Points Letter Grade Points***

A (Excellent) 4.00 C (Satisfactory) 2.00

A- 3.67 C- 1.67

B+ 3.33 D+ 1.33

B (Good) 3.00 D (Poor) 1.00

B- 2.67 D- 0.67

C+ 2.33 E (Failure) 0.00

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**LEARNING ENVIRONMENT AND PREFERRED NAME:**

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class.  If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise.  I would like to acknowledge your preferred name, and pronouns that reflect your identity.  Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together!

**ZOOM PROTOCOLS:**

To ask a question on Zoom, use the “participant view” to click the “raise your hand” button. You can also send me questions through the “chat” function, but I may answer those after class or at our next class session. When you join a Zoom meeting, please use the following rules of video conferencing etiquette:

* Use your own name (preferred first name, last name) and do not change it;
* Choose a stationary location;
* Choose a location where there are no disruptions;
* Do not change your background;
* Dress appropriately for video conferencing;
* I will mute you upon entry to the class, but it is your responsibility to be “present” for the class to be counted for attendance purposes. You must “show video” and yourself to be counted as present;
* Turn off cell phones and other electronic devices;
* Close any other computer programs, websites, and email to give you classmates and speakers your full attention; and
* Do not Zoom in the same room as someone else in the class as this creates feedback.

Other helpful tools to help you master Zoom technology and get IT support:

* Zoom Student Quick Start Guide: <https://video.ufl.edu/conferencing/zoom/>.
* Zoom tutorials and help desk: <https://support.zoom.us/hc/en-us>
* e-Learning support: 352-392-4357 and UF Law IT support: 352-273-0760.

Please follow rules of common courtesy in all email messages, threaded discussions and chats. See <http://teach.ufl.edu/wp-content/uploads/2012/08/NetiquetteGuideforOnlineCourses.pdf>

**UF LAW HONOR CODE:**

The University of Florida College of Law Honor Code represents a commitment by students to adhere to the highest degree of ethical integrity. Teaching and learning flourish best in an environment where mutual trust and respect form the bedrock of relationships. The Honor Code helps create a community in which students can maximize their intellectual and academic potential. Further information may be found here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

**STATEMENT RELATED TO ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES:**

Students with disabilities requesting accommodations should first register with the Disability Resource Center  (352-392-8565, <https://disability.ufl.edu>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs. Students with disabilities should follow this procedure as early as possible in the semester.

**STATEMENT REGARDING 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/>.

**TENTATIVE COURSE OUTLINE:**

This tentative outline sets forth the material I hope to cover this semester, although it’s unlikely we will have time to cover all listed items. Reading and viewing assignments will be posted in Canvas and available in ChartaCourse and may be supplemented periodically throughout the semester.

I. Commencement of Formal Criminal Proceedings

Felony and misdemeanor processes

Collateral consequences

Fines and fees

II. The Role of Counsel

The doctrine of incorporation and the right to counsel (Scottsboro Tragedy)

Effective assistance of counsel

Right to assistance of experts

Right to proceed pro se

Initiating the criminal process from the defense perspective

III. Pretrial Release

Bail

Preventative detention

IV. Identifying the Defendant and the Charges/Decision to Prosecute

The screening function & preliminary hearings

Grand jury screening

Prosecutorial discretion in charging

The investigative grand jury

V. Preparing for Adjudication

Pretrial motions

Joinder and severance

Discovery (defense and prosecution)

Venue

Right to speedy trial

VI. Plea Bargaining/Negotiated Pleas

Plea v. trial: cost benefit analysis/risks

Voluntary and knowing guilty pleas

Binding power of a plea bargain

Remedies for plea bargain violations

VII. Jury Trials

Fair cross section

For cause challenges

Peremptory challenges (Batson)

Jury decision-making and jury nullification

VIII. Trial Rights

Confrontation (Crawford)

Compulsory process

Defendant testimony

Co-defendant’s statements (Bruton)

Pre-trial publicity & the right to a fair trial

IX. Sentencing and Appeals

Double jeopardy

Proportionality and fairness in sentencing

Due process and sentencing - the Apprendi revolution

Determinate and indeterminate sentencing

Habitual offender laws

The death penalty

Mandatory sentencing and constitutional limits