

COURSE SYLLABUS
INTRODUCTION TO PROSECUTION
LAW 6930-693W (21610)
Fall 2023

INSTRUCTOR'S CONTACT INFORMATION:

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Office Hours: Wednesdays 1:00-3:00pm. If this time does not work for you, please contact me to set up a meeting at another time, or just drop by my office. Students should feel free to contact me at any time to discuss legal issues or to ask questions about your cases. You are welcome to contact me via email, text, or phone.

COURSE OBJECTIVES AND GOALS:

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 basic case preparation, and discuss the challenges they will face in the courtroom and in 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.

LEARNING OUTCOMES:

At the conclusion 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 which reflects the core values of the legal profession and embraces ethical problem-solving in the criminal justice arena.

CLASSROOM AND CLASS TIME:

Classroom location: Bruton-Geer Hall room 220D

This course will meet on the following dates and times:

Mon, August 14 - 10am-noon and 1-3pm

Tues, August 15 - 10am-noon and 1-3pm

Weds, August 16 - 9am-noon @ SAO8 120 W. University Ave. and 1-3pm

Thurs, August 17 - 9am-noon @ Reception and Medical Center, Lake Butler and 1-3pm

Fri, August 18 - no class

CLASS ATTENDANCE:

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. Further information about UF Law's attendance policy is available [here](#).

REQUIRED READING AND VIEWING:

- 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"
- 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)
- Wendy Sawyer and Peter Wagner, Mass Incarceration: The Whole Pie 2020 | Prison Policy Initiative, March 24, 2020
- Zach Weissmueller, Can Larry Krasner Fix Philly's Crime Problem? (Reason, February 2023)
- Correctional Control 2018: Incarceration and supervision by state | Prison Policy Initiative (2020)
- 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, http://law.scu.edu/wp-content/uploads/socialjustice/Catharine_Wells_Paper.pdf.

- 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
- NDAA National Prosecution Standards, 3rd Ed.
- ABA Model Rules and Florida Rules of Professional Conduct

PERFORMANCE EXPECTATIONS AND INFORMATION ON GRADING:

The components of the final grade for the course are listed below:

- **Written assignments on the readings in syllabus: 50%** (responses are due prior to class and should be submitted in Canvas)
- **Classroom preparation and participation: 50%**

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICES:

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 17 hours in length, requiring at least 34 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 prior to the start of class.

COMMUNICATION COURTESY AND CIVILITY:

Please follow 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, may not check email (even Clinic or career related emails), and may not check news sites. Think of class as an important client meeting, and schedule your emailing needs accordingly. Your internet use, even for a noble purpose, is a violation of the standards of professionalism. If you have concerns about this policy, please feel free to 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 the level of difficulty of each section and is subject to change. Specific assignments and supplemental reading may be announced in class and/or in Canvas.

MONDAY TOPICS

The role of the prosecutor and the charging decision

Prosecutorial immunity

Microaggressions

Due by 9am Monday, August 14, 2023:

Watch/read and be prepared to discuss:

- 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)
- Billy Binion, Prosecutors Shouldn't Be Above the Law (Reason, January, 2023) in Canvas
- Zach Weissmueller, Can Larry Krasner Fix Philly's Crime Problem? (Reason, February 2023) in Canvas
- "Tempering the Law: Problems and Questions" in Canvas

Upload to Canvas your written response to these questions:

- 1. Should the prosecutor have tempered the legislature's judgement regarding the crime of statutory rape? *State v. Bartlett*, and**
- 2. Should the prosecutor have respected the legislature's judgment in this case and gone ahead 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:

1. Would you, on this evidence, prosecute Steve R. for rape?
2. Is there probable cause to believe R raped D?
3. Are you convinced beyond a reasonable doubt that R raped D?
4. 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,
5. Assume you proceed to charge R with rape. Shortly before 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

Implicit and unconscious bias

Restorative justice

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

Due by 9am Tuesday, August 15, 2023:

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 under "Restorative Justice"
- 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>
- David Graham, The Murders in Memphis Aren't Stopping (The Atlantic, November, 2022) in Canvas.

Upload to Canvas 1-2 pages 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>

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

Polices and procedures at SAO8

Security/STAC training

Adverse childhood experiences (ACEs)

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

Over-criminalization

“Progressive” prosecution

Due by 9am Wednesday, August 16, 2023:

Read and be prepared to discuss:

- Olwyn Conway, Beyond Binary Thinking: Addressing the Biases That Threaten the Progressive Prosecution Movement in Canvas (2022)
- 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 what we've discussed so far this week. Is it only a “false hope?”

THURSDAY TOPICS

Prison reform

Abolition

Due by 9am Thursday, August 17, 2023:

Read and be prepared to discuss:

- Correctional Control 2018: Incarceration and supervision by state | Prison Policy Initiative (2021) in Canvas
- Allegra M. McLeod, Prison Abolition and Grounded Justice, 62 UCLA L. Rev. 1156 (2015) excerpted in Canvas
- Billy Binion, Keri Blakinger Is a Figure Skater and a Felon (Reason, January 2023) in Canvas
- Wendy Sawyer and Peter Wagner, Mass Incarceration: The Whole Pie 2020 | Prison Policy Initiative, March 24, 2020 in Canvas

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 circumstances of the case, 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.

1. the defendant is the sole support for three children
2. the defendant is of below-average intelligence
3. the defendant's father severely abused him
4. the defendant, who is 18, has been accepted to join the Marines, but imprisonment would disqualify him
5. the defendant, who is 18, has been accepted to attend Columbia, but imprisonment would disqualify him
6. the defendant, who is 68, has terminal cancer and less than three years to live
7. 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
8. 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

Due by 11:59pm Friday, August 18, 2023:

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 three practical take-aways from Karakatsanis' article.

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

Upload to Canvas your answers to each of these questions:

- 1. Think back to the reasons you came to law school. What was your original vision**
- 2. 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?**
- 3. 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?**
- 4. What are the attributes, knowledge, and skills possessed by lawyers whom you admire?**

ADVANCE ASSIGNMENTS FOR PROSECUTION CLINIC:

Due by 6pm on Wednesday, August 23, 2023:

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 11:59pm Sunday, August 27, 2023:

Prepare a goal statement and upload it in Canvas. This statement should be for the fall 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 6pm Wednesday, September 6, 2023:

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 6pm Wednesday, September 13, 2023:

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

The Persuasive Edge, Chapters 3-4