

INTRODUCTION TO CRIMINAL PRACTICE
COURSE SYLLABUS, *Fall 2019*

INSTRUCTOR'S CONTACT INFORMATION:

Sarah H. Wolking

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Office Hours: By appointment, but students should feel free to contact the professor at any time to discuss legal issues or to ask questions. Students are welcome to contact the professor via email, text, or phone.

COURSE OBJECTIVES AND GOALS:

This week-long, 1-credit course is designed to introduce students to the practice of criminal law. Prosecutors must learn to wield the power of the state ethically and deliberately. Defenders must be adept at investigation and plea negotiations, with a focus on providing zealous, client-centered representation. For both defenders and prosecutors, basic case preparation and courtroom skills are essential. To that end, part of the classroom focus will trace the life of a criminal case. Students will develop insight into the strategic and logistical challenges 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 prison conditions and sentencing reform, the institutional strengths and weaknesses of the players in the system, and the impact of race, gender, and class on the quality of justice. All students will be required to attend a prison tour on Thursday, August 22nd.

Finally, students will begin to think about or refine their professional identity, realizing a critical privation and becoming motivated to do something about it. The criminal justice system is a goldmine for professional development, challenging students to stretch their minds and problem-solve a system in crisis.

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);

- Identify innovative solutions to criminal justice system challenges, including bail, municipal violations, implicit bias, extreme prison sentences, domestic violence, racism, sexism, and poverty;
- 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:

This course will meet on the following dates and times:

Monday-Wednesday, August 19th-21st from 10am-noon *and* 1-2pm

Thursday, August 22nd from 9am-noon *or* from 12:45-3:45pm *at Lowell Correctional Institution*

Friday, August 23rd from 10am-1pm (*except fall Prosecution and Defense Clinic Students who will meet from 8:45am-3pm at the SAO and PD's Office for orientation*)

Classroom: TBD

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 the Levin College of Law's attendance policy is available here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies#3>.

RECOMMENDED TEXTS:

- Thomas A. Mauet, *Trial Techniques* (8th ed. 2019)
- 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
- Mark Herrmann, *The Curmudgeon's Guide to Practicing Law* (2006)

REQUIRED READING AND VIEWING:

- Adam Foss, *A Prosecutor's Vision for a Better Justice System*, https://www.ted.com/talks/adam_foss_a_prosecutor_s_vision_for_a_better_justice_system?language=en (15:50)
- Ryan McKinnon and Josh Salman, *Wasted Minds: Inmates Languish in Florida Prisons with Little Access to Education*, <http://gatehousenews.com/wastedminds>
- John Oliver, *On Bail*, <https://www.youtube.com/watch?v=IS5mwymTIJU> (17:49)

- 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/>
- William Ury, *The Power of Listening*, <https://www.youtube.com/watch?v=saXfavo1OOo> (15:40)
- 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/>
- John McWhorter: *America Has Never Been Less Racist*, <https://www.youtube.com/watch?v=O3POpubeoIc> (45:50)
- Morris Hoffman, *The Injustice of Extreme Prison Sentences*, <https://www.wsj.com/articles/a-judge-on-the-injustice-of-americas-extreme-prison-sentences-11549557185>
- John Oliver, *On Municipal Violations*, <https://www.youtube.com/watch?v=0UjpmT5noto> (17:54)
- 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>
- Eric Johnson, *Seattle is Dying*, <https://www.youtube.com/watch?v=bpAi70WWBlw> (1:00:35)
- <https://implicit.harvard.edu/implicit/takeatest.html>
- Catharine Wells, *Microaggressions in the Context of Academic Communities*, http://law.scu.edu/wp-content/uploads/socialjustice/Catharine_Wells_Paper.pdf

PERFORMANCE EXPECTATIONS AND INFORMATION ON GRADING:

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

- Reflections on questions in syllabus: 30% (*responses are due prior to class via Canvas*)
- Classroom preparation and participation: 30%
- Final Paper: 40%

The final paper will be due by midnight on Friday, 9/6. This 6-8 page paper should thoughtfully address an aspect of the criminal justice system which we have discussed during the week or which captures your attention. If you have a question about whether your paper topic is appropriate, or if you would like some ideas for a topic, please consult Professor Wolking.

The law school grading policy is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies#3>. The law school recognizes the following grades:

<u>Grade</u>	<u>Points</u>
A (excellent)	4.0
A-	3.67
B+	3.33
B	3.00
B-	2.67
C+	2.33
C (satisfactory)	2.00
C-	1.67
D+	1.33
D (poor)	1.00
D-	0.67
E (failure)	0.00

CLASS PREPARATION AND CIVILITY:

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 15 “classroom hours” of in-class instruction, *requiring at least 30 hours of preparation outside of class*. Assignments will be posted on Canvas prior to the start of class. Please note that due to the compressed nature of this course, the bulk of your preparation must be done in the days or weeks prior to the start of class.

During our brief class sessions, please do not sign onto the internet or the law school network for any reason, including web surfing, instant messaging, and email; do not send or receive messages on cell phones or any other electronic device; do not play any games on your computer, phone or any other device. All of these activities are a distraction to you, to the professor and to the other students, and are a violation of law school rules. If the professor observes any violations of this policy, use of laptops and other electronic devices will not be permitted for any student for the remainder of the course.

GETTING HELP:

For technical difficulties with E-learning in Canvas, please contact the UF Help Desk at:

- helpdesk@ufl.edu
- 352-392-HELP
- <http://elearning.ufl.edu/> (See “Message Us” at the top of the page)

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. Students are bound by the UF Honor Code, which may be found at <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, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the law school Office of Student Affairs. Students with disabilities are encouraged to follow this procedure as early as possible.

NETIQUETTE: COMMUNICATION COURTESY:

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>

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/>.

ASSIGNMENTS:***Due by Thursday, August 8, 2019:***

- Provide your name, DOB, sex, race, and driver's license number to Debbie Vincent (vincent@law.ufl.edu or 352-273-0801). This information will be kept in the strictest confidence and is required by the Department of Corrections in order for you to attend the prison tour at Lowell Correctional Institution. When you submit this information, please sign up for either the morning tour (8:45-11:45am) or the afternoon tour (12:45-3:45pm). Sign ups are first come, first served.

Due by 10am Monday, August 19, 2019:

- Watch and be prepared to discuss: William Ury, *The Power of Listening*, <https://www.youtube.com/watch?v=saXfavo1OOo> (15:40) **and** Adam Foss, *A Prosecutor's Vision for a Better Justice System*, https://www.ted.com/talks/adam_foss_a_prosecutor_s_vision_for_a_better_justice_system?language=en (15:50).
- Please take at least one implicit association test (IAT) which can be found here: <https://implicit.harvard.edu/implicit/takeatest.html>
- Read “Tempering the Law: Problems and Questions” in Canvas and upload 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*

Attend Class—Day 1: Monday, August 19, 2019 10am-noon and 1pm-2pm

The Role of the Prosecutor and the Charging Decision

Implicit Bias

Guest Speaker: Heather Jones, Assistant State Attorney, County Court Division Chief

Due by 10am Tuesday, August 20, 2019:

- Read Reports by Det. Janice Barth and Sgt. Gregory Buckley in Canvas and upload your written response to the following questions: 1) Would you, on this evidence, prosecute Steve R. for rape? Is there probable cause to believe R raped D? Are you convinced beyond a reasonable doubt that R raped D? 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, 2) 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?
- Watch and be prepared to discuss: John Oliver, *On Bail*, <https://www.youtube.com/watch?v=IS5mwymTIJU> (17:49) **and** John Oliver, *On Municipal Violations*, <https://www.youtube.com/watch?v=0UjpmT5noto> (17:54).
- Read and be prepared to discuss: 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> **and** Scott Shackford, *Innocent Until Proven Guilty, But Only if You Can Pay*, <https://reason.com/2018/07/14/innocent-until-proven-guilty-b/> **and** 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/>

Attend Class—Day 2: Tuesday, August 20, 2019 10am-noon and 1pm-2pm

Bail, Poverty, Municipal violations

Guest Speaker: Kris Eisenmenger, Assistant Public Defender, County Court Division Chief

Due by 10am on Wednesday, August 21, 2019:

- Read and be prepared to discuss: Sarah M. Buel, *Fifty Obstacles to Leaving, aka Why Abuse Victims Stay*, http://www.ncdsv.org/images/50_Obstacles.pdf and 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/> and Catharine Wells, *Microaggressions in the Context of Academic Communities*, http://law.scu.edu/wp-content/uploads/socialjustice/Catharine_Wells_Paper.pdf
- Watch and be prepared to discuss: John McWhorter: *America Has Never Been Less Racist*, <https://www.youtube.com/watch?v=O3POpubeoIc> and the collection of readings in Canvas titled "Race."
- After reading and viewing the above resources, prepare and upload a written response to these questions: 1) Are racism and sexism similar? Argue why or why not; 2) Describe a microaggression that you have suffered or made and what lessons you took from it.

Attend Class—Day 3: Wednesday, August 21, 2019 10am-noon and 1pm-2pm

Sexism, Racism, Adverse Childhood Experiences, Domestic Violence

Guest Speaker: Teresa Drake, UF Law, Director, Intimate Partner Domestic Violence Clinic (IPVAC)

Due by 10am on Thursday, August 22, 2019:

- Prepare a goal statement and upload in Canvas. This statement may be for fall and/or spring semester goals, clinic goals, or even career goals. See "Developing Good Goal Statement" in Canvas.

Attend Class—Day 4: Thursday, August 22, 2019 8:45-11:45am or 12:45-3:45pm

Lowell Correctional Institution (11120 NW Gainesville Road Ocala, FL 34482)

Due by 10am on Friday, August 23, 2019:

- Read and be prepared to discuss: Ryan McKinnon and Josh Salman, *Wasted Minds: Inmates Languish in Florida Prisons with Little Access to Education*, <http://gatehousenews.com/wastedminds> and Morris Hoffman, *The Injustice of Extreme Prison Sentences*, <https://www.wsj.com/articles/a-judge-on-the-injustice-of-americas-extreme-prison-sentences-11549557185> and Nazgol Ghandnoosh, *The Next Step: Ending*

Excessive Punishment for Violent Crimes, <https://www.sentencingproject.org/wp-content/uploads/2019/03/The-Next-Step.pdf>

- Watch and be prepared to discuss: Eric Johnson, *Seattle is Dying*, <https://www.youtube.com/watch?v=bpAi70WWBlw> (1:00:35)
- Submit your written response to these questions: 1) What are three key issues in reducing mass incarceration? Identify and explore these issues; 2) What are the best current practices for reducing incarcerated populations? and; 3) What are your ideas on best practices for involving *communities* in reducing incarceration?

Attend Class—Day 5: Friday, August 23, 2019 10am-1pm (except Fall Prosecution and Defense Clinic students who will be attending orientation at the Public Defender’s and State Attorney’s Offices from 8:45-3pm)

Prison conditions and reform

Recidivism, Collateral Consequences and Re-entry

Wrap-up