

CRIMINAL PROCEDURE – ADVERSARY SYSTEM
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
FALL 2023 COURSE POLICIES & SYLLABUS
LAW 6112 – 3 CREDITS

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Office Hours: Fri, 2:45 – 4:45PM

Class meeting time: **Tues**, 1:45 – 3:10PM; **Fri**, 1:15 – 2:40PM

Location: HH Room 285B

COURSE DESCRIPTION AND OBJECTIVES. This course examines the adjudicatory phase of criminal procedure, beginning after arrest and continuing through sentencing. 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. We also study Florida law where it differs significantly from the norm. At each stage of the process we ask the ultimate question: do we have a legitimate system of criminal justice that is accurate and fair, respects notions of limited government, and is reasonably efficient?

Students are encouraged to employ critical thinking and to rely on data and verifiable sources to interrogate all assigned readings and subject matter in this course as a way of determining whether they agree with their classmates and/or their instructor. No lesson is intended to espouse, promote, advance, inculcate, or compel a particular feeling, perception, viewpoint, or belief.

STUDENT LEARNING OUTCOMES. At the end 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;
- Identify and establish, from a given fact pattern, possible violations of procedural rules and statutes governing the process of criminal litigation;
- Examine evidence of inequities 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, 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 AND SUGGESTED INSTRUCTIONAL MATERIALS.

Required: Yale Kamisar et al., Advanced Criminal Procedure (15th ed. 2019). **You must buy a physical copy of this book if you'd like access to the book during the exam.**

****Note: this is not the most recent version of the casebook.***

Canvas: Please be sure to register for the Canvas course, check our Canvas course site before each class, and have any required materials with you in print or easily accessible electronic form in class. Our Canvas course site has our syllabus, problems, supplemental readings, and other class materials. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

Optional: Yale Kamisar et al., 2022 Supplement to Fifteenth Editions: Modern Criminal Procedure, Basic Criminal Procedure, and Advanced Criminal Procedure (West 2022) – this book includes the federal rules and statutes covered in this course. If you prefer not to purchase this book, you may find all rules and statutes on Westlaw or Lexis.

Secondary Sources: To the extent you have questions on any topic, I suggest consulting this treatise: Wayne R. LaFare et al., Criminal Procedure, which can be found on Westlaw.

COURSE EXPECTATIONS AND GRADING EVALUATION. Our time will focus on case explications and discussion of problems, hypotheticals, and big-picture questions. It is essential that you prepare any assigned problems in advance of class.

After the first week, I will divide the classroom into four sections. Each section will be on call once every two weeks. Thus, each student is required to be fully prepared to discuss the assigned reading (including any material assigned for the class before that we didn't reach) and all assigned problems, once every two weeks. Your grade may be lowered if I call on you and you are unprepared for class.

If an extenuating circumstance arises and you must miss class on your assigned on-call day (eg, you are sick, have a job interview, or are at a funeral), email me before that class and select another on-call day within that two-week period. You may only do this once a semester unless unusual, unforeseen circumstances arise. Missing an on-call day without prior notice will likely result in a reduced grade.

Cumulative Exam. Students will be evaluated through an **in-class**, cumulative, limited-space exam of 3 or 4 hours in length. The exam will definitely contain multiple choice questions. In addition, it may contain short answer and 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.

Our examination will be a **partial open book exam**. You may bring the following materials (and only these materials) in physical form with you to the exam room:

- **Your casebook**
- **Your outline**
- **Assigned rules and statutes:**
 - **Federal authority: found in your casebook supplement OR printed from another source (like Westlaw or Lexis)**
 - **Florida authority: printed from an online source**
- **Any handout included in Canvas Modules 1-11**

Please be sure to bring a hard copy of all rules and statutes encountered in the course with you to the exam room. **Students will not be permitted to access the internet or any of their computer files during the exam.** Please plan accordingly.

Law school policy dictates that exams will only be distributed electronically. You may use a 'split screen' to see the exam questions while answering them.

Quality of class participation. Extra credit (up to 0.75 grade points on your final grade) may be given for high quality class participation and preparation. Negative credit may be given for lack of preparation or poor attendance.

CLASS ATTENDANCE POLICY. Attendance in class is required by both the ABA and the Law School. Attendance will be taken at the beginning of each class meeting. Students are allowed **four** absences during the course of the semester. Please plan accordingly and arrive to class on time. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

PREFERRED NAME AND PRONOUNS. It is important to the learning environment that you feel welcome 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 so I can address you with your preferred name and pronoun.

OFFICE HOURS. Office hours will be held in my office (Holland 305) each Friday from 2:45 – 4:45PM. You are welcome to drop by or schedule a meeting during these hours. My final office hour of the semester will be on **Friday, November 17**. I will be happy to receive questions on course material by email until **12pm on Monday, November 27**.

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](#).

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. Each weekly class is approximately 3 hours in length, requiring at least **6 hours of preparation** outside of class. This requirement will be met through your completing the assigned reading and practice materials.

HEALTH AND WELLNESS RESOURCES. Your mental and emotional health are important. Here are some important resources of which you should be aware.

- *U Matter, We Care:* If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit [U Matter, We Care website](#) to refer or report a concern and a team member will reach out to the student in distress.
- *Counseling and Wellness Center:* [Visit the Counseling and Wellness Center website](#) or call 352-392-1575 for information on crisis services as well as non-crisis services.
- *Student Health Care Center:* Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](#).
- *University Police Department:* [Visit UF Police Department website](#) or call 352-392-1111 (or 9-1-1 for emergencies).
- *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road,

Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website.](#)

Basic Needs Assistance. Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

FALL 2023 TENTATIVE COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This tentative outline sets forth the topics I hope to cover this semester, although we may not cover all listed items. **The readings for each topic – and daily assignments – can be found on Canvas within each module.** **For the first week of class, please see Modules 1 and 2 on Canvas** (see highlighted below). I will update the syllabus and module dates on Canvas weekly.

<u>Week</u>	<u>Topic</u>
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Week 1	
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	<u>Module 1: INTRODUCTION & OVERVIEW</u>
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	Overview
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| | <ul style="list-style-type: none">• <u>Overview of process:</u> read casebook pages 3-5; pages 8 ("arrest") - 16; pages 18 (bottom) - 20 (to end of n.2); note 1 on pages 22-23• <u>Misdemeanor justice & collateral consequences:</u> see material posted on Canvas |
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	<u>Module 2: THE RIGHT TO & PERFORMANCE OF COUNSEL</u>
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	The Right to Trial Counsel
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| | <ul style="list-style-type: none">• Read casebook pages 64-70; pages 70-73 (*only nn.1, 3, 5, 7); pages 74-77 (*skip Brennan dissent); pages 78-79 (*only n.7); pages 80-83 (stop at Thomas's dissent); pages 84-85 (*nn.1-4)• Read Florida Rule of Criminal Procedure 3.111• Complete the Right to Counsel Problem Set prior to class• Watch the video on the building blocks of the right to counsel prior to class (on Canvas)• See Canvas for optional supplemental reading |
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Week 2	
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	Right to Assistance of Experts
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	Right to Proceed Pro Se
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	Effective Assistance of Counsel
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Week 3	
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	Effective Assistance of Counsel, cont'd
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	Conflicts of Interest
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Week 4	
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	Disqualification of Counsel
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	<u>Module 3: Client Control</u>
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THE COMMENCEMENT OF FORMAL PROCEEDINGS

Module 4: Pretrial Release

Bail

Week 5

Preventative Detention

Module 5: The Decision to Prosecute

Prosecutorial Discretion

Week 6

Challenging the Charging Decision

Module 6: Grand Jury Review

Grand Jury Review

Week 7

Challenges Related to Grand Jury

Module 7: Pretrial Issues for Motions

Practice

Joinder & Severance

Speedy Trial

Week 8

Speedy Trial, cont'd

Module 8: DISCOVERY

For the Defense

Week 9

For the Prosecution

Week 10

Module 9: NEGOTIATED PLEAS

Risks of Plea Bargaining

Judicial Involvement

Week 11

Voluntary & Knowing
Duty of Prosecutor & Unrealized Expectations
Professional Responsibility
The Effect of a Guilty Plea

Week 12

Module 10: TRIAL BY JURY

The Right to a Jury Trial
Jury Selection
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Week 13

Petit Jury
Right of Confrontation