

**PROSECUTORIAL ETHICS
SENIOR RESEARCH SEMINAR
PROFESSOR RICHARDSON
DEPAUL UNIVERSITY COLLEGE OF LAW
(FALL 2008)**

SYLLABUS

- MEETING TIME AND LOCATION:** MONDAY, 1:00 - 2:40, ROOM 631
- FACULTY INFORMATION** PROFESSOR L. SONG RICHARDSON
LRICHAR3@DEPAUL.EDU
811 OM 362-7692
OFFICE HOURS: W: 10-11:30; 1:30-3 AND BY APPT
- COURSE MATERIALS:** **R. Michael Cassidy, PROSECUTORIAL ETHICS (West 2005); Angela Davis, ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR JUSTICE**

COURSE DESCRIPTION:

This course examines constraints on prosecutorial discretion imposed by the Constitution and the Model Rules of Professional Responsibility. A criminal prosecutor must reconcile the ethical obligation to "seek justice" with personal incentives to "win" the case and professional obligations to protect the public. We will discuss the areas of prosecutorial decision making that bring these frequently competing goals into sharpest conflict. Topics will include issues of overcharging and selective prosecution; discovery practice; use of informants; the "no contact" rule; plea negotiations; and trial conduct.

COURSE REQUIREMENTS

Each student's grade will be based primarily on the final paper submitted by the student. The paper is expected to be comparable to a law review comment or case note. It is to be 30 pages, exclusive of footnotes, typed and double-spaced, with standard one-inch margins. The grade will also reflect the extent to which the student has complied with the deadlines outlined below for his/her preliminary written work. In extreme situations, the quality of the preliminary written work will be taken into account so that mere pretexts of compliance with above deadlines can be policed.

The final paper component of the final grade will reflect both the quality and thoroughness of each student's research and analysis of his/her selected topic and the quality and style of his/her expression. Non-observance of the deadline for the final draft will result in deductions from the grade of the final draft. I will deduct one letter grade per day for any work handed in late.

Non-observance of deadlines for student written work may be excused and extensions granted, of course, for appropriate reasons. However, excused lateness and extensions will not be granted easily.

Participation: This is a discussion seminar, therefore active classroom participation is essential.

- You are expected to be on time, to be prepared, and to be an active and thoughtful participant. Your participation grade will be based not on quantity but on quality: participating means not just speaking, but also actively listening and contributing in useful ways to the class discussion.
- Class attendance is mandatory. If you have an illness or emergency that will cause you to miss class, you must contact me in advance. An unexcused absence will result in a deduction from your participation grade; repeated unexcused absences may lead to an involuntary withdrawal and a grade of “FX.”

Research Paper & Class Presentation: You will go through several guided stages in creating and completing your research paper. All assignments, except where noted, should be turned in as a hard copy to my office (O’Malley 811) as well as e-mailed to me at LRICHAR3@depaul.edu.

- *Picking a topic:* To allow enough time to write a quality research paper, you should begin thinking about your topic in the first week of class. I encourage you to come talk to me about your topic as soon as possible, during office hours or another time that I am available. In preparation for our meeting, please email me one or two paragraphs about your proposed topic, preferably at least a day in advance.
- *Prospectus and Annotated Bibliography:* Topics for the paper must be selected by the student (with notice given to, and approval received from, the professor) by the third class of the semester (September 15). A description of your proposed topic as well as an outline, focusing on points and authorities, must be submitted by the sixth class of the semester (September 29). It should be approximately 2-4 double-spaced pages in length. Bring a hard copy to class and e-mail it to me.
- During the week of 7th class (October 6) we will not have a class session; instead, you will sign up to meet with me to discuss your prospectus.
- *First Draft:* A typed first draft, which need not have more than rudimentary citation to authority, must be submitted by the ninth class of the semester (October 20). It must also be emailed to me before class.
- *Presentations:* The final two weeks of class (except for the last class) are devoted to presentations and discussions of student research. I will allow people to sign up for presentation days during the second week of class (if necessary, we will run a lottery). You should present your thesis, give relevant background and briefly summarize what scholars have argued in the general area of your topic, discuss the types of sources that you are using and the challenges that they present, and describe the implications of your findings (however tentative).
- *Final Draft:* The typed final draft, with full citation to authority, must be submitted by 5 PM on the Monday after our last class of the semester (December 8).

GRADING:

Your final grade will be based on classroom participation (10%), your research presentation (10%), your preliminary and final research paper (80%).

With regard to the final paper, the standard used in excusing lateness and granting extensions will be modeled upon the standard used by the administration in excusing attendance at scheduled examinations; and the standard will be applied only after consultation with the administration.

Therefore, any requests for a later deadline for the final work product must be made in advance to Dean Diana White (Assistant Dean for Student Affairs), and will be treated like a request for a makeup exam. Failure to meet the deadline without prior administrative approval will result in a grade of "FX."

Academic Integrity:

You are expected to use proper citation form in all of your work for this class. You must provide accurate attribution for all quotations and for every paraphrase or summation of another person's ideas. If you need further discussion of the definitions of plagiarism, please see "Rules for Working with Authority," on the Legal Writing Institute website

(<http://www.lwionline.org/publications/plagiarism/workingauthority.asp>).

Schedule of Readings: This schedule may change to reflect the needs and direction of the class.

Week 1. August 25: INTRODUCTION & WHO IS THE CLIENT?

Cassidy:

pp. iv-x
Chapter I & Problems

Davis:

pp. 143-147 (up to first full paragraph on p. 147)

Recommended

Robert H. Jackson, *The Federal Prosecutor*, 31 Am. Inst. Crim. L. & Criminology 3 (1940-1941).

Town of Newton v. Rumery, 480 U.S. 386 (U.S. 1987).

California v. Kelley, 142 Cal. Rptr. 457 (1977)

Kenneth Bresler, *I Never Lost a Trial: When Prosecutors Keep Score of Criminal Convictions*, 9 GEO. J. LEGAL ETHICS 537 (1996).

Fred C. Zacharias and Bruce A. Green, *Prosecutorial Neutrality*, 2004 WIS. L. REV. 837 (2001)

Week 2. September 8: CHARGING

Cassidy:

Chapter II & Problems 1 & 2

Davis:

pp. 19-25; 31-41; 101-103; 147-148

Recommended

Blackledge v. Perry, 417 U.S. 21 (1974)(Majority Opinion through section I; Dissenting Opinion, section I and section III.)

US v. Redondo-Lemos, 955 F.2d 1296 (9th Cir. 1992)

US v. Armstrong, 517 U.S. 456 (1996)

Carol A. Corrigan, *On Prosecutorial Ethics*, 13 HASTINGS CONST. L.Q. 537 (1986)(Section II of the Article)(starts at page 539)

H. Richard Uviller, *The Virtuous Prosecutor in Quest of an Ethical Standard: Guidance from the ABA*, 71 MICH. L. REV. 1145 (1973).

Jane Mayer, *The Lover in Jail*, THE NEW YORKER (Nov. 30, 1998).

Week 3. September 15: DUE -- TOPIC SELECTION

PLEA BARGAINING

Cassidy:

Text Chapter VI & Problems 1&3

Davis:

43-52; 56-59

Recommended

Bordenkircher v. Hayes, 434 U.S. 357 (1978).

Stephen J. Schulhofer, *Plea Bargaining as Disaster*, 101 YALE L.J. 1979 (1992) (Parts I and II).

Frank H. Easterbrook, *Plea Bargaining as Compromise*, 101 YALE L.J. 1969 (1992).

Roland Acevedo, *Is A Ban on Plea Bargaining an Ethical Abuse of Discretion? A Bronx County, New York Case Study*, 64 *FORDHAM L. REV.* 987 (1995).

Week 4. September 22: DISCOVERY

Cassidy:
Text Chapter V & Problems 1, 3

Davis:
pp. 127-141; 148 (Bottom) - 151

Recommended

Brady v. Maryland, 373 U.S. 83 (1963)

Kyles v. Whitley, 514 U.S. 419 (1995).

Richard A. Rosen, *Disciplinary Sanctions Against Prosecutors for Brady Violations: A Paper Tiger*, 65 *N.C. L. Rev.* 693 (1987)

Roger Parloff, *They Still Want to Kill Him: How Much Evidence Did Arizona Hide When It Tried to Kill John Knapp the First Two Times?*, *THE AMERICAN LAWYER* (July/August 1991).

Week 5. September 29: THE “NO CONTACT” RULE

Cassidy
Chapter IV & Problems 1, 3

United States v. Hammad, 858 F.2d 834 (2d Cir. 1988).

United States v. Lopez, 989 F.2d 1032 (9th Cir. 1993).

Recommended Reading

Massiah v. United States, 377 U.S. 201 (1964).

Alafair S.R. Burke, *Reconciling Professional Ethics and Prosecutorial Power: The No-Contact Rule Debate*, 46 *STAN. L. REV.* 1635 (1994)(Parts I and II only).

28 U.S.C. §530B (1999).

**Week 6. October 6: OUTLINE DUE
USE OF INFORMANTS**

United States v. Cervantes Pacheco, 826 F.2d 310 (5th Cir. 1987).

United States v. Singleton, 165 F.3d 1297 (10th Cir. 1999).

R. Michael Cassidy, "Soft Words of Hope:" *Giglio, Accomplice Witnesses, and the Problem of Implied Inducements*, 98 NW. U. L. REV. 1129 (2004).

Recommended

Jeffrey Toobin, *Capone's Revenge*, THE NEW YORKER (May 23, 1994).

Week 7. October 13:
NO CLASS -- CONFERENCES

Week 8. October 20: A VIEW FROM THE TRENCHES

Week 9. October 27:
NO CLASS -- FIRST DRAFT DUE

Week 10. November 3:
NO CLASS -- CONFERENCES

Week 11. November 10: TRIAL CONDUCT

Cassidy:
pp. 96-114 and Problems 2-5

Recommended Reading

Miller v. Pate, 386 U.S. 1 (1967).

Alcorta v. State of Texas, 355 U.S. 28 (1957).

Harry I. Subin, *The Criminal Lawyer's "Different Mission:" Reflections on the "Right" to Present a False Case*, 1 GEO. J. LEGAL ETHICS 125 (1987).

John B. Mitchell, *Reasonable Doubts Are Where You Find Them: A Response to Professor Subin's Position on the Criminal Lawyer's "Different Mission,"* 1 GEO. J. LEGAL ETHICS 339 (1987).

Berger v. United States, 295 U.S. 78 (1935).

R. Marc Kantrowitz et al., *Closing Arguments: What Can and Cannot Be Said*, 81 MASS. L. REV. 95 (1996).

**Week 12. November 17
PRESENTATIONS**

**Week 13. November 24
PRESENTATIONS**

Week 14. December 1: WRAP UP: DOING GOOD WHILE DOING WELL

Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?* 14 GEO. J. LEGAL ETHICS 355 (2001).

R. Michael Cassidy, *Character and Context: What Virtue Theory Can Teach Us About a Prosecutor's Duty to "Seek Justice,"* 82 NOTRE DAME L. REV. __ (2006).

Final Paper Due December 8th by 5 p.m.

Recap of Due Dates

Monday, Sept. 15:	Topic Selection Due
Monday, Oct. 16:	Outline Due
Monday, Oct. 27:	First Draft Due
Monday, Dec. 8:	Final Draft Due

Presentation Dates will vary by student