

The Role of the Prosecutor

Fall 2024

Course Number: 223-001

Monday 8:10 p.m. to 10:10 p.m.

Professor William Fitzpatrick

Syllabus

Course Description

This course will examine the role of the modern prosecutor through reading assignments and discussions. We will address the limits and extent of prosecutorial power, the degree to which prosecutors shape the criminal justice system, the significance of electoral politics in selecting prosecutors and setting law enforcement priorities, the proper exercise of prosecutorial discretion, plea negotiations, and the relationships between prosecutors and other actors in the criminal justice system such as police, legislators, judges, defense counsel, victims, and the communities prosecutors serve. We will also delve into prosecutorial ethics and the challenges today's prosecutors face in their mission to be "Ministers of Justice."

Materials and Reading Assignments

The principal textbook is *Prosecutorial Ethics*, Third Edition, R. Michael Cassidy and Suzanne Valdez. Many lectures will be supplemented by reading assignments as set forth below.

Class Participation and Writing Assignments

You are expected to attend each class and to come prepared and on time. Participation is 20% of your grade. Absences, late arrivals and failures to participate adequately will be factored into your final grade.

As mentioned above, 20% of your grade will be based on class participation. The study of prosecutors and their role in the effective and ethical administration of justice is a collective activity. If needed, I will call on students to help facilitate group discussion. I expect students to have read the assigned readings and to come prepared for class discussion. Many classes will explore challenging and controversial issues facing prosecutors and during these discussions classmates will most certainly hold a variety of opinions. It is important for everyone to be heard and to always engage one another professionally and respectfully.

There will be three writing assignments. The first two papers will be 5 to 7 pages in length and will each make up 25% of your grade. The third paper due on the last day of class should be 8 - 10 pages in length and will make up 30% of your grade. On the first night of class, we will discuss the assignment for the first two papers. The third paper will be on a topic of your choice.

August 26:

Course Administration, Expectations, Writing Assignments

The Role of the Prosecutor: An Overview

The Federal Prosecutor, by Robert H. Jackson, Journal of the American Judicature Society, Volume 24 at page 18

Department of Justice, Justice Manual, 9-27.001 (Preface to the Principles of Federal Prosecution)

Distinction Between State and Federal Prosecutors

September 2:

Labor Day/No Class

September 4

(Wednesday but observe Monday class schedule)

Ethical Responsibilities of Prosecutors

Text, pgs. 1-9; 123-134

Rule 3.8 of the Virginia Rules of Professional Conduct, Additional Responsibilities of a Prosecutor

Prosecutorial Discretion

The Need for Prosecutorial Discretion, Stephanos Bibas, University of Pennsylvania Carey School of Law,
https://scholarship.law.upenn.edu/faculty_scholarship/1427

September 9:

Responsibilities of a Prosecutor (Part 1): Investigative Process, Grand Jury, Charging Decisions, Bail Issues, Discovery

Text, pgs. 25-43; 35-53; 71-89

Rule 6 of the Federal Rules of Criminal Procedure

Bail Reform Act of 1984, Title 18, United States Code, Section 3143

Rule 16 of the Federal Rules of Criminal Procedure

Title 18, United States Code, Section 3500 (*Jencks Act*)

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

Giglio v. United States, 405 U.S. 150 (1972)

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

Due Process Protections Act and Rule 5(f) of the Federal Rules of Criminal Procedure

Department of Justice, Justice Manual, 9-27.200 to 9-27.260 (Considerations for Initiating or Declining Prosecutions)

September 16: Responsibilities of a Prosecutor (Part 2): Motions Practice, Voir Dire, Trial, Sentencing, Appeals, Post-Conviction Litigation.

Text, pgs. 103-119; 137-147

Batson v. Kentucky, 476 U.S. 79 (1986)

Title 18, United States Code, Section 243 (Exclusion of jurors on account of race or color)

Department of Justice, Justice Manual, 9-5.001 to 9-5.100 (Issues Related to Discovery, Trials, and Other Proceedings)

First Writing Assignment Due

September 23: Cooperating Defendants/Cooperating Witnesses/Immunized Witnesses/Confidential Informants

Text, pgs. 55-69

Department of Justice, Justice Manual, 9-27.420 and 9-27.620 (Considerations Before Offering Plea Agreement or Non-Prosecution Agreement to Defendant or Putative Defendant)

Third Circuit Court of Appeals, Model Criminal Jury Instructions:

4.19 (Credibility of Witnesses-Witness Who Has Pleaded Guilty to Same or Related Offense, Accomplices, Immunized Witnesses, Cooperating Witnesses)

4.20 (Credibility of Witnesses-Testimony of Informer)

September 30: Plea Negotiations

Text, pgs. 91-100

Plea and Charge Bargaining, Research Summary, Lindsey Devers, Ph.D, CSR, Inc./Bureau of Justice Assistance, United States Department Justice

October 7: Prosecutors Relationships with Law Enforcement, Defense Counsel, the Judiciary, and the Community

“As Camden’s police chief, I scrapped the force and started over. It worked. (The city needed guardians, not warriors),” Perspective by John Scott Thomson, *Washington Post*, July 18, 2020

October 14: Fall Break/No Class

October 21: Elected vs Appointed Prosecutors

The Prosecutors and Politics Project. National Study of Prosecutor Elections, February 2020, University of North Carolina School of Law, pp. 1-9; 313-328

Establishing Law Enforcement Priorities

Second Writing Assignment Due

October 28: Prosecutorial Misconduct (Part 1): Causes and Consequences

Rule 3.3 of the Virginia Rules of Professional Conduct, Candor Toward the Tribunal

Rule 3.6 of the Virginia Rules of Professional Conduct, Trial Publicity

Rule 4.2 of the Virginia Rules of Professional Conduct, Communications with Persons Represented by Counsel

Rule 4.3 of the Virginia Rules of Professional Conduct, Communications with Unrepresented Persons

November 4: Prosecutorial Misconduct (Part 2): Causes and Consequences

United States v. Ali Sadr Hashemi Nejad, 18-cr-224 (AJN) (Dkt# 379) (S.D.N.Y.)

November 11: Investigating and Prosecuting Law Enforcement Conduct

Enhancing Accountability and Trust with Independent Investigations of Police Lethal Force, by Walter Katz, Harvard Law Review, Volume 128, Issue 6, April 2015

The Role of the Grand Jury in Determining Charges Against Law Enforcement

November 18: Sentencing Issues (Part 1):

- Sentencing Factors
Title 18, United States Code, Section 3553 (Sentencing Factors)
Department of Justice, Justice Manual, 9-27.730 (Making Sentencing Recommendations)
- Sentencing Guidelines
United States Sentencing Commission, Guidelines Manual
(I will summarize in class)
- Capital Punishment

Title 18, United States Code, Sections 3591 to 3599 (Capital Punishment)

Department of Justice, Justice Manual, 9-10.000 (Capital Crimes)

November 21

(Thursday but observe Monday class schedule)

Sentencing Issues (Part 2):

- Victims' Rights
Title 18, United States Code, Sections 3771 (Crime Victim Rights Act)
- Diversionary Programs and Reentry Courts
Recidivism and Reentry Data, Bureau of Justice Statistics, 2021;
Department of Justice, Justice Manual, 9-22.000 (Pretrial Diversion Programs)

Class Summary

Third Writing Assignment Due