

I. COURSE DESCRIPTION – Criminal Prosecution Seminar, Spring 2016
Tuesdays, 6:00 p.m. – 7:40 p.m.
Room 437

This class will analyze how our sense of justice is formed and what it looks like in the actual practice of criminal law. The class will discuss the legal standards for arrest, charging, and conviction along with the ethical conduct required of prosecutors and defense attorneys. The goal of the class is to take a global view of the criminal justice system through a focus on policy and practice issues, rather than case law. We will question and discuss the systemic issues in case outcomes, prosecutorial charging and bargaining discretion, and sentencing -- aspects of the criminal process that affect huge volumes of cases and require more thought in global terms.

II. COURSE MATERIALS (REQUIRED)

A. Picking Cotton: Our Memoir of Injustice and Redemption, by Jennifer Thompson-Cannino, Ronald Cotton, and Erin Torneo (Publisher: St. Martin's Press; March 3, 2009, 0312376537)

B. Additional reading materials will be assigned during the semester.

III. COURSE REQUIREMENTS

A. Preparation & Participation

1. Each student is required to prepare for class, including completing reading assignments and preparing for in-class presentations.
2. Each student will be expected to actively participate in classroom discussions and exercises.
3. “What’s News?” -- Each week, one student will be assigned to bring in a news story or, preferably, a work experience related to class. That student will briefly present and summarize the issue for the class. The student should be prepared for questions.

B. Attendance

1. Each student is required to attend class and must arrive on time. I will begin and end every class on time.
2. Each student is permitted one unexcused absence. An absence will be deemed excused if a student has a serious medical condition or an emergency.
3. Additional unexcused absences will result in a make-up assignment or, in the alternative, the loss of one-half grade per absence.

C. Classroom Exercises

1. Throughout the semester, there will be a number of classroom exercises. Each student is required to participate. We will conduct a mock oral argument, modeled on arguments heard by action of Attorney Regulation Counsel. For each oral argument, two students will be assigned. One student will defend a prosecutor charged with misconduct for violating an ethical rule. The other student will represent Attorney Regulation Counsel in arguing that the prosecutor violated one or more of the ethical rules. Your fellow students and I will serve as the Court and ask questions during the argument.

IV. GRADE

A. The final grade will be determined by the following:

1. *Preparation & Participation.* You are expected to prepare for class and actively participate in classroom discussion. This is a very important part of this class. As such, Preparation & Participation will count for one-third (1/3) of your final grade.
2. *Oral Arguments.* You will be graded on preparation, the substance of your argument, and your presentation. The oral argument will count for one-third (1/3) of your final grade.
3. *The Final Examination.* The final will be a written, take-home exam. The examination will be a comprehensive test exploring your knowledge of the class material and principles of law

discussed throughout the semester. The final examination will count for one-third ($1/3$) of your final grade.

V. PROFESSOR AVAILABILITY

Please feel free to contact me on my cellphone, 303-590-5176. You may also contact me via e-mail, at professordougherty@yahoo.com. I am also available by appointment for one hour before every class. You may also schedule an appointment for another time, if necessary. I strongly encourage you to feel free to do so.

COURSE OVERVIEW

This overview is illustrative of the subjects to be covered during the course of the semester. The reading assignments may change, depending on our progress. In addition, we will have guest speakers and video presentations. Those dates will be finalized during the semester. I will likely supplement the reading assignments during the semester.

- B. January 12, 2016:** Introduction: An Overview of the Course and Course Requirements. Discussion on how a society forms its sense of justice with a focus on: the Right to Remain Silent, and the Suppression of Evidence (Reading assignment for next class - 3: Robert H. Jackson, *The Federal Prosecutor*, 31 J. Crim. L. 3 (1940); “To end the anguish, drop the death penalty”, Bill and Denise Richards, *Boston Globe*, 4/16/15; “U.S. Attorney says sentiments of all marathon victims important”, *Boston Globe*, 4/17/15).
- C. January 26, 2016:** The role of the prosecutor with a focus on Charging decisions and Plea-Bargaining Cases: what are the advantages and disadvantages to our system of justice? (Reading assignment for next class - 3: MRPC 3.8(a); “Strauss-Kahn Prosecution Said to be Near Collapse”, *NY Times*, June 30, 2011; People of the State of New York v. Dominique Strauss Kahn, Recommendation for Dismissal).
- D. February 9, 2016:** Guest Speaker. Cold Case Investigations and Prosecution. (Prepare for Oral Arguments to be held on February 23rd)
- E. February 23, 2016:** Oral Arguments. What happens to our rights in a time of a crisis... Constitutional Rights and Prosecutorial Ethics. Discussion of Ethics for Prosecutors. (Finish reading Picking Cotton by March 8th).
- F. March 8, 2016:** Discussion of Prosecutorial Misconduct, Picking Cotton, and review of trial practice techniques. (Doubting Case, a Prosecutor Helped the Defense,” *NY Times*, June 23, 2008; “The Manhattan District Attorney Responds”, *NY Times*, June 30, 2008).

G. March 22, 2016: Sentencing and the Death Penalty: The Sentencing Statute and Considerations. Where do the prosecutor's own beliefs play a role? Should they?

H. April 5, 2016: How Can WE Improve the CJS?

Final Examination: a take-home, written examination