

CRIMINAL PRACTICE AND PROCEDURE

VERMONT LAW AND GRADUATE SCHOOL, SPRING 2023

PROFESSOR SHANNON HEERY (SHE/HER/HERS)

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CELL: 347-622-1942 (CALL OR TEXT)

CLASS MEETINGS: Tuesday/Thursday 4:00 – 6:00 pm, Location: OAKES 208

OFFICE HOURS: Available both in person and virtually.

In-person: Tuesdays, 10:30-11:30 am – feel free to drop in (but realize someone else may already be there) or schedule in advance.

Virtually: I am generally available M, W, F before 4 pm for virtual appointments. Reach out via email or text to schedule an appointment. In your message, please include at least 3 times that would work for you.

Note: Unfortunately, I am not available directly before or after class. I will not be able to stay after class to meet or answer questions due to my schedule. Feel free to reach out any other way though.

TEACHING ASSISTANTS:

- Zach Estrada: ZacharyEstrada@vermontlaw.edu
 - o TUESDAY classes
 - o Office Hours: 1-2 PM Tuesday/Thursday, virtual via Teams or can met in the café in person. Reach out directly to schedule and let him know if you would like an in-person meeting.
- Caitlyn Cournoyer: caitlyncournoyer@vermontlaw.edu
 - o THURSDAY classes
 - o Office Hours: Monday and Wednesday, virtual via Teams. Reach out directly to schedule.

REQUIRED TEXTS:

1. Lee, Richardson & Lawson, *Criminal Procedure Cases and Materials*, third edition. Other materials used will be available online. (Listed below as “CB”)
2. Brent Newton, *Criminal Litigation & Legal Issues in Criminal Procedure* (NITA 4th ed. 2014). (Listed below as “NITA”)
3. CANVAS: Throughout the semester, I will post additional material, from videos to podcasts to reading, through CANVAS. It is your responsibility to keep track of these individually distributed handouts as well as to read, view, or listen to anything assigned. Please follow the postings closely so you have completed any reading, viewed any videos, listened to any podcasts and completed any other assignments before each class.

COURSE DESCRIPTION:

Criminal Practice and Procedure examines the issues that arise under the Fourth, Fifth, Sixth, and Fourteenth Amendments during the government's investigatory phase of a criminal case. The course will explore the relationships between constitutional doctrines, policies, and current social issues. Additionally, students will practice advocacy, making arguments for the government or defense at various stages of a criminal case.

LEARNING OUTCOMES:

1. A student who completes this course should come away with an understanding of the basic doctrines of constitutional criminal procedure.
2. Students will analyze, evaluate, and learn the substantive law for each stage of a criminal case, including the applicable law of the Fourth, Fifth, Sixth and Fourteenth Amendments.
3. Students will learn how to assess criminal procedure exam questions in a manner consistent with the Bar Exam.
4. A student who completes this course should have a clear understanding of the criminal process or "life of a case" through the criminal system.
5. A student who completes this course will learn advocacy skills and be able to prepare and argue legal issues while applying the particular facts of a criminal case.
6. Students will analyze and identify areas of criminal procedure where policy or legal reform is needed.
7. Students will understand that criminal cases greatly impact real human beings. Students will learn to examine the system and its criminal procedure rules with empathy, understanding its wide-reaching effects.

CLASSROOM ENVIRONMENT, EXPECTATIONS, AND VALUES:

- (1) I hope to have lively class discussions in which everyone will *listen* to each other's opinions with *civility and respect*. That does not mean that everyone has to agree with everyone else. My expectation is simply that everyone treats one another with common courtesy and professional integrity as you discuss the material. It also means that when you disagree with one another, you do so in a professional manner.
- (2) All members of the VLGS community, including professors, are expected to treat each other with respect. I want to promote an environment that avoids words/remarks or actions that show bias or prejudice based on age, disability, ethnicity, gender, national origin, native language, race, religion, sex, sexual orientation, or socioeconomic status. I also want us to be able to engage in honest discourse. If you have any concerns about anything said or done in class, by me or by one of your colleagues, please talk to me about your concerns.
- (3) Criminal law frequently involves sensitive material that can be distressing to some. Please keep in mind that everyone else's lived experiences are not your own and you may not know what another person has been or is going through. Do not make assumptions about your classmates. Instead, show sensitivity to your classmates and to the subject matter.
- (4) Be open to new ideas. Our environment should foster growth and learning.

- (5) It is okay to admit not knowing or understanding something. It is safe to make a mistake. This is true for everyone in class and all class members should strive to create and maintain that feeling for all other class members.
- (6) Be willing and unafraid to express yourself: including your thoughts, opinions, or any concerns if something is said that is troubling to you.
- (7) We will be doing a lot of active advocacy exercises. For many, it will be the first time attempting these exercises. Be patient with yourselves and with your classmates. You are all here to learn how to argue on our feet and express complicated law effectively. Do not plan on being perfect during these exercises but give yourself room to learn as the semester continues.
- (8) Come to class prepared and engaged!

Please consult and abide by the Vermont Law and Graduate School's Better Community Statement (which can be found in the [student handbook](#) and is reprinted here):

As members of the Vermont Law and Graduate School (VLGS) community, we choose to be a part of an academic community that is dedicated to principles that foster integrity, civility, and justice.

As citizens of a broad and pluralist society, we encourage those of all cultures, orientations, and backgrounds to educate and respect one another in a safe environment.

- We respect the dignity of all persons and assume the best about them.
- We challenge and reject all forms of bigotry while striving to learn from each other's differences.
- We celebrate our differences while appreciating our similarities.
- We value an inclusive environment that is accepting of each other's physical, cognitive, social, and professional differences.
- We respect the rights of each and every member of the community, regardless of race, ethnicity, national origin, religion, age, gender, sexual orientation or lifestyle, medical condition, or socio-economic status.
- We realize that our common interests exceed our individual differences.

As members of the Vermont Law and Graduate School community, we affirm our rights to freedom of expression and association, and the belief that they must be exercised responsibly. The spirit of building a better community is best served when the ideals of integrity, civility, and justice are expressed and debated with tolerance, understanding, appreciation, and good will.

HOW A CRIMINAL CASE MOVES THROUGH COURT:

While we are discussing cases from our casebook you will also build on your knowledge of how a case moves through the criminal court system. To that end, in addition to learning substantive criminal law, another goal of this class is to teach you the steps involved in prosecuting and defending a criminal case after a person has been charged with a crime. This means that when you are preparing for class, you should always consider what court wrote the opinion you are reading and how that case landed in that court (state or federal, trial or appellate, etc.).

CLASS ATTENDANCE:

Class attendance is mandatory. Vermont Law and Graduate School Academic Regulation II.A. provides that a student will receive a grade of F-Wd if they are absent from 20% of regularly scheduled classes. The Academic Regulations permit individual professors to set a higher requirement (but not a lower requirement) and for this class you will receive a grade of F-Wd if you are absent from more than three regularly scheduled classes. You are required to monitor your own compliance with this policy. Two tardies equals one unexcused absence.

If additional absences are due to a health issue or some other extraordinary circumstance beyond your control, contact Vice Dean for Students Brennan as a withdrawal or medical leave may be appropriate.

CLASS DISCUSSION AND PREPARATION:

I expect students to be prepared for class and will call on you at random if there are no volunteers. If you are not prepared on a particular day, you may “pass.” If you pass, however, your participation grade may suffer.

If, due to the nature of the topic matter, life experience, or another sensitive personal reason, a certain class is not one that you feel comfortable contributing to, please let me know in advance of class via email. You do not need to provide the specific reason why in this circumstance.

Class discussion, including responding to questions asked by me and points made by your classmates, is an essential component of my class. That said, *please do not confuse quantity with quality*. Participation includes actively listening and contributing in useful ways to the class discussion in accordance with the classroom environment section above. If you find yourself talking a lot in class, take the responsibility for listening more. If you never talk in class, take the responsibility for participating more.

IN-CLASS EXERCISES/GROUP WORK AND OUT OF CLASS GROUP WORK:

We will do hands-on skills exercises throughout the semester. In addition to classroom discussion, your participation in these exercises is a consideration for assessing class participation. Please do not underestimate the value of group work. As an attorney, you are often required to collaborate with a team. You can expect, on average, that a student will do *at least* one on-their-feet, speaking exercise per week.

GUEST SPEAKERS:

There will be guest speakers throughout this course. The material presented by speakers can, and likely will, appear in some form on your final examination. Actively listen during presentations and be prepared to contribute with meaningful questions following a presentation.

ACCOMMODATIONS:

If you have a disability and would like to request an accommodation for any reason and/or any aspect of the class, please review our accommodations policy [here](#). On that webpage, there is an on-line form to complete and upload with your supporting documentation. Contact Associate Dean of Diversity, Equity, and Inclusion Lisa Ryan for any accommodation request or questions.

Please note that requests made within two weeks of an examination may not be granted in time. Please make your request as soon as possible.

QUESTIONS:

You are welcome to reach out directly to me or to either of the TA's with questions; however, please know that I am not a big fan of answering substantive questions via email. One of the reasons for this is because I value getting to know each of you, so I prefer the kind of back-and-forth exchange we can have talking with each other. With that understanding, please feel free to ask me a question via email or canvas if you think the question is straightforward enough that it does not warrant a meeting or if you think it is something I should clarify with the class.

READING ASSIGNMENTS:

There is a separate document with your reading assignments. These readings are tentative and may change throughout the semester as current events, time, and interest necessitate. **You must check our Canvas site regularly to stay current on the assignments for each week. I will post individual class modules a week in advance which will contain any additional materials required for class.**

GRADING:

1. 20% - In-Class exercises, Group Assignments, Discussion Groups, and Written Reflective Assignments
2. 10% - Outline Motion to Suppress Argument
3. 25% - Oral Motion to Suppress
4. 45% - Final Exam

EXAM:

You will have a final exam. The exam may include multiple choice questions, true/false questions, short answers, and at least one essay question. I will discuss the exam more as we progress through the course. For now, please know that you are responsible for all material covered in class (including guest speakers or information otherwise discussed or distributed for class and anything posted in Canvas, such as information in handouts, supplementary readings, video clips, in-class exercises, etc.). You are responsible for all material assigned on the syllabus unless I tell you otherwise.

MOTION TO SUPPRESS:

You will be responsible for arguing a motion to suppress in this class. It will take place the week of April 3, 2023. I will have more details on exact times and locations of arguments before I provide the assignment for your argument on February 16, 2023. If, when you receive your assignment, you have issues with your schedule, please let me know as soon as possible so I can re-schedule your argument.

Prior to your argument, you must submit an outline by March 19, 2023 at 6 p.m. Once you have turned in the outline, I will be available to discuss feedback and suggestions for the oral argument of your motion to suppress.

WRITTEN REFLECTIVE ASSIGNMENTS:

Do not stress about the written portion of these assignments. They are reflective assignments to have you think about the criminal system and how criminal procedure law impacts individual populations. As long as they are completed in a timely manner and there is a genuine effort to reflect on the assignment given, you will receive full credit. I will not be submitting feedback (though I am happy to discuss them with you outside of class) or checking grammar, etc. These are meant to be a safe space for you to write genuine reactions to something you have seen that is a part of the criminal system. As a precursor to the written reflective assignments, I may ask that you participate in an activity or read/listen to extra assignments. There will be the opportunity to receive extra credit in the course if you do one additional written reflective assignment than is required. Canvas assignments will be clear about which written reflective assignments are required and which are optional.

FORMATIVE ASSESSMENTS:

I may give several formative assessments during the semester in the form of short quizzes, polls, or short assignments. These are to help both of us gauge progress and review the material for future graded examinations.

COMPUTERS AND TECHNOLOGY:

As a courtesy to everyone, do not use the internet or your computer for personal use during class, including: instant messaging, peer-to-peer file sharing, text-messaging, any kind of recording, or any other such applications during class. Please do not look things up on the internet, check your email, or otherwise multi-task during class. Even if you are great at doing multiple things at once, it can be very distracting to others, including classmates sitting near you or behind you. The only exception is if you are specifically asked to do so for learning purposes during a class. Texting during class is also prohibited.

RECORDING CLASS:

Do not independently record the class without checking with me beforehand and/or obtaining permission to do so. Links to class recordings and a copy of any Power Point I use will be available after class on our Canvas site in the specific module for the date of the class.

AMENDMENTS TO THE SYLLABUS:

Any Amendments to the Syllabus will be made in writing.

OTHER THOUGHTS:

I value all perspectives and experiences, and I expect each of you to contribute in meaningful ways to class discussion based on your careful preparation for class, as well as on the individual experiences and perspectives that shape and influence your understanding of the material. I hope to meet you all on an individual basis during the course of the semester so do not hesitate to contact me or arrange a meeting! I look forward to working with each of you.