

THE PROSECUTION FUNCTION

Law 685

Fall 2005

SYLLABUS

Hans P. Sinha
Clinical Professor of Law
Director Prosecutorial Externship Program

hsinha@olemiss.edu

(662) 915-6884

Room 523

Summary of course subject

The course will cover the history and current role of the prosecutor in American society. It will examine the theory and practical role of a prosecutor, including areas of substantive and procedural law with which a prosecutor needs to be familiar. The course will focus on Mississippi law. There will also be a heavy emphasis on the unique ethical and professional duties of a prosecutor. The goal is that a student who has successfully completed the course, will have both the substantive and procedural knowledge required of a prosecutor, as well as an understanding of the unique role of the prosecutor in American society. The course is a co-requisite for students placed as prosecutorial externs (Law 685) during the fall and spring semesters, and a pre-requisite for students placed as prosecutorial externs during the summer term.

Room: The class will meet on Tuesdays and Thursdays from 3:30 pm to 4:50 pm in room 514.

Texts: The required text can be purchased from University Printing for \$44.00.

Grade The course will be graded on a regular letter grade basis. The grade will be based upon one final term paper.

In order for a paper to receive a high grade, it must not only be excellent in content, and organization, but style (including grammar, spelling, etc.) as well.

Please note that the mere fact this is a paper course does not guarantee a high grade. It is the law school policy that all classes which are not bound by the curve, aspire to follow such curve. That is the policy of this class as well.

Please note that intentionally taking someone else's work and passing it off as your own, will result in a failing grade (plagiarism). Using someone else's work without providing adequate and sufficient credit for such work, will result in a lowered grade (poor footnoting).

In light of the course being a paper course, the final grade for the course will also take into account preparation for class, class attendance and class participation. As such, a student's final grade for the course may be lowered one grade step based upon a lack of class preparation. Conversely, excellent class preparation and participation, may also be taken into account in the final grade, not to exceed the raising of the final grade by one grade step.

- Attendance:** Class attendance is expected and mandatory. Class roll will be maintained for each class. A student's grade will be lowered one grade step in instances of excessive absences, defined as three or more un-excused absences.
- Class:** The class is envisioned as a discussion class. The topics to be covered should prove to be quite interesting, and subject to different views.
- Readings:** The assigned readings correspond roughly to one general topic per week. Note, however, that this will vary as we cover the material. In addition to the text, supplemental hand outs will also be used.
- Paper:** The paper should be thirty pages in length. Foot notes, 12 point font, and the Harvard Bluebook format should be used. Students are required to turn in a paper topic and may turn in one draft for review and critique as per the below schedule. As such, the due dates for the paper is as follows:
- I. Tuesday, September 27, 2005 - Paper topic due
 - A. The topic of the paper has to pertain to the course, i.e. the prosecution function. If you cannot associate the role of the prosecutor to your topic, it is likely too far afield from the class.
 - II. Tuesday, October 18, 2005 - Outline due
 - A. The outline should be one to two pages in length, plus a list of authorities.
 - III. Tuesday, November 8, 2005 - Drafts will be accepted for critique.
 - A. Please note that this is optional, not mandatory.
 - B. Only completed drafts will be accepted for critique. Spelling and grammatical errors will not be corrected.
 - C. Please note that in order for paper drafts to be properly critiqued, and timely returned, they must be turned in on this date.
 - IV. Thursday, December 1, 2005 - Final paper due in class.
 - A. Late papers will be penalized one grade step.

Syllabus

1. **Topic One History of the American Prosecutor.** Pages 1 - 29.
 - a. “The American Prosecutor in Historical Context” by Joan E. Jacoby. The Prosecutor, May/June, 1997.
 - b. “The Emergence of Local Prosecutors” by Joan E. Jacoby. The Prosecutor, July/August, 1997.
 - c. “The American Prosecutor: From Appointive to Elective Status” by Joan E. Jacoby. The Prosecutor, September/October, 1997.
 - d. “The American Prosecutor’s Discretionary Power” by Joan E. Jacoby. The Prosecutor, November/December, 1997.
 - i. All used with permission by Joan E. Jacoby and the National District Attorney’s Association.

2. **Topic Two The Role of the Prosecutor I - Ethics and Professionalism.** Pages 31 - 76.
 - a. “High Ethical Standards: The Foundation for Every Prosecutor,” by Douglas R. Roth. First Deputy District Attorney, Sedgwick County, Wichita, Kansas. The Prosecutor’s Deskbook, 3rd ed. Used with permission by the American Prosecutors Research Association (APRI)
 - b. Mississippi Rules of Professional Conduct
 - (1) Preamble: A Lawyer’s Responsibility
 - (2) 3.1, 3.3, 3.4, 3.5, 3.6, 3.8, 4.1, 4.2, 8.3, 8.4
 - c. Mississippi Uniform Rules of Circuit and County Court Practice, Rules 1.02, 1.10, and 3.02
 - d. ABA Prosecution Standards. ABA Standards of Criminal Justice - Prosecution Function and Defense Function, 3rd ed. Copyright 1993 by the American Bar Association. Reprinted with Permission. Look at all. Read 3-1.2, 3-1.5, 3-2.8, 3-3.1, 3-3.2, 3-3.9, 3-3.11, 3-5.2.

3. **Topic Three The Role of the Prosecutor II - The Duty to Disclose.** Pages 77 - 139.
 - a. Mississippi Rule of Professional Responsibility 3.8(d)
 - b. Brady v. Maryland, 83 S.Ct. 1194 (1963)
 - c. Giglio v. United States, 92 S.Ct. 763 (1972)
 - d. United States v. Bagley, 105 S.Ct. 3375 (1985)
 - e. Kyles v. Whitley, 115 S.Ct. 1555 (1995)

4. **Topic Four Understanding the Defense Role and Ethics.** Pages 141 - 171.
 - a. Nix v. Whiteside, 106 S.Ct. 988 (1986)
 - b. “Client Confidences and Client Perjury: Some Unanswered Questions” by Monroe H. Freedman. Used with permission by Monroe Freedman and the University of Pennsylvania Law Review.

5. **Topic Five DA Immunity.** Pages 173 - 229.
 - a. Imbler v. Pachtman, 96 S.Ct. 984 (1976)
 - b. Burns v. Reed, 111 S.Ct. 1934 (1991)
 - c. Buckley v. Fitzsimmons, 113 S.Ct. 2606 (1993)
 - d. Kalina v. Fletcher, 118 S.Ct. 502 (1997)

6. **Topic Six The Decision to Prosecute: Screening, Charging and Plea Bargaining**
Hand out and pages 231 - 244.
 - a. “The Screening Bargaining Trade Off,” by Marc Miller and Ronald Wright. 55 Stanford Law Review 1 (2002). Used with permission by Miller and Wright, and the Stanford Law Review. (Separate handout)

- b. “The Power of Charging Discretion,” by Paul Wallace. Deputy District Attorney General, Delaware. The Prosecutor’s Deskbook, 3rd Edition. Used with permission by Paul Wallace and the APRI. (Pages 231 - 244.)

7. Topic Seven Beginning the Case: Time Limits, Arrest, Bail, Indictment and Grand Jury

Pages 245 - 293.

- a. Fifth and Sixth Amendments to the U. S. Constitution and Sections 14, 27, and 29 to Article Three of the Mississippi Constitutions.
- b. Time limits: Selected sections from Title 99, Chapter 1 and Title 99, Chapter 17, URCCC 6.03, Barker v. Wingo, 92 S.Ct. 2182 (1972) and De La Beckwith v. State, 707 So.2d 547 (1997)
- c. Arrest: Selected sections from Title 99, Chapter 3
- d. Bail: Selected sections from Title 99, Chapter 5 and URCCC 6.02
- e. Indictment and Grand Jury: Selected sections from Title 99, Chapter 7, Title 13, Chapter 5, URCCC Rule 7, and sample Charge to Grand Jury

8. Topic Eight Jury, Voir Dire and Challenges

Pages 295 - 378.

- a. 6th Amendment to the United States Constitution and Sections 26 and 31 of Article 3 of the Mississippi Constitution
- b. Collected Rules of Jury - Mississippi and Federal
- c. Selected parts of URCCC Rules 3, 4 and 10
- d. Selected sections of Title 99, Chapter 17 and Title 13, Chapter 5
- e. Batson: Law and Procedure Summary
- f. Batson v. Kentucky, 106 S.Ct. 1712 (1982)
- g. State v. McCollum, 112 S.Ct. 2384 (1992)

- h. Edmonson v. Leesville, 111 S.Ct. 1859 (1991)
- i. Powers v. Ohio, 111 S.Ct. 1364 (1991)
- j. J.E.B. v. Alabama, 114 S.Ct. 1419 (1994)

9. Topic Nine Rights of Victims and the Duty of the Prosecutor Pages 379 - 445.

- a. Sections 26 and 26A of Article 3 of the Mississippi Constitution
- b. “Victim Issues for Prosecutors,” by Bill Ritter. The Prosecutor’s Deskbook, 3rd edition. Used with permission by Bill Ritter and the APRI.
- c. “The Effective Prosecutor: Assisting Crime Victims With Special Needs,” by Mary Boland. The Prosecutor’s Deskbook, 3rd edition. Used with permission by Mary Boland and the APRI.
- d. Excerpts from the Mississippi Crime Victim’s Bill of Rights (99-43-1 et seq.), the Mississippi Crime Victim’s Compensation Act (99-41-1 et seq.) , the Mississippi Crime Victim’s Escrow Account (99-38-1 et seq.) and the Mississippi Restitution to Victims of Crime (99-37-1 et seq.) and Victims Assistance Coordinator acts (99-36-1 et seq.)
- e. Title 99, Chapter 19 - the Victim Impact Statement

10. Topic Ten Getting to Trial: Jurisdiction, Venue, Competency & Insanity, Preliminary hearing, Pleas and Discovery Pages 447 - 485.

- a. Jurisdiction and venue: Selected sections of Title 99, Chapter 11 and URCCC Rule 6.06
- b. Sanity / Competency: Selected sections of Title 99, Chapter 1e and URCCC Rule 9.06 (also URCCC 9.07)
- c. Preliminary hearing: URCCC Rule 6.04
- d. Discovery: URCCC Rules 9.04, 9.05, and 9.07; Box v. State, 437 So.2d 19 (Miss. 1983), State v. Ramos, 710 So.2d 380 (Miss. 1998)

13. **Topic Thirteen** **Identifications** Pages 563 - 596.
- a. Manson v. Brathwaite, 97 S.Ct. 2243 (1977)
 - b. York v. State, 413 So.2d 1372 (Miss. 1982)
 - c. “The Eyes Have It - Or Do They,” by James M. Doyle, Mark R. Larson, and Caterina M. DiTraglia. *Criminal Justice*, Fall, 2001. Copyright *Criminal Justice*, the American Bar Association. Used with permission by James M. Doyle, Mark R. Larson, and Caterina M. DiTraglia. Reprinted by Permission of the American Bar Association.
14. **Topic Fourteen** **Current issues and the Prosecutor**
- a. Hand outs to be provided.

Here the public prosecution service fulfils a selective function which differs from country to country according to its legal status and discretionary powers. Therefore the prosecutorial case-ending decisions in form of dismissal of proceedings, conditional disposals and penal orders can not be treated in isolation, but in dependence of its role within the whole criminal justice system and especially of the input from the police level. View. Show abstract. While the role and status of prosecutors varies greatly among Member States, in all legal traditions prosecutors occupy a key position in the criminal justice system and exercise considerable powers and responsibilities. Ultimately, the rule of law cannot be upheld, nor can human rights be protected, without effective prosecution services that act with independence, integrity and impartiality in the administration of justice. The FPS fulfils the criminal litigation responsibilities of the Attorney General of Canada and the Minister of Justice, that is, the prosecution function and prosecution-related functions. UN-2. To provide a better understanding and awareness among officials in the law enforcement, security and prosecution sectors of the functions of intelligence, investigation and prosecution functions and on how those functions provide value in the successful prosecution of terrorism-related cases. Giga-fren.