

Presidential Criminal Liability
Syllabus, Spring 2024
Wednesday Evenings, 6:05-8:05 p.m.

Description

This class involves an in-depth look at the legal issues that surround potential criminal liability for current and former Presidents. The class will utilize both historical cases such as Watergate and the Monica Lewinsky Scandal, as well as current events (including the four pending indictments against former President Trump). This class will explore substantive legal issues (such as racketeering and conspiracy principles, the overlap between civil and criminal law, etc.); evidentiary law (e.g. the admissibility of coconspirators statements); constitutional law (e.g., indicting a former President, First Amendment Considerations, search warrants and legal process); and procedural law (e.g., investigative grand juries, the federal removal statute, federal vs. state prosecution, “flipping” codefendants, etc.)

Learning Outcomes

1. Students will have a solid understanding of the constitutional issues at play in the investigation of a current or former President.
2. Students will understand the legal issues involved in both historical cases of criminal investigations into a President (Nixon and Watergate; Clinton and White Water/Monica Lewinsky) as well as the four pending criminal cases involving former President Trump.
3. Students will be able to articulate a position on the relative legal strengths and weaknesses of each case from a prosecution and defense perspective, without respect to political considerations.
4. Students will have a firm understanding of the substantive, evidentiary, and procedural aspects of conspiracy law and how prosecutors and defense attorneys make decisions in cases involving multiple suspects.
5. Students will be able to utilize examples from the prosecutions of President Trump to highlight different stages of litigation in criminal cases.

Contact Information and Availability

My email address is dlord1@gmu.edu. I would welcome you to contact me with any questions or concerns and am happy to schedule a meeting, as needed, throughout the Spring term.

Class Preparation (including Podcasts), Texts, and TWEN

I will create a TWEN page for this course where the PowerPoint lectures from class will be available along with the reading materials. These will be of substantial use to you in preparing for the exam.

There is no textbook for this class. All of the readings identified below will be available on TWEN. Please note that throughout the semester, there are a total of five different legal podcast episodes that you are expected to listen to before the class session. Please make sure early on that you have the ability to download and listen to the specified episodes. If you don't, please let me know right away so that we can create an appropriate solution.

Class Participation

Please understand that it is Mason's policy that if a student is absent for *any* reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session. (AR 4-1.1.) Missing three sessions of this course would result in this provision being triggered. Please also note that while missing less than 3 courses would not result in your being precluded from receiving credit from the course, any absence will factor into class participation.

Class participation will consist of attendance, engagement in class discussion, and preparation for the class activities and case preparation discussed above. If a student is deemed to have exceptional class participation, they will be eligible to have their final grade increased one level (for example, from a B to a B+ or from a B+ to an A-), assuming it does not cause a violation of the university's mandatory curve. Similarly, the failure to meaningfully participate can result in a one-step decrease on a student's grade level.

Evaluation and Grading

The final exam will take place on April 27, 2024 and students will have three hours to complete it. The exam will be open-book (in terms of notes that you create), but students will not have access to the internet. Half of the exam will consist of multiple choice or true and false questions. The second half will consist of two essay questions.

Class Schedule

Class 1: Wednesday, January 17, 2024

Topic: The history of Presidential criminal liability, Part I: Richard Nixon, Watergate, and Spiro Agnew

- Reading: *Watergate: What Was It?* by John. W. Dean III, Hasting Law Journal (53 pages)
- Reading: NY Times Investigation/article: *How Agnew Bartered His Office to Keep from Going to Prison*, New York Times (20 pages)

Class 2: Wednesday, January 24, 2024

Topic: The history of presidential criminal liability, Part 2: Bill Clinton, White Water and Monica Lewinsky

- Reading: The Starr Report (pages 129-204) (74 pages)
- Reading: *Clinton v. Jones*, 520 U.S. 681 (1997) (44 pages)

Class 3: Wednesday, January 31, 2024 - **Class will meet remotely via Zoom.**

Topic: Alternate means of accountability (Impeachment, civil lawsuits, Presidential disqualification under the 14th Amendment)

- Podcast: “Is President Trump Disqualified from Office Under the 14th Amendment”, We The People Podcast, August 31, 2023
- Reading: Petition, *Anderson v. Griswold*: Colorado disqualification suit. (Pages 80-103)
- Reading: Breaking Down NY’s Long Awaited Fraud Lawsuit (or updated version (6 pages)
- Reading: Complaint, *Carroll v. Trump* (29 pages)
- Reading: The Constitutional (and Political) Safeguards Against Impeachment (16 pages)

Class 4: Wednesday, February 7, 2024

Topic: Constitutional Considerations #1 (Can Presidents be charged with crimes? Independent Counsel and unitary executive theory, Separation of Powers)

- Reading: Motion to Dismiss based on presidential immunity, *US v. Trump* (Jan 6 case) (52 pages)

- Reading: Government's response to motion to dismiss, *US v. Trump* (Jan 6 case) (54 pages)

Class 5: Wednesday, February 14, 2024

Topic: Constitutional Considerations #2 (State investigations and the Supremacy Clause, the federal removal statute, 1st Amendment Considerations).

- Reading: Federal removal statute, 28 U.S.C. § 1455
- Reading: *Georgia v. Meadows*, Motion for Removal (14 pages)
- Reading: *Georgia v. Meadows*, State's response to Motion for Removal (22 pages)
- Reading: *US v. Trump* (DC case), First Amendment motion to dismiss (31 pages)

Class 6: Wednesday, February 21, 2024

Topic: Investigation and Charging (Special/Investigative and Regular Grand Juries); subpoenas and privilege against self-incrimination. Special Guest Speaker: Maana Parcham on use of an investigative grand jury

- Reading: Prosecutorial Misconduct in Grand Jury Investigations by Peter J. Henning, *South Carolina Law Review* (62 pages)

Class 7: Wednesday, February 28, 2024

Topic: President Trump's Georgia Case Part 1: Conspiracies, multi-defendant investigations (including prosecution and defense strategy, cooperation, joinder vs. severance)

- Reading: Indictment, *Georgia v. Trump et al* (98 pages)

Wednesday, March 6, 2024

Spring Recess – No Class

Class 8: Wednesday, March 13, 2024

Topics: President Trump's Georgia Case Part 2: (Racketeering/RICO). Special guest speaker, Deputy Commonwealth's Attorney Robert Strange on prosecuting a RICO case.

- Reading: Virginia, Georgia, and federal RICO statutes (43 pages)
- Reading: RICO, Corruption and White Collar Crime by Pamela Bucy Pierson, *Temple Law Review* (52 pages)

Class 9: Wednesday, March 20, 2024

Topics: President Trump Georgia Case Part 3 (Interplay of election law with criminal liability) and President Trump’s Jan 6 Federal Case part 1

- Podcast “Judge J. Michael Luttig on January 6 and the Indictment of President Donald Trump”, We The People Podcast, August 10, 2023
- Reading: Indictment, *US v. Trump* (DC case (45 pages)
- Reading: Motion to Dismiss for Selective and Vindictive Prosecution, *US v. Trump* (11 pages)
- Reading: Response to Motion to Dismiss (not yet available)

Class 10: Wednesday, March 27, 2024

Topics: President Trump’s Jan 6 Federal Case Part 2

- Reading: Motion for Recusal (9 pages)
- Reading: Opposition to Motion for Recusal (20 pages)
- Reading: Motion for Fair and Protective Jury Procedures (11 pages)
- Reading: Response to Motion for fair Jury Procedures (4 pages)
- Reading: Motion for notice: Intent to rely on advice-of-counsel defense (14 pages)
- Reading: Response to Motion for Notice of intent to rely on advice-of-counsel defense (14 pages)
- Reading: Motion to Dismiss on Statutory Grounds (31 pages)

Class 11: Wednesday, April 3, 2024

Topic: The federal Florida presidential records case against President Trump

- Podcast: “Presidents, Prosecutions, and the Rule of Law,” We the People Podcast, June 15, 2023.
- Podcast: “Constitutional Questions After the Raid on Margo Lago,” We the People Podcast, August 18, 2022
- Reading: Superseding Indictment, *US v. Trump*, US District Court for Southern District of Florida (60 pages)

Class 12: Wednesday, April 10, 2024

Topic: The New York Records Case

- Podcast: “The Indictment of Former President Trump,” We the People Podcast, April 6, 2023
- Reading: Statement of Facts, *New York v. Donald J. Trump* (13 pages)
- Reading: Motion to Dismiss, *New York v. Donald J. Trump* (57 pages)

Class 13: Wednesday, April 17, 2024

Review session for final exam