

**LAW 389-002/DL6 – Criminal Procedure: Adjudication  
Spring 2024 (3 Credit Hours)**

**Professor:** Erienne A. Sutherell

**Office Hours:** Virtual; by appointment (all held via Zoom)

**Email:** [esuthere@gmu.edu](mailto:esuthere@gmu.edu)

**Days/ Time:** 15-week Hybrid course, Beginning January 19, 2024; Fridays 12:00- 3:00 PM.

**Location:** Room 215

**COURSE DESCRIPTION:**

Study of constitutional principles governing the conduct of criminal prosecutions, with special emphasis on the trial and post-trial stages. Subjects include the charging process; bail and pretrial release; discovery; double jeopardy and collateral estoppel; speedy trial; public trial; jury trial; guilty pleas and plea bargaining; right to confrontation; sentencing; appeals; and collateral post-conviction remedies. (Constitutional Criminal Procedure I is not a prerequisite.)

**TEXTBOOK AND COURSE MATERIALS:**

**\*REQUIRED:**

\*(1) Dressler, Thomas, and Medwed's Criminal Procedure: Prosecuting Crime, 8<sup>th</sup>:  
ISBN- 9781647087746

This is a softbound book. Please note that I am **not** assigning:

Dressler, Thomas, and Medwed's Criminal Procedure: Principles, Policies, and Perspectives, 8<sup>th</sup>.

The assigned book (“Prosecuting Crime”) consists of chapters 1, and then 11-19 of the larger “Principles, Policies, and Perspectives” casebook, which is approximately 1651 pages total. You will notice that your text begins with pages 1-67, and then jumps to page 835. This is not an error. The assigned text essentially covers the “bail to verdict” part of criminal procedure; the other book in the series, which is the first half of the Casebook, is called “Criminal Procedure: Investigating Crime.” This is also a softbound book, and covers chapter 1-10, and also 14, of the larger Casebook. This is NOT assigned; it covers the investigation portion of criminal procedure (“cops and robbers”). If you anticipate taking the Criminal Procedure: Investigations, at some point during your course of study, you may wish to buy the overall Casebook, but you are certainly NOT required to do so. Many students may wish to have the separate, smaller, softbound books for ease of use.

The required text, as well as the additional texts in this series, are all available to be purchased as digital e-books as opposed to print format.

**\*\*All students can receive 15% off** the cost of any print or electronic books purchased from the **West Academic** online store (<https://www.westacademic.com/>) by using the school-specific discount code **WAGMU** at checkout. In addition, they will receive **FREE 14-DAY DIGITAL ACCESS** to the book immediately after purchase, so they can read online until the print version arrives. If they choose to create an account (via the "Create an Account" link at the top of the page) and sign in prior to completing the purchase, students will also receive **free shipping** within the US by using that code. The code will be good for the entire 2023/2024 academic year, and there's no limit to the number of times it can be used, so please feel free to share this with your students as they prepare for the upcoming semester. If your students have questions about using the code or require technical support, they can reach our Customer Support team at **1-877-888-1330** (option 4) or via email to [support@westacademic.com](mailto:support@westacademic.com).

### **LEARNING OBJECTIVES:**

Each week of study in this course builds upon the previous weeks' learning outcomes. By the end of the course, students will be able to:

- 1. Describe the criminal adjudication process from arrest through an application for post-conviction relief.**
- 2. Explain the discovery obligations for prosecutors and defense lawyers including how formal requests for documents are made as well as issues of relevance; privilege; work-product protection; protective orders; discovery of testifying and consulting experts; physical and mental examinations; and sanctions for discovery misconduct.**
- 3. Explain preliminary adjudication proceedings for dismissal of criminal charges.**
- 4. Describe the grand jury process.**
- 5. Identify potential constitutional errors in a fact pattern involving criminal procedure and construct arguments for and against granting the defendant relief.**
- 6. Describe the various methods of challenging the validity of a conviction and identify some of the hurdles that must be overcome to successfully overturn a conviction.**

### **STUDENT RESPONSIBILITIES**

Students are required to attend classes and to be timely. If a student knows that he/she cannot attend a class or that he/she will be late for class, or must leave class early, it is the responsibility of that student to contact the professor beforehand by phone or email. Students shall read all of the cases and assignments for each day in advance and shall be prepared to be called upon to discuss the rules and/or a case in that day's reading assignments, per the syllabus.

## **GRADING and IN-CLASS CONDUCT:**

The final grade will be based on the following:

Class attendance, participation, completion of written assignments- 25%  
Final Exam - 75% (Take-home, open book)

### **Class Preparation:**

This class relies on everyone arriving fully prepared to participate in the day's discussion and review exercises. Getting answers wrong is entirely forgivable. Failing to read the day's assignment is not.

There may, of course, be entirely unforeseen events (meteor strikes, alien invasions, etc.) that prevent you from completing readings prior to class. In such a circumstance, you should notify me BEFORE class starts. I can be quite understanding when I am informed ahead of time... not so much when I discover you are unprepared during class discussion.

### **Professionalism:**

Learning cannot effectively take place in an environment that is unprofessional or uncivil. To that end, I expect that you will observe basic professional courtesies such as arriving on time and turning off your cell phone. (We will discuss lateness in greater detail in class.) Since one of the key goals of the class is learning how to make effective arguments, it is my hope that we can have lively class debates where all students feel comfortable participating and expressing their opinions. Respect for your colleagues is vital to fostering a healthy debate environment. At all times, remain mindful of the diversity of perspectives and experiences in our classroom and be respectful as you articulate your arguments. We need not agree on everything, but we do need to disagree professionally.

### **Prohibited Class Activities:**

Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device, laptop, phone, or camera. Any exceptions to this policy must be expressly permitted in writing by the professor. During class sessions, no student shall access any outside resources unrelated to class topics or issues. Any access to or participation in social media, websites, emails, texts, or other electronic communications during class is strictly prohibited. This includes any intra-class communications as well as external communications. If a student has an urgent or emergent situation, he/she may excuse him/herself from the classroom to make answer such a communication.

### **Academic Integrity:**

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the

School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; unapproved multiple submissions; material misrepresentation of one’s academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; and inappropriate discussion of exams.

**Covid Health & Safety Requirements:**

Please note that this class will follow current University health and safety protocols. Any student who has a covid or other health related issue should immediately contact the administration for assistance and advice.

**Covid Instructional Contingency Plan:**

In the event that the administration requires this class to transition to a remote format, the professor will inform the students as to the manner and type of instruction by which the class will be operated.

**WEEKLY OUTLINE AND ASSIGNMENTS:**

<b>Class #/ DATE</b>	<b>TOPICS</b>	<b>READINGS</b>
Class 1 January 19, 2024	<b>1. Introduction</b> <b>2. Fundamentals of Criminal Procedure: Failures and Evolution of the Process</b> <b>3. Overview of the “normal” criminal process in the American judicial system</b>	READ THE ENTIRE SYLLABUS  (See introduction E-mail)  NO additional required readings for the first class.
Class 2 January 26, 2024	<b>1. Pretrial Release</b> <b>2. Case Screening</b> <ol style="list-style-type: none"> <li>a. Prosecutorial Discretion</li> <li>b. Preliminary Hearing</li> <li>c. Grand Jury</li> </ol>	Textbook: Chapter 11, pgs. 835-842; 849-866 Chapter 12, pgs. 867-900
Class 3 February 2, 2024	<b>1. Case Processing</b> <ol style="list-style-type: none"> <li>a. Grand Jury investigative function</li> <li>b. Pretrial Motions Practice (generally)</li> <li>c. Discovery (Brady Violations)</li> </ol>	Textbook: Chapter 13, pgs. 919-991
Class 4 February 9, 2024	<b>1. Joinder and Severance</b> <b>2. 6<sup>th</sup> Amendment Speedy Trial</b> <b>3. 6<sup>th</sup> Amendment Right to Counsel</b>	Textbook: Chapter 13, pgs. 991-1014 Chapter 14, pgs. 1015-1042; 1053-1066

Class 5 February 9, 2024	<b>1. Right to Counsel Continued 2. Plea Bargaining and Guilty Pleas</b>	Textbook: Chapter 14, pgs. 1069-1092; Chapter 15, pgs. 1105-1186
Class 6 February 16, 2024	<b>1. Trial Process a. Jury Selection, Voire Dire, Peremptory Challenges; Batson</b>	Textbook: Chapter 16, pgs. 1187-1265
	<b>****NO CLASS FEBRUARY 23, 2024</b>	
Class 7 March 1, 2024	<b>1. Trial Process, Cont'd (Jury Nullification) 2. Confrontation of Witnesses</b>	Textbook: Chapter 16, pgs. 1265-1275; 1282-1336
	<b>****SPRING BREAK MARCH 4-10th</b>	
Class 8 March 15, 2024	<b>1. Confrontation of Witnesses Cont'd 2. Right to Compulsory Process 3. Defendant's Right to Testify</b>	Textbook: Chapter 16, pgs. 1336-1373
Class 9 March 22, 2024	<b>1. Jury Deliberations 2. Sentencing</b>	Textbook: Chapter 16, pgs. 1373-1383; Chapter 17, pgs. 1385-1459
Class 10 March 29, 2024	<b>1. Double Jeopardy</b>	Textbook: Chapter 18, pgs. 1461-1510
Class 11 April 5, 2024	<b>1. Post-Trial Process, Habeas Corpus</b>	Textbook: Chapter 19, pgs. 1511-1570
Class 12 April 12, 2024	<b>Make Up Class</b>	TBD

<p>Class 13 April 19, 2024</p>	<p><b>Final Exam Review Class</b></p>	
	<p><b>Spring Semester Classes End on Monday, April 22, 2024</b> <b>Reading/ Study Day Tuesday, April 23, 2024</b> <b>Examinations begin Wednesday, April 24- Wednesday, May 8, 2024</b></p>	

### University Policies and Resources

- a. Academic Honesty: You are expected to be familiar with and abide by the University’s Honor Code. The Code can be found [here](#). It is your responsibility to see me if you have questions about these policies. George Mason University has an honor code that states the following: *To promote a stronger sense of mutual responsibility, respect, trust, and fairness among all members of the George Mason University community and with the desire for greater academic and personal achievement, we, the student members of the University Community have set forth this:*
- b. Students must follow the university policy for [Responsible Use of Computing](#).
- c. Student services: The University provides range of services to help you succeed academically and you should make use of these if you think they could benefit you. I also invite you to speak to me (the earlier the better). Here are a few helpful links.
  - Keep Learning, Learning Services ([learningservices.gmu.edu/keeplearning/](http://learningservices.gmu.edu/keeplearning/))
  - University Libraries ([library.gmu.edu](http://library.gmu.edu))
  - Writing Center ([writingcenter.gmu.edu](http://writingcenter.gmu.edu))
  - Counseling and Psychological Services ([caps.gmu.edu](http://caps.gmu.edu))
- d. Students are responsible for the content of university communications sent to their George Mason University email account and are required to activate their account and check it regularly. All communication from the university, college, school, and program will be sent to students solely through their Mason email account in accordance with [Family Educational Rights and Privacy Act \(FERPA\)](#). For more on student privacy and student rights under FERPA, reference: <https://registrar.gmu.edu/ferpa/>.
- e. [The George Mason University Counseling and Psychological Services \(CAPS\)](#) staff

consists of professional counseling and clinical psychologists, social workers, and counselors who offer a wide range of services (e.g., individual and group counseling, workshops and outreach programs) to enhance students' personal experience and academic performance. Counseling Center: Student Union I, Room 364, 703-993-2380.

- f. Students with disabilities who seek accommodations in a course must be registered with the [George Mason University Office of Disability Services \(ODS\)](#) and inform their instructor, in writing, at the beginning of the semester. All academic accommodations must be arranged through that office. Please note that accommodations MUST BE MADE BEFORE assignments or exams are due. Student grades cannot be adjusted after the fact. In requesting accommodations from Disability Services, students will need to provide appropriate documentation ([ds.gmu.edu/forms/](https://ds.gmu.edu/forms/)).
- g. Students must follow the university policy stating that all sound emitting devices shall be turned off during class unless otherwise authorized by the instructor.
- h. [The George Mason University Writing Center](#) staff provides a variety of resources and services (e.g., tutoring, workshops, writing guides, handbooks) intended to support students as they work to construct and share knowledge through writing. University Writing Center: Robinson Hall Room A114, 703-993-1200. The writing center includes assistance for students for whom English is a second language.
- i. [Diversity](#): George Mason University promotes a living and learning environment for outstanding growth and productivity among its students, faculty and staff. Through its curriculum, programs, policies, procedures, services and resources, Mason strives to maintain a quality environment for work, study and personal growth.
- j. [Holiday Observation](#): As it pertains to religious holiday observation, within the first two weeks of the semester, students are responsible for letting their instructor know the dates of major religious holidays when their absence or unavailability is anticipated due to religious observances. The Mason University Life religious holiday calendar can be found at: <https://ulife.gmu.edu/religious-holiday-calendar/>. For important academic calendar dates, see: <https://studentaccounts.gmu.edu/calendars/>

**Software:** Many courses use Blackboard as the learning management system. You will need a browser and operating system that are listed compatible or certified with the Blackboard version available on the [myMason Portal](#). See [supported browsers and operating systems](#). Log in to [myMason](#) to access your registered courses. Some courses may use other learning management systems. Check the syllabus or contact the instructor for details. Online courses typically use [Acrobat Reader](#), [Flash](#), [Java](#), and [Windows Media Player](#), [QuickTime](#) and/or [Real Media Player](#). Your computer should be capable of running current versions of those applications. Also, make sure your computer is protected from viruses by downloading the latest version of Symantec Endpoint Protection/Anti-Virus software for free [here](#).

Students owning Macs or Linux should be aware that some courses may use software that only runs on Windows. You can set up a Mac computer with Boot Camp or virtualization software

so Windows will also run on it. Watch [this video](#) about using Windows on a Mac. Computers running Linux can also be configured with virtualization software or configured to dual boot with Windows.

Note: If you are using an employer-provided computer or corporate office for class attendance, please verify with your systems administrators that you will be able to install the necessary applications and that system or corporate firewalls do not block access to any sites or media types.