

Criminal Justice Ethics: Prosecution and Defense

Professor Angela J. Davis

Course Materials: Monroe H. Freedman & Abbe Smith, Understanding Lawyers' Ethics, 5th Edition

R. Michael Cassidy, Prosecutorial Ethics, 2nd Edition

ABA Model Rules of Professional Conduct (at mywcl)

ABA Criminal Justice Standards (at mywcl)

Additional Readings at mywcl

Course Requirements and Grading:

Your grade will be based primarily on your performance on the final examination. The final exam will be a three-hour, open book examination with both essay and multiple choice questions. Your grade may be raised one step for outstanding class participation. Class attendance and punctuality are extremely important and essential to success in the course.

LEARNING OUTCOMES

Upon successful completion of this course, students should:

- Understand the purpose of the Model Rules of Professional Conduct
- Understand the purpose of the ABA Criminal Justice Standards for the Defense and Prosecution Function
- Understand and distinguish the role and ethical responsibilities of the prosecutor and defense attorney in the criminal justice system
- Have an in-depth understanding of the model rules and criminal justice standards that apply to prosecutors and defense attorneys
- Be able to spot ethical issues in hypotheticals, apply the relevant model rules, and make appropriate recommendations
- Understand the process for attorney discipline

ASSESSMENTS

Student assessments will be based on a final examination and class participation.

SYLLABUS

I. History and Overview of the Regulation of the Legal Profession

ABA Model Rules of Professional Responsibility – Preface, Preamble and Scope (at mywcl)

ABA Criminal Justice Standards for the Defense Function – 4-1.1

ABA Criminal Justice Standards for the Prosecution Function – 3-1.1

Freedman and Smith, Chapter 1

Overview of the Criminal Process (chart at mywcl)

II. The Defense Counsel’s Duty to Provide Zealous Advocacy

Freedman and Smith, Chapter 4, pp. 67 – 101

ABA Model Rule of Professional Conduct 1.1, 1.2, 1.3, 1.4, 4.2

ABA Criminal Justice Standards for the Defense Function 4-1.2, 4-1.3

Kate Taylor, “Harvard’s First Black Faculty Deans Let Go Amid Uproar Over Harvey Weinstein Defense” (at mywcl)

David Cole & Carole Rose, Harvard Was Wrong to Dismiss Its Dean for Representing Harvey Weinstein (at mywcl)

Lucy Caldwell, “Harvard Was Right to Fire Ron Sullivan”

Freedman and Smith, Chapter 4, pp. 101 – 127

Christopher Zoukos, “Indigent Defense in America: An Affront to Justice” (at mywcl)

III. Guest Lecturer – Joni Wiredu (Director, Office of Academic Excellence)

IV. Confidentiality

Freedman and Smith, Chapter 5

ABA Model Rule of Professional Conduct 1.6

ABA Criminal Justice Standards for the Defense Function 4-2.2

Guest Speakers

V. The Ethical Trilemma/Candor to the Court

Freedman and Smith, Chapter 6

ABA Model Rule of Professional Conduct 3.3

ABA Criminal Justice Standards for the Defense Function 4-1.4

VI. Conflicts of Interest

Freedman and Smith, Chapter 9
 ABA Model Rules of Professional Conduct 1.7, 1.8, and 1.9
 ABA Criminal Justice Standards for the Defense Function 4-1.7

VII. The Role of the Prosecutor

Cassidy, Chapter 1
 ABA Model Rule of Professional Conduct 3.8
 ABA Criminal Justice Standards for the Prosecution Function 3-1.2, 3-1.3
 Angela J. Davis, “Prosecutors and the Victims of Crime” (at mywcl)

VIII. The Charging Decision and the Grand Jury

Cassidy, Chapter 2
 ABA Model Rule of Professional Conduct 3.8 (a)
 ABA Criminal Justice Standards for the Prosecution Function 3-4.2, 3-4.3, 3-4.4
 Cassidy, Chapter 3
 ABA Criminal Justice Standards for the Prosecution Function 3-4.5, 3-4.6

Guest Speakers

IX. Discovery and Brady

Cassidy, Chapter 5
 ABA Model Rule of Professional Conduct 3.8 (d)
 ABA Criminal Justice Standards for the Prosecution Function 3-5.4, 3-5.5
 Jessica Brand, *The Epidemic of Brady Violations: Explained* (at mywcl)
 Judge Emmet Sullivan’s Standing Brady Order
 Cynthia E. Jones, *Here Comes the Judge: A Model for Judicial Oversight and Regulation of the Brady Disclosure Duty*, 46 Hofstra L. Rev (2018) (excerpt)(at mywcl)

X. Plea Bargaining

Cassidy, Chapter 6
 ABA Criminal Justice Standards for the Prosecution Function 3-5.6, 3-5.7, 3-5.8
 Angela J. Davis, “Let’s Make a Deal: The Power of the Plea Bargain” (at mywcl)
 Film Presentation – “The Plea”
 Discussion of Ethical Issues in “The Plea”

XI. Prosecutorial Misconduct and Wrongful Convictions

Cassidy, Chapter 9
 ABA Model Rule of Professional Conduct 3.8 (g) and (h)
 ABA Criminal Justice Standards for the Prosecution Function 3-8.3
 Adam Liptak, *\$14 Million Jury Award to Ex-Inmate Is Dismissed* (at mywcl)

Sam Roberts, *John Thompson, Cleared After 14 Years on Death Row, Dies at 55* (at mywcl)

In Re: G. Paul Howes (at mywcl)

Guest Speaker

Film Presentation – “Mississippi Innocence”

XII. The Progressive Prosecutor Movement

Angela J. Davis, *The Prosecutor’s Ethical Duty to End Mass Incarceration*, 44 Hofstra Law Review 1063 (2016) (at mywcl)

Angela J. Davis, *The Progressive Prosecutor: An Imperative for Criminal Justice Reform*, Fordham Law Review Online 87, 8 (2018) (at mywcl)

“The Politics of Prosecutors” (at mywcl)

The Larry Krasner Memo (at mywcl)

The Rachael Rollins Policy Memo (at mywcl)

XIII. Attorney Discipline

ABA Model Rules of Professional Conduct 8.1, 8.3, 8.4, 8.5

Angela J. Davis, *The Legal Profession’s Failure to Discipline Unethical Prosecutors*, 36 Hofstra Law Review 275 (2007)

In Re Andrew J. Kline (at mywcl)

In Re Karen P. Cleaver-Bascombe (at mywcl)

Guest Speaker

XIV. Prosecution and Defense – Reflections and Lessons learned

XV. Exam Review