

JD____ Criminal Trial Practice II: Prosecutor Clinic
Summer 2017

Instructor Information

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Office Hours: vary depending on court schedule

Course Information

Meetings: generally Monday, Tuesday, Wednesday and Thursday as noted in course schedule

Location: Room _____

Catalog Description: THIS CLASS IS RESTRICTED to rising 3Ls (or, if in a four-year program, rising 4Ls) who have taken evidence, trial advocacy and at least one semester of criminal procedure. Students will be assigned five or six cases to prosecute in the Quincy District Court under the supervision of a clinical instructor pursuant to Supreme Judicial Court Rule 3:03. They will bear all the responsibilities of a full-time Assistant District Attorney, and will handle felonies and misdemeanors such as drug distribution, property theft, operating under the influence, breaking and entering, and property damage crimes. They will be responsible for every aspect of the preparation and presentation of their cases, and will devise legal strategies; interview police, civilian and expert witnesses; visit crime scenes; obtain discovery; perform extensive legal research; draft motions and legal memoranda in opposition to defense motions; and engage in plea negotiations and handle sentencing proceedings. Students may litigate evidentiary suppression hearings, and each will be assigned to conduct every phase of a jury or bench trial. Students will collaborate with each other, but each will serve as the lead prosecutor on his or her own cases. Case assignments are based upon an individual assessment of a student's progress and demonstrated competence. **NOTE: The Criminal Clinical Program satisfies the upper-class professional skills requirement.** **Prerequisites:** evidence, trial advocacy and at least one semester of criminal procedure

Credit Hours: 6

Per ABA guidelines, you should anticipate a workload of roughly 42.5 hours per credit for the semester, which includes both in-class and out-of-class time. For elaboration, you may consult BU Law's Credit Hour Policy.

Course Description

This semester you will be prosecuting cases under my supervision in the Quincy District Court pursuant to Supreme Judicial Court Rule 3:03. As will be explained further, you will serve as the functional equivalent of an Assistant District Attorney (ADA) and will assume virtually all the responsibilities of a full-time prosecutor. You will be assigned a number of cases throughout the semester involving a variety of offenses and legal challenges. What makes this program so valuable is the opportunity it presents for you to gain real-world, meaningful experience as a lawyer.

Course Materials

There is no text to be purchased for this course. Throughout the semester you will read sections from the *BU Prosecutor Clinic Manual* posted on the Criminal Trial Practice II: Prosecutor Clinic Blackboard site. Other assigned reading will appear in that subfolder as well.

Course Objectives

OBJECTIVES	ASSESSMENTS
Upon successful completion of this course, students should be able to:	Students will be assessed on these learning objectives through:
define and adhere to their ethical obligations as a prosecutor, including their responsibilities to the public, to victims, to the court and to the defendant, and identify and address ethical issues that arise in cases	discussions during supervisor case prep meetings about potential and actual ethical issues in cases; in-class discussions
exhibit advanced legal reasoning and problem solving skills, including the ability to analyze issues from varying viewpoints and to anticipate and rebut arguments by the defense	legal research and arguments in court filings (memoranda of law in opposition to defense motions to suppress or dismiss; motions for discovery; motions in limine); performance in court and in practice trial and motion hearings; discussions during supervisor case prep meetings; in-class discussions
exhibit an advanced understanding of criminal law and procedure, including charging decisions; 4th, 5th and 6th Amendment issues; and sentencing	legal research and arguments in court filings; performance in court and in practice trial and motion hearings; discussions during supervisor case prep meetings; in-class

	discussions
exhibit proficiency in legal research and writing	thoroughness of legal research; clarity, accuracy and persuasiveness of arguments in court filings
demonstrate proficiency in trial advocacy and related skills	performance in court and in practice trials and motion hearings
collaborate with law enforcement personnel in the investigation and preparation of cases	interactions in and out of court with police prosecutors, police officers and District Attorney's Office prosecutors and staff
collaborate with and delegate authority to others in the preparation of cases	all aspects of work with fellow students, including preparation for practice trials and motion hearings; discussions in supervisor case prep meetings
exhibit interviewing skills that allow them to work effectively with victims and civilian witnesses while recognizing their rights and roles	interactions in and out of court with victims and witnesses; collaboration with Victim Witness Advocates
understand the goals of sentencing, recognize aggravating and mitigating circumstances, demonstrate fairness, and exhibit proficiency in negotiating pleas	performance in plea bargaining and sentencing proceedings; discussions in supervisor case prep meetings regarding possible sentencing recommendations
exhibit professionalism in dealing with defendants, judges, attorneys, court personnel, District Attorney's Office staff, police, victims and witnesses	interactions both in and out of court; discussions in class and in supervisor case prep meetings
demonstrate cultural competence by prosecuting cases across a diverse population in an objective and fair manner and recognizing how implicit and explicit biases may affect whether justice is done	interactions both in and out of court; discussions during supervisor case prep meetings and in class regarding potential bias issues
self-critique and learn from their own performance, as well as through the feedback of others	discussions during monthly one-on-one supervisor meetings and less formal discussions as necessary; group discussions following practice trials and motion hearings

demonstrate resilience in response to adverse results, particularly following an unfavorable result on a trial or motion	debriefing sessions after court events; monthly one-on-one supervisor meetings
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Assignments and Grading

Details of our course schedule appear below. Readings will be assigned for each class.

Your final grade will be determined by my overall assessment of your performance throughout the course, and depends on a multitude of factors. More on grading appears in the *BU Prosecutor Clinic Manual* (posted on the course's Blackboard website) and we'll discuss this subject in our first class, but in sum, everything you do this semester will have some bearing on your grade. Particularly important considerations include, but are not limited to, your attitude and professionalism; effort and preparation; recognition of and adherence to ethical obligations; legal reasoning and problem solving abilities; legal research and writing proficiency; trial and motion hearing performance both in practice and in court; performance before the judge in other contexts (*e.g.*, sentencing, routine matters); relationships with and ability to collaborate with your fellow students; interactions with police, DA's Office staff and witnesses; and class participation.

Your grade will *not* be affected negatively simply because a case resulted in an unfavorable outcome. The allowance of a motion to suppress or dismiss, or an acquittal at trial, is not necessarily a reflection of your effort and performance, particularly where I assign you difficult cases.

As the decision whether to litigate a motion or to proceed to trial is the defendant's, and therefore out of your control, it's possible that despite your diligent preparation you end the semester without having had a trial or suppression hearing. Though in that case I won't be able to judge your in-court litigation performance, you won't be at any grading disadvantage compared to your colleagues who have had trials or motion hearings.

Attendance and Participation

Given the amount of material we need to cover early in the session, your preparation for and participation in class is critical to not only your grade, but to the success of this program. Since we work as a team, we learn from each other's viewpoints and experiences. Throughout the semester I may call upon you to educate your colleagues about unusual issues that have come up in your cases.

For further information regarding law school attendance and grading policies, you may consult the Academic and Disciplinary Regulations available from the law school.

Course Schedule

You will generally be in class or in court on Mondays, Tuesdays, Wednesdays and Thursdays as outlined below (adjustments to be made as necessary). Classes will generally run 4 hours, from 10:00-12:15 and 1:00-2:45. The length of court days will vary depending on the events we have scheduled and on the court's schedule. You will be in court at 8:45 a.m. If you have a pretrial event that does not involve litigation, you will usually be finished by 1:00 p.m. If you have an evidentiary hearing (*e.g.*, motion to suppress) or a trial, your case may not be finished until the afternoon (court closes at 4:30 p.m.).

For those who have work or other commitments on court days, I will take those into account when assigning cases. For example, if you work every Wednesday afternoon, I will avoid giving you a trial or evidentiary hearing on that day of the week.

Beginning in week 3, much of our class time will involve the preparation of our cases. We will conduct a "mock" of every evidentiary hearing and trial, with students not assigned to the case playing the roles of defense counsel and witnesses. Other class time will be spent collaborating on cases, working on motions and legal memoranda, interviewing witnesses by telephone, and other tasks. On court days on which we are excused earlier than expected we may visit scenes, interview witnesses in person, and other tasks while we're able to take advantage of our proximity to the towns in which our crimes occurred.

WEEK 1

CLASS 1

Monday, July 10

- Introduction, Prosecutorial Ethics Overview & Working Relationships (1 ½ hours)
- General Case Preparation, Discovery & Sentencing I (2 ½ hours)

Assigned Reading

- MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT
 - Rule 3.3 – Candor Toward the Tribunal [rule & comments 1, 2, 3, 4, 5, 6, 14]
 - Rule 3.4 – Fairness to Opposing Party and Counsel [subsections (a) through (g), (i) & comments 1, 2, 7]
 - Rule 3.5 – Impartiality and Decorum of the Tribunal [rule & comment]
 - Rule 3.8 – Special Responsibilities of a Prosecutor [rule & comment]

Rule 4.1 – Truthfulness in Statements to Others [rule & comment]
Rule 4.2 – Communication with Person Represented by Counsel [rule & comment]
Rule 4.3 – Dealing with Unrepresented Person [rule & comment]
Rule 4.4 – Respect for Rights of Third Persons [rule & comment]
Rule 8.4 – Misconduct [rule & comments 1, 3, 5]

- Blumenson et al., MASSACHUSETTS CRIMINAL PRACTICE (4th ed. 2012)
 - Chapter 1 – Trial or Probable Cause Hearing: Determining the Role of the District Court (§§ 1.1 & 1.2 only)
 - Chapter 3 – District Court Trials (skip §§ 3.7; 3.8; 3.10)
 - Chapter 4 – Complaints and Indictments (§§ 4.1; 4.2 only)
 - Chapter 7 – Arraignment and Related Issues (skip §§ 7.4; 7.11)
 - Chapter 9 – Pretrial Release, Bail and Pretrial Detention (§§ 9.1; 9.3; 9.4A; 9.5A; 9.8; 9.9 only)
- BU PROSECUTOR CLINIC MANUAL – *Discovery*
- District Court forms – police discovery request
- ABA STANDARDS OF CRIMINAL JUSTICE: PROSECUTION FUNCTION
 - Standard 3-3.1 – Investigative Function of Prosecutor [subsections (d), (g)]
 - Standard 3-3.2 – Relations with Victims and Prospective Witnesses [subsections (e), (f), (g)]
 - Standard 3-3.3 – Relations with Expert Witnesses [subsection (a)]
 - Standard 3-3.11 – Disclosure of Evidence by the Prosecutor
- Mass. G.L. c. 258B, § 3 (Mass. Victims' Rights statute) [subsections (a), (b), (c), (f), (g), (h), (l), (m), (n), (o), (p), (q), (r), (u)]
- Review the following forms on Blackboard:
 - Victim Impact Statement
 - Restitution Request
 - Restitution Order
 - witness & police sign-in sheets

CLASS 2

Tuesday, July 11

- Prosecuting Drug Cases (1 ½ hours)
- Prosecuting Operating Under the Influence (OUI) cases (1 ½ hours)

Assigned Reading

- S-D/D trial materials (posted in the Class 2 folder)
 - Police reports & photos – class A (heroin) & class B (cocaine)
 - Drug cert class A (heroin) & class B (cocaine)
 - Drug file class A (heroin) & class B (cocaine) [skim through chemist CV pp. 2-4 of PDF file; drug chemistry analysis notes pp. 11-15; drug submission form p. 78; chain of custody report pp. 79-80 just to familiarize yourself with these documents; we will discuss them in class]
 - Sample qualifying and direct questions – drug lab chemist

- G.L. c. 94C, § 47 (civil forfeiture statute)

- District Court forms – notice of forfeiture; order of forfeiture

- MDAA case summary: *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009)

- MDAA OPERATING UNDER THE INFLUENCE MANUAL (2015)
 - Chapter II: The Elements of an OUI Case pp. 11-24
 - Chapter III: Pretrial Preparation pp. 45-48; 61, 64-68
 - Chapter IV: Trial pp. 70-73; 79-83, 90-92
 - Chapter V: Defense Challenges; Common Defenses at Trial pp. 154-157, 158 (sections on citation, clerk’s hearing, no probable cause to arrest, independent blood test), 166-177, 185-189 (skip Horizontal Gaze Nystagmus, Blood Test Result, Breath Test Result)
 - Chapter VI: Sentencing pp. 201-204

- Massachusetts General Laws
 - G.L. c. 90, § 24(1)(a)(1) (OUI)
 - G.L. c. 90, § 24D (OUI driver alcohol education program)
 - G.L. c. 90, § 23 (leaving the scene of property damage)

- MDAA case summaries
 - Commonwealth v. Saulnier*, 84 Mass. App. Ct. 603, 603-607 (2013)
 - Commonwealth v. Canty*, 466 Mass. 535, 536-545 (2013)

- massrmv.org (links on Blackboard)
 - Operating Under the Influence (OUI)
 - Discretionary/Public Safety Suspensions
 - Suspension for Criminal Convictions

CLASS 3**Wednesday, July 12**

- Sentencing II (2 hours)
- Prosecuting Property Crimes and Miscellaneous Motor Vehicle Offenses (1 hour)
- Discovery & Pretrial Motions and Hearings (1 hour)

Assigned Reading

- BU PROSECUTOR CLINIC MANUAL – *Plea Bargaining*
- BU PROSECUTOR CLINIC MANUAL – *Common Abbreviations on DA Grey and Court Files*
- Wendy J. Kaplan, *Revisiting Dispositions and Sentencing Advocacy in the Massachusetts District Courts*, Mass. L. Rev. vol. 92, no. 2 (Aug. 2009) [you had read it for your junior class on sentencing]
- Blumenson et al., MASSACHUSETTS CRIMINAL PRACTICE (4th ed. 2012)
Chapter 37 – Plea Bargaining and Guilty Pleas (skip §§ 37.3)
Chapter 38 – Directory of Sentencing Alternatives (skim just to familiarize yourself with the types of services that might be appropriate for a defendant as a term of probation)
Chapter 39 – Dispositions and Sentencing Advocacy
Chapter 40 – Imprisonment and Release from Custody
Chapter 41 – Probation Revocation
Chapter 42 – Immigration Consequences of Criminal Proceedings
Chapter 43 – Civil Consequences of Criminal Cases
- MDAA case summaries
Commonwealth v. Rodriguez, 461 Mass. 256 (2012)
Commonwealth v. Dean-Ganek, 461 Mass. 305 (2012)
Commonwealth v. Cheney, 440 Mass. 568 (2003)
- Blumenson et al., MASSACHUSETTS CRIMINAL PRACTICE (4th ed. 2012)
Chapter 14 – The Pretrial Conference
Chapter 15 – Pretrial Motions and Pretrial Hearings (skip §§ 15.6 & 15.7; note that this chapter covers not only the event known as a pretrial hearing (“PTH”), but also, in a streamlined fashion, suppression hearings; we will discuss the latter in further detail)
Chapter 16 – Discovery (skip §§ 16.6E; 16.7B)
- Mass. R. Crim. P. 14 & 17
- MDAA case summaries (links on Blackboard)
Commonwealth v. Lampron, 441 Mass. 265 (2004)
Commonwealth v. Dwyer, 448 Mass. 122 (2006)
Commonwealth v. Odgren, 455 Mass. 171 (2009)

- District Court forms – pretrial conference report

COURT DAY 1**Thursday, July 13**

- Students will tour Quincy District Court, meet police, DA's Office, and courthouse personnel, and observe arraignments, pretrial hearings, and possibly motions to suppress and trials.

WEEK 2**CLASS 1****Monday, July 17**

- Massachusetts Evidence (2 ½ hours)
- Case collaboration – Students will discuss their cases in class and we will work together to identify potential strengths and weaknesses, legal issues, discovery issues, sentencing recommendations, etc. (1 ½ hours)

(Reading Assignments to be Determined)

CLASS 2**Tuesday, July 18**

- Suppression Issues – 4th, 5th & 6th Amendment and other issues (4 hours)

Reading Assignments

- Review on Blackboard – vehicle tow policy; inventory policy
- *Commonwealth v. Oliveira*, 474 Mass. 10 (2016)
- *Commonwealth v. Crayton*, 470 Mass. 228 (2014)
- *Commonwealth v. Collins*, 470 Mass. 255 (2014)
- MDAA case summaries of *Crayton & Collins*

(additional readings TBA)

COURT DAY 1**Wednesday, July 19**

- Students will handle their own pretrial cases in court.

CLASS 3

Thursday, July 20

- Courtroom Mechanics (4 hours)

WEEK 3**CLASS 1****Monday, July 24**

- Trial Issues (4 hours)

CLASS 2**Tuesday, July 25**

- Practice litigation of our pending suppression hearings and trials, class collaboration about our cases, and various types of case preparation (4 hours).

COURT DAY 1**Wednesday, July 26**

- Students will handle their own pretrial cases in court.

COURT DAY 2**Thursday, July 27**

- Students will handle their own pretrial cases in court.

WEEK 4**CLASS 1****Monday, July 31**

- Practice litigation of our pending suppression hearings and trials, class collaboration about our cases, and various types of case preparation (4 hours).

CLASS 2**Tuesday, August 1**

- Practice litigation of our pending suppression hearings and trials, class collaboration about our cases, and various types of case preparation (4 hours).

COURT DAY 1**Wednesday, August 2**

- Students will handle their own pretrial cases, suppression hearings, or trials in court.

COURT DAY 2**Thursday, August 3**

- Students will handle their own pretrial cases, suppression hearings, or trials in court.

WEEK 5**CLASS 1****Monday, August 7**

- Practice litigation of our pending suppression hearings and trials, class collaboration about our cases, and various types of case preparation (4 hours).

CLASS 2**Tuesday, August 8**

- Practice litigation of our pending suppression hearings and trials, class collaboration about our cases, and various types of case preparation (4 hours).

COURT DAY 1**Wednesday, August 9**

- Students will handle their own pretrial cases, suppression hearings, or trials in court.

COURT DAY 2**Thursday, August 10**

- Students will handle their own pretrial cases, suppression hearings, or trials in court.

WEEK 6**CLASS 1****Monday, August 14**

- Practice litigation of our pending suppression hearings and trials, class collaboration about our cases, and various types of case preparation (4 hours).

CLASS 2**Tuesday, August 15**

- Practice litigation of our pending suppression hearings and trials, class collaboration about our cases, and various types of case preparation (4 hours).

COURT DAY 1**Wednesday, August 16**

- Students will handle their own pretrial cases, suppression hearings, or trials in court.

COURT DAY 2**Thursday, August 17**

- Students will handle their own pretrial cases, suppression hearings, or trials in court.

WEEK 7**COURT DAY 1****Monday, August 21**

- Students will handle their own pretrial cases, suppression hearings, or trials in court.

COURT DAY 2**Tuesday, August 22**

- Students will handle their own pretrial cases, suppression hearings, or trials in court.

COURT DAY 3**Thursday, August 23**

- Students will handle their own pretrial cases, suppression hearings, or trials in court.

CLASS 1**Thursday, August 24**

- Course review