Criminal Procedure: Trial

LAW 790001, Fall 2016
University of Alabama, School of Law

Monday & Wednesday, 10:45 - Noon
Room 187
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This course explores the criminal process from the moment the suspect appears for the first time in court, the judge makes a probable cause finding, counsel is assigned (if the suspect is indigent), and the suspect is released or detained pending formal charges. We follow the criminal process through charging, discovery, plea bargaining, trial, sentencing, appeal and post-conviction. In this course we will explore not only the constitutional and legal bases for each stage of the process, but we will also examine the practical application of these legal theories. We will seek to critique notions of criminal process from all viewpoints and positions in the hopes of gaining a meaningful understanding of this topic. Students should come to class prepared to discuss not only the reading, but to experiment with the ideas (and ideals) expressed therein.

This course has three main objectives: (1) to help you master the basic doctrines of criminal procedure as it relates to the trial and appellate processes, (2) to help you develop an understanding of the principles of justice and the social policies that underlie and inform those doctrines, and (3) to develop your skills in case-reading, legal analysis, statutory interpretation, critical thinking, and oral expression.

TWEN & Email

We have a course webpage accessible through TWEN. I will use that page to post weekly assignments, send class-related announcements, and distribute any additional materials that we may need, so please check your University of Alabama School of Law email account and TWEN regularly.

Required Text

Please note I am using a new casebook from previous years: **Cynthia Lee, L. Song Richardson, and Tamara Lawson, CRIMINAL PROCEDURE CASES AND MATERIALS (WEST 2016), ISBN# 978-0-314-29020-5**. At this point, given that it is a brand new book, there is no supplement. If that changes I will provide the supplemental materials to you via TWEN. We will also rely on the **Federal Rules of Criminal Procedure**, which you do not have to purchase, but can find online. There are "guides" to these rules that you can purchase if you like, though I do not believe they are necessary for this course.

In addition, I may assign readings that will be posted on TWEN. I will note on TWEN whether the additional readings are required or optional. I will always post any additional reading in the "Course Materials" folder on the left hand side of TWEN's Homepage.

Optional Text

As noted above, there are various "versions" of the Federal Rules of Criminal Procedure available for purchase. These versions offer a variety of commentary on the rules. I have no strong opinion about any of these and view them as a matter of personal preference in terms of their presentation style. All are available in the library. If you are contemplating purchasing one such presentation of the rules I highly recommend you examine the library's copy first and make sure that it is presented in a format that is consistent with your own learning style. These should be treated as supplements to, but by no means a substitute for, the required readings.

Contacting Me

My regular office hours are on Tuesday from 1:00 - 3:30 p.m. in Room 315. My first office hours will be Tuesday, August 16.

You are also welcome to set up an appointment to meet with me at another time. Please email me to schedule an appointment or simply drop by. I encourage all of you to stop by my office to discuss the course, law school, career paths, or anything else that interests you. In addition, you can always use email to communicate with me and I will do my best to respond promptly. Please note that I do not generally answer substantive questions by email. I find it more helpful to discuss such questions in person and, if your question is of general interest, I will share a response with the entire class.

Attendance and Participation

You are required to attend all classes and be punctual. In accordance with the law school's attendance policy, I will keep a class attendance sheet. A student may miss a class only for good cause. Good cause is defined by the law school to include illness of self or significant other, accident which prevents attendance, death of a family member or friend, an interview for a summer clerkship or for a permanent position which cannot reasonable be rescheduled, a meeting in which the student appears as a representative of the law school or other good cause. Looming deadlines do not constitute good cause. If you are going to miss a class, please notify me as soon as possible so I can plan accordingly. You will be responsible for acquiring the notes from any missed class from a fellow student, and will be responsible for the material covered. In addition, according to the law school's attendance policy, "[a] student who is absent for any reason more than three class hours per semester credit hour in a course may be dropped from the roll or not allowed to sit for the exam and receive an "F" for the course."

All students are expected to have done the required readings prior to class. More importantly, all students are expected to be ready to discuss the readings in class. I call on students in class on a random basis and will call on each student at least once, and probably multiple times, during the term. Nevertheless, unforeseeable matters occasionally occur that make preparation impossible. You should still attend because you can learn something from the discussion. If you are unprepared for any particular class, you must let me know before

class begins. An abuse of this policy could result in a reduction of your grade, as explained below.

To ensure lively and productive discussions, I expect that you will listen to your classmates when they are asking or answering questions. I want to maintain a classroom in which all feel free to participate respectfully and distractions are minimized and, therefore, **internet use is strictly prohibited during class except when authorized.** You may use a computer or other electronic device to take notes only. Use of a computer or other electronic devise for a purpose that is unrelated to note-taking or classroom instruction may result in the restriction of your use of such devices. You may not use a computer or electronic device to record a class without my express permission.

Cancelled Classes

There will be no class on Monday, September 5 (Labor Day). Please also note that our first day of class is Monday, August 15 and the last day of class is Thursday, November 19. If we have additional, unanticipated class cancellations I will notify you of scheduled make-up classes.

Exams and Grading

Your grade will be determined by your performance on the final exam. The exam will be graded anonymously. Consistent with the law school's policy, I reserve the right to exercise "departure," i.e. positive or negative discretion in grading by 1/3 grade (e.g., B to B+ or B+ to B) based on the overall quality of a student's participation. If you choose to appear unprepared repeatedly without a valid excuse, I may exercise discretion to lower your grade. **A serious failure to participate in class may result in your being dropped from the course.** Please do not put yourself in the position of facing either a lowered grade or being dropped from the course.

The **final exam will consist of two to three essays and will be an in-class, closed-book exam,** with the exception that I will provide copies of the Federal Rules of Criminal Procedure and any state or federal statutes that I expect you to use for the exam. I also often write fictitious statutes for exam purposes (e.g., "State of Tuscaloosa"). Toward the end of the term, I will provide you with more information and guidance about the exam, including sample questions from past exams. Please note, I do not use multiple choice questions on my criminal procedure exams; therefore I will not be providing you with any multiple choice sample questions.

Course Outline & Assignments

Below is a course outline of the units that we will cover during the term and the assigned pages in the casebook. All page numbers referenced below are from Lee, Richardson and Lawson, Criminal Procedure: Cases and Materials (West, 2016) (hereinafter "LRL"), unless otherwise noted.

Please note: even though the LRL readings are listed below, you must check TWEN. **I will assign supplemental readings or assignments that will only be posted on TWEN.**

In addition to reading assignments we will also periodically do in-class exercises. These in-class exercises are designed to give you all a chance to apply the material you have read. I will post these exercises in the "Course Materials" folder on the left-hand side of TWEN's Homepage.

It is imperative that you do the assigned reading and/or in-class exercise for the assigned day prior to coming to class. This will not only allow you to make the most of our in-class discussions, but will also ensure that each member of the class has a sufficient basis to participate. Occasionally we will not cover all the reading material assigned for a given day. In that case, the next class will begin by considering the uncovered material. Although you will have already read it once, you should be sure to review this uncovered material before class.

WEEK 1

AUGUST 15..... 1-8; 671-685
CH. 1: INTRODUCTION TO THE CRIMINAL JUSTICE PROCESS
APPENDIX – U.S. CONSTITUTION AMENDMENTS IV, V, VI, VIII, XIV
CH. 20: THE PROSECUTOR'S CHARGING DISCRETION
United States v. Armstrong
United States v. Batchelder
AUGUST 17.....686-700
CH. 20: THE PROSECUTOR'S CHARGING DISCRETION (cont'd)
United States v. Goodwin

WEEK 2:

AUGUST 22
IN CLASS EXERCISE ON CHARGING DISCRETION (AVAILABLE ON TWEN)
UGUST 24 701-710
CH. 21: GRAND JURY
Vasquez v. Hillery
Costello v. United States

WEEK 3:

AUGUST 29.....711-722
CH. 21: GRAND JURY (cont'd)
United States v. Williams
CH. 22: BAIL
Stack v. Boyle
AUGUST 31.....723-734
CH. 22: BAIL (cont'd)
United States v. Salerno

NOTE NO CLASS MONDAY, SEPTEMBER 5

WEEK 4:

SEPTEMBER 7 735-748
CH. 23: THE RIGHT TO A SPEEDY TRIAL
Barker v. Wingo
Doggett v. United States

WEEK 5:

SEPTEMBER 12 749-763

CH. 23: THE RIGHT TO A SPEEDY TRIAL (cont'd)

United States v. Lovasco

CH. 24: DISCOVERY

Brady v. Maryland

United Sates v. Bagley

SEPTEMBER 14 764-780

CH. 24: DISCOVERY (cont'd)

Wood v. Bartholomew

Williams v. Florida

WEEK 6:

SEPTEMBER 19 781-794

CH. 25: PLEA BARGAINING

Bordenkircher v. Hayes

Santobello v. New York

Mabry v. Johnson

United States v. Ruiz

SEPTEMBER 21 795-810

CH. 25: PLEA BARGAINING (cont'd)

Boykin v. Alabama

Henderson v. Morgan

North Carolina v. Alford

WEEK 7:

SEPTEMBER 26

IN CLASS EXERCISE ON PLEA BARGAINING (AVAILABLE ON TWEN)

SEPTEMBER 28 811-821

CH. 26: THE RIGHT TO TRIAL BY JURY

Blanton v. City of North Las Vegas

Burch v. Louisiana

WEEK 8:

OCTOBER 3 822-835

CH. 26: THE RIGHT TO TRIAL BY JURY (cont'd)

Singer v. United States

Taylor v. Louisiana

Turner v. Murray

OCTOBER 5.....836-850

CH. 26: THE RIGHT TO TRIAL BY JURY (cont'd)

Batson v. Kentucky

J.E.B. v. Alabama

WEEK 9:

OCTOBER 10 851-864

CH. 27: ROLE OF COUNSEL

Strickland v. Washington

Padilla v. Kentucky

OCTOBER 12 865-882

CH. 27: ROLE OF COUNSEL (cont'd)

Nix v. Whiteside

Wheat v. United States

Faretta v. California

WEEK 10:

OCTOBER 17 883-896

CH. 27: ROLE OF COUNSEL (cont'd)

Indiana v. Edwards

CH. 28: THE RIGHT OF PRESENCE

Illinois v. Allen

Taylor v. United States

United States v. Gagnon

OCTOBER 19 897-912

CH. 29: THE CONFRONTATION CLAUSE

Crawford v. Washington

Davis v. Washington

WEEK 11:

OCTOBER 24 912-924

CH. 29: THE CONFRONTATION CLAUSE (cont'd)

Giles v. California

Richardson v. Marsh

JOINDER AND SEVERANCE

READINGS POSTED ON TWEN UNDER ASSIGNMENTS

OCTOBER 26 925-942

CH. 30: DOUBLE JEOPARDY

(A) Collateral Estoppel

Ashe v. Swenson

(B) The "Same Offense" Requirement

United States v. Dixon

WEEK 12:

OCTOBER 31 942-953

CH. 30: DOUBLE JEOPARDY (cont'd)

(C) The Dual Sovereignty Doctrine

Heath v. Alabama

(D) Criminal Versus Civil Punishment

Hudson v. United State

NOVEMBER 2 954-964

CH. 30: DOUBLE JEOPARDY (cont'd)

(E) Mistrials

Arizona v. Washington

Oregon v. Kennedy

WEEK 13:

NOVEMBER 7 965-979

CH. 30: DOUBLE JEOPARDY (cont'd)

(F) Retrial Following Acquittals, Dismissals, and Convictions

United States v. Scott

Burks v. United States

Lockhart v. Nelson

NOVEMBER 9 980-988

CH. 30: DOUBLE JEOPARDY (cont'd)

(G) Jury Nullification

WEEK 14:

NOVEMBER 14 989-1000

CH. 31: SENTENCING

Coker v. Georgia

Ewing v. California

NOVEMBER 16 1000-1011

CH. 31: SENTENCING (cont'd)

McCleskey v. Kemp

EXAM REVIEW SESSION (LAST HOUR OF CLASS)

WEEK 15:

NOVEMBER 21 EXTRA CLASS TO BE USED FOR "MAKE UP" CLASSES OR IF UNNECESSARY WILL BE CANCELLED