

# CONSTITUTIONAL CRIMINAL PROCEDURE II

Professor Byron L. Warnken

## COURSE MANUAL & SYLLABUS – SPRING 2017

### Table of Contents

<b>Introduction.....</b>	<b>1</b>
<b>Course Name &amp; Number, Course Description, &amp; Course Materials .....</b>	<b>2</b>
<b>Course Personnel .....</b>	<b>3</b>
<b>Student Learning Outcomes.....</b>	<b>3</b>
<b>Course Coverage .....</b>	<b>4</b>
<b>Class Dates, Times, &amp; Attendance.....</b>	<b>5</b>
<b>Who Am I &amp; Who Are You? .....</b>	<b>6</b>
<b>Class Format &amp; Preparation.....</b>	<b>7</b>
<b>Students Contacting the Professor .....</b>	<b>9</b>
<b>Course Grade .....</b>	<b>9</b>
<b>Title IX Sexual Misconduct &amp; Non-discrimination Policy.....</b>	<b>10</b>
<b>Accommodations under the Americans with Disabilities Act.....</b>	<b>10</b>
<b>Students Interested in Criminal Law as a Potential Career .....</b>	<b>10</b>
<b>The Professor’s Eight “Pet Peeves”.....</b>	<b>11</b>
<b>Information for the First Class.....</b>	<b>11</b>
<b>Syllabus.....</b>	<b>11</b>

### Introduction

This is my 116<sup>th</sup> semester in the classroom. The rules of the course are set forth in this Course Manual. The document is not helpful if you are not familiar with its content. If you ask a question (other than a substantive question), the response will likely be: “It is in the Course Manual.” Students are responsible to know the content of the Course Manual or, at least, go to the Course Manual before asking a question.

### Constitutional Underpinnings of This Course

For sixteen years (1953-69), the “Warren Court” created a “revolution” of rights for criminal Defendants by limiting the power of Government. The “constitutionalization” of criminal procedure began in 1961 when the Court “incorporated” the Fourth Amendment limitations against the states and local governments. By 1970, almost all constitutional protections of the Fourth, Fifth, Sixth, and Eighth Amendments had been incorporated against the states. In the forty-eight years since the end of the Warren Court, there has been a counter-revolution by the “Burger Court” (1969-86), the “Rehnquist Court” (1986-2005), and the “Roberts Court” (since 2005). Since the start of the Warren Court sixty-four years ago, no area of the law has grown as rapidly as constitutional criminal procedure, evolving from a small portion of a Criminal Law course or a Constitutional Law course to its own three-credit course. Today, constitutional criminal procedure can barely be covered in six credits (three credits each in Constitutional Criminal Procedure I (CCPI) and Constitutional Criminal Procedure (CCPII)).

### Professor’s Perspective on Course Coverage

Unlike many academics, I have practiced the subjects I teach. Twenty-five years ago, after I had been a law professor for fifteen years, my wife and I started Warnken, LLC, Attorneys-at-Law. In November 2013, I mostly retired. My son, Byron B. Warnken, Esq., now owns Warnken, LLC. My goal, in this course, is to make use of my legal experience by providing you a litigation perspective. In particular, I want to demonstrate trial strategies and practical considerations for both prosecutors and defense counsel. This course is a “how to” course, advising tomorrow’s assistant state’s attorneys, assistant public defenders, and private defense counsel what to do, when to do it, how to do it, and why to do it.

This is my 40<sup>th</sup> year on the law faculty. I have taught CCPII since 1982. In 1984, I began using a hornbook for “the law,” accompanied by my own selected cases, analysis questions, and hypothetical problems. In 2007, I replaced the hornbook with my own written materials, geared to practicing criminal law and procedure in Maryland, with an emphasis on passing the Maryland and multistate bar exams. In 2013, I published a three-volume, 34-chapter, 1,769-page treatise. I now use only my treatise, plus selected Supreme Court and Maryland cases.

There is one disadvantage to creating one’s own teaching materials, instead of using a standard casebook. The disadvantage is that it is incredibly time consuming. I read every criminal law and procedure case (that’s more than one-third of all appellate opinions) filed by the Supreme Court, the Court of Appeals of Maryland, and the Court of Special Appeals of Maryland. There are two advantages when creating one’s own teaching materials, and they outweigh the disadvantage. First, I know why the next case and next hypothetical problem are in the materials. Second, I am able to – and I do – update the materials each semester. Keeping course materials current is essential because the case law constantly changes our understanding of the Constitution.

### **Why Should Law Students Take This Course?**

For students with no interest in criminal law, there is one reason to take CCPI. In the last decade, both the multistate and Maryland bar examiners have increased their testing of constitutional criminal procedure. If you are not interested in criminal law, you should take this course as late as possible (third year day or fourth year evening). For students interested in criminal law, the following courses are essential: CCPI, CCPII, Evidence, Trial Advocacy, a Judicial Internship, and the Criminal Practice Clinic. CCPI is “constitutional law for criminal law majors,” and CCPII is “civil procedure for criminal law majors.” CCPI is more fun than CCPII, but CCPII is more important on a day-to-day basis. If you are interested in criminal law, you should take CCPI as early as possible (second year day or second or third year evening). Just as Constitutional Law & Civil Procedure could be taken in any order, CCPI and CCPII can be taken in any order.

### **Course Name, Number, Description, & Materials**

The course name is Constitutional Criminal Procedure II. The course number is Law 711-311. The course description for Constitutional Criminal Procedure II is as follows: “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.”

The CCPII casebook is online through TWEN, and you register through Shavaun O’Brien (room 1112; 410-837-4635; [sobrien@ubalt.edu](mailto:sobrien@ubalt.edu)), my administrative assistant. I have been a law

professor since 1977. I have taught CCPII since 1982. In October 2013, after many years of work, I published a three-volume, 34-chapter, 1,769-page treatise, titled Maryland Criminal Procedure. All classes in CCPI and CCPII are taught from the treatise. The treatise is available from Amazon.com in digital form for \$99. I have a co-author, G. Adam Ruther, Esq., for the second edition, which is anticipated to be published in 2018. Adam and I published a 132-page supplement, covering 2013 to 2016, which is provided to you on TWEN at no cost.

The course materials include the following for each of 27 classes: (1) the treatise; (2) two heavily edited judicial opinions; (3) analysis questions for each opinion, which are designed to guide your analysis and understanding and to assist you in preparing for class; (4) a hypothetical problem that provides the basis for discussion and application of the law for that class; and (5) a 354-page outline that provides a class preview and final exam review. Commercial outlines are not helpful for this course. I also provide other materials, for which you are not responsible, and which are not tested, i.e., (1) Glossary of Criminal Law Terms and Abbreviations; (2) Steps in the Criminal Justice System; (3) About Professor Warnken; (4) Curriculum Vitae of Professor Warnken; and (5) Writings of Professor Warnken.

### **Course Personnel**

Professor: Professor Byron L. Warnken (room 1109; 410-837-4640 (law school); 410-868-2935 (cell); [bwarnken@ubalt.edu](mailto:bwarnken@ubalt.edu)).

Administrative assistant: Shavaun O'Brien (room 1112; 410-837-4635; [sobrien@ubalt.edu](mailto:sobrien@ubalt.edu)).

### **Student Learning Outcomes**

Students will learn all of the steps in the criminal justice system under constitutional law and Maryland law from arrest through post-verdict proceedings. Students will learn jurisdiction and venue; grand jury and charging documents; right to counsel; discovery; pre-trial motions; double jeopardy; competency to stand trial and insanity; rights to speedy trial, jury trial, public trial, and fair trial; plea bargaining and guilty pleas; voir dire; burdens of production and persuasion; rights to confrontation and compulsory process; jury instructions, deliberations, and verdicts; sentencing; post-verdict motions; appeals; and post conviction. Students will learn how to analyze constitutional criminal procedure appellate decisions. Students will learn how to analyze hypothetical constitutional criminal procedure problems and how to argue those problems as a prosecutor and as defense counsel. Students will learn how to handle a socratic dialogue and respond to a judge's questions.

### **Course Coverage**

Criminal law and criminal procedure, when combined, are one of the six subjects tested on the six-hour Multistate Bar Exam (thirty-three questions out of the two hundred questions) and one of the eleven subjects tested during the five and two-thirds hours of the Maryland Essay Bar Exam (ten twenty-five minute essays and one ninety-minute "performance testing" essay). About 90% of UofB graduates take the Maryland Bar Exam and practice law in Maryland. About 10% of UofB graduates join either a State's Attorney's Office or the Office of the Public Defender, and about 25% of UofB graduates practice some criminal law.

The first class is on Tuesday, January 10, from 3:00 to 4:15 p.m., in room 803 of the Law Center. The first class – and every class – starts with a seven-minute, seven-question, multiple-

choice Daily Quiz. Thus, it is essential to obtain and prepare the materials for the first class as soon as possible. Every student will take the Daily Quiz, regardless of whether that student is prepared for class. Just prior to 3:00 p.m., I will instruct you to open your laptop, sign onto TWEN, and find the Daily Quiz. I will tell you the password. At 3:07 p.m., you will lose access to TWEN. **IT IS AN HONOR CODE VIOLATION TO ACCESS ANY MATERIAL DURING THE DAILY QUIZ.** Your computer will inform you of your Daily Quiz score.

Prior to taking the first Daily Quiz on January 10, please download the Honor Code policy from the assignment dropbox, digitally sign it, and re-upload it, acknowledging that you have read, understand, and will comply with the Honor Code policy, which provides: “I have read the Course Manual, & I know that it is an Honor Code violation to access any material during the Daily Quiz, including anything on a computer, any notes, any text, any materials, or anything.”

#### Course Coverage by Class

Class #1 – Initial appearance and preliminary hearing

Class #2 – Personal jurisdiction, subject matter jurisdiction, and venue

Class #3 – Grand jury and charging documents

Class #4 – Circuit Court proceedings and the right to counsel

Class #5 – Timing issues

Class #6 – Discovery

Class #7 – Pre-trial motions

Class #8 – Double jeopardy

Class #9 – Incompetency to stand trial and not criminally responsible by reason of insanity

Class #10 – Right to speedy trial

Class #11 – Defendant’s right to a public trial & the public’s right to a public trial

Class #12 & #13 – Plea bargaining and guilty pleas

Class #14 – Right to trial by jury

Class #15 – Jury composition, selection, voir dire, and challenges

Class #16 – Prosecution’s burden of production, MJOA, and the Defendant’s burden of production

Class #17 & #18 – Right to a fair trial

Class #19 & #20 – Right to confrontation & right to compulsory process

Class #21 – Burden of persuasion, jury instructions, deliberations and questions, and verdicts

Class #22 & #23 – Sentencing

Class #24 – Post-verdict motions and post-sentencing motions

Class #25 – Appeals

Class #26 & #27 – Post conviction, coram nobis, actual innocence, and habeas corpus

Class #28 – Review

### **Class Dates, Times, & Attendance**

This three-credit course has 27 classes, which are scheduled at a pace of two classes per week. Each class is 75 minutes. Class meets on Tuesday and Thursday from 3:00 to 4:15 p.m. in room 803.

Under both the ABA policy and UofB policy, attendance is required. Each class begins with a seven-minute, seven-question, multiple-choice Daily Quiz, which is administered online and which also serves as the attendance roster. If you arrive after 3:00 p.m., you may not take the Daily Quiz, and you will receive a “zero” for that Daily Quiz, and you will be “absent” for that class. To be eligible to take the Daily Quiz, you must be in class for the entire 75 minutes, i.e., attend class on time and remain for the entire class. The reason for your absence or your lateness is immaterial because, in this course, there are no excused absences or unexcused absences – only absences. Moreover, there is no make-up for a Daily Quiz that is missed. Period. Do not ask. If you miss more than five classes, I have the right to preclude you from taking the Final Exam.

Students should bring a laptop to class. The laptop is for the limited purposes of (1) taking the Daily Quiz, and (2) taking notes. If you are caught, even once, using a laptop for any other purpose, you will be admonished, and you will receive a one-third letter grade reduction for the course. If you are caught twice using a laptop for any other purpose, you will be required to withdraw from the course with an “F.” Students are permitted to bring a tape recorder to audiotape the class. Students are encouraged to take the Final Exam on a laptop, if they are in compliance with the Law School’s exam software policies and procedures.

Students take the seven-question, multiple-choice Daily Quiz on TWEN. Just prior to 3:00 p.m., make sure that (1) your laptop is closed on your desk; (2) TWEN is easily accessible, i.e., there is an icon on the desktop; and (3) your laptop is plugged in or it has sufficient battery. If you do not have a laptop, or your laptop is broken, see me at least five minutes before class, and I will provide you with a hard copy of the Daily Quiz, which you must submit to me at the end of the Daily Quiz. The Daily Quiz is timed for seven minutes. Along with the Daily Quiz, you will receive a copy of the Problem for that class because Daily Quiz question #6 and question #7 are taken from the Problem for that class. At 3:00 p.m., I will instruct you to open your laptop, sign onto TWEN, and find the Daily Quiz. I will inform you of the password for that Daily Quiz for that day. At 3:07 p.m., you will no longer have access to the Daily Quiz.

### **Who Am I & Who Are You?**

You can learn about me by reading “About Professor Warnken.” I want to learn about you. I am interested in you, and I am interested in your success, both during law school and beyond. That process starts with me knowing who you are. In the 1973 movie, “The Paper Chase,” Mr. Hart, the protagonist, was a first-year student at Harvard Law School. His toughest professor was Professor Kingsfield (that’s me), and the goal of Mr. Hart (that’s you) was to earn an “A” in Professor Kingfield’s class. The sad moment for Mr. Hart came at the end of the movie. He earned an “A” from Professor Kingsfield and encountered the professor on the elevator, only to realize that Professor Kingsfield had no idea who Mr. Hart was. That will not happen with you and me. I will know you now, and I will know you ten years from now when I retire after 50 years of teaching.

You must help me in my quest to know you. First, you must sit in the same seat each class. During the first class, I will distribute a seating chart. In the box that corresponds with your seat, please print -- in large, clear, block capped letters – the name by which you wish to be called in class. The vast majority of students use their first name or a nickname, e.g., BILL SMITH, MARY JONES. A few students prefer an honorarium, e.g., MR. SMITH, MS. JONES, MISS JONES, MRS. JONES.

Second, identify yourself in class. If “I call on you,” by name, I know your name – at least at that moment. If “you call on me,” e.g., I seek a volunteer, you offer a comment, or you ask a question, I will not know who you are. When you begin speaking, you must identify yourself in the same manner as indicated on the seating chart. If you do not identify yourself, “the floor” will be given to another student. The requirement for you to identify yourself by name is waived only when you are certain that I know your name. I may have called on you earlier in that same class, but that does not mean that I know your name – yet. Third, please introduce yourself if we meet in the hall. Fourth, please stop by my office (room 1109), during office hours, and introduce yourself.

### **Class Format & Preparation**

Under the ABA standards, you should spend approximately six hours per week, out of class, to prepare for a three-credit course. This course does not use “the hidden ball trick.” For each class, the course materials contain (1) the treatise; (2) two heavily edited appellate opinions with accompanying analysis questions; (3) a hypothetical problem; and (4) my outline that serves as a class preview and as a final exam review. Class assignments vary greatly in length, and you should plan accordingly.

When you prepare for class, I recommend the following: (1) read the treatise to learn the law; (2) for each of the two assigned cases, (a) read the analysis questions for a perspective on the issues, (b) make a written case brief, and (c) create an outline for discussion of the analysis questions; (3) create an outline for discussion of the hypothetical problem (some analysis questions and problems tie in current material with previously assigned material); and (4) prior to class, review the class preview, your case briefs, your written answers to the analysis questions, and your outline of the analysis for the hypothetical problem.

I assume that you are prepared for class, meaning that you understand the principles of law, and you are ready to refine the law’s philosophy, policy considerations, analytical framework, subtle nuances, and practical considerations. The class structure is more like a “workshop” than a lecture. Consequently, class time is spent more “at work” than in note taking, which is why you are permitted – even encouraged – to audiotape the classes.

### **Class Phase One**

The first three questions on the Daily Quiz test your understanding of the treatise and the class preview outline, i.e., the law. Two questions test your understanding of the two assigned cases, with one question based on each case. Two questions test your understanding of the hypothetical problem. To be eligible to take the Daily Quiz, you must (1) be in your seat and ready to go prior to 3:00 p.m., and (2) remain in class until 4:15 p.m.

Seven minutes after the start of the Daily Quiz, you will be instructed to “stop now please.” It is an Honor Code violation to fail to stop when instructed. If I think that there might be an Honor Code violation, I will submit the student’s name to the Honor Board. The seven questions on the Daily Quiz are designed, in part, to test you in this course, and, in part, to prepare you for the 200

multiple-choice questions on the Multistate Bar Exam, which includes 33 questions on Criminal Law and Procedure. Like the Multistate Bar Exam, the Daily Quiz seeks the “best answer” among four answers, recognizing that there may be no correct answer, four correct answers, or somewhere in between.

### **Class Phase Two**

Phase two of each class includes my answers and analysis to all seven questions on the Daily Quiz and any general discussion or lecture that I choose to offer. For the first three questions on the Daily Quiz, I provide the analysis that supports the answer, meaning why the correct answer is the “best answer” and why each of the other three answers is either incorrect or, even if correct, is not the “best answer.” Although you will receive the answers for Daily Quiz questions #4 and #5, the analysis will wait for our discussion of the two cases from which those two questions arise. The analysis for Daily Quiz questions #6 and #7 will wait until we have discussed the hypothetical problem for that class, from which those two questions arise.

Once during the semester, but only once, may you challenge my answer to a Daily Quiz question. To do so, please send me an email, no later than 24 hours after the Daily Quiz, explaining why you believe that another answer is the best answer. I will not entertain any question about the Daily Quiz at the time that I provide the answers and the analysis to the Daily Quiz, because I do not want to compromise any Daily Quiz question in the event that one or more students may wish to challenge that answer. If you wish to discuss, but not challenge, a Daily Quiz question and/or answer, after class, waive your right to challenge the Daily Quiz, and I will be happy to discuss any Daily Quiz question.

### **Class Phase Three**

Phase three of each class takes about 60 minutes. It is a Socratic dialogue, covering the analysis and arguments relating to the two cases and the hypothetical problem. I will “cold call” individual students to discuss (1) their analysis for the questions following the assigned cases, and (2) their analysis and arguments for the hypothetical problem, making appropriate arguments on behalf of the State and/or the Defendant. You will be “cold called” approximately three times during the semester, and your performance will be graded.

The Socratic dialogue is designed to assist you in mastering essential “lawyering” skills. First, a Socratic dialogue teaches you to handle the integration of law and fact. Second, a Socratic dialogue teaches you to recognize how the analysis may change with even a minor change in the facts. Third, a Socratic dialogue teaches you to appreciate when your position is legally and/or factually sound and when it is legally and/or factually weak. Fourth, a Socratic dialogue teaches the attorney (that’s you) to handle oneself under the pressure that is inherent when appearing before a judge (that’s me).

I do not expect your analysis to be at my level. As a law student, there are multiple ways for you to be incorrect in your analysis. You may not understand the law. You may not understand the facts. You may be drawing irrational inferences from the facts. You may not be answering the question that I asked. I will challenge you. If you are incorrect, I may call on another student. Please do not take it personally. At that point, I will be using you as a teaching tool. If you have a “thin skin,” you are going to have a problem in this class and a problem in the practice of law. I would be delighted if you love me. However, if you cannot, I would rather you hate me today, and

love me five years from now, than vice versa. I am on your side, and we are all in this together.

If I call on you, do not read your answer or your analysis to the class. Instead, understand your answer and your analysis well enough that you and I can have a dialogue. You may come to class with some level of confusion, even though you diligently prepared the material. If you leave class with “the pieces having fallen into place,” it does not matter that you could not make them “fall into place” on your own prior to class. However, if the material does not make sense, even after the material has been discussed in class, you should (1) work with a study group, and/or (2) set up an appointment with me.

I have been a law professor since 1977, and I have been teaching CCPII since 1982, which is before most of you were born. If I call on you in class, you may be only two words into your answer, but I know exactly where you are going. If you are going in the wrong direction, and I do not have time, at that moment, to slowly turn you around, I may interrupt you with a follow-up question, or I may move to another student. If you are an attorney in court, the best way to be harmful to your client is to interrupt the judge, raise your voice and try to talk over the judge, and/or give the judge a dirty look in response to the judge’s ruling. In this classroom, I am the judge. Don’t hurt your client.

### **Students Contacting the Professor**

I am willing to discuss with you any academic or non-academic topic, except I will not discuss course material with you that we have not yet covered in class, because that might place other students at a disadvantage. I recognize “professor-student” confidentiality. If you would like to meet with me, please use one or more of the following methods. (1) Sign up for a 20-minute appointment, using the office hour sign-up sheet on my office door (room 1109). Office hours are on Tuesday from 10:00 a.m. to 1:00 p.m.; on Wednesday from 4:00 to 7:00 p.m.; and on Thursday from 10:00 a.m. to 1:00 p.m. Please stop by and introduce yourself. If my office hours do not work for you, please (1) email me at [bwarnken@ubalt.edu](mailto:bwarnken@ubalt.edu), explaining when you would like to meet with me, and I will do my best; (2) call me to ask a question (410-837-4640 (UofB) or 410-868-2935 (cell)); or (3) identifying yourself by name, email me to ask a personal question or a course-related question about material we have already covered.

### **Course Grade**

Ten years ago, the law faculty adopted a mandatory grade range. For upperclass courses, such as CCPII, the mandatory grade range is a section-wide average of 3.00 to 3.50. Thus, I am required, under the faculty mandated grade range, to grade you in the comparative with your classmates.

At the end of the semester, the numbers from your (1) 25 highest Daily Quizzes, (2) scores from being “cold-called,” and (3) the Final Exam will be totaled, based on their percentage of the course grade. The Daily Quizzes and the Final Exam are graded anonymously. The 189 Daily Quiz multiple-choice questions are graded online (using your seven-digit student ID number), and the 49 Final Exam multiple-choice questions are graded online (using your exam number). I grade the five 25-minute essays on the Final Exam. I will not know which student goes with which exam number until after I have graded the exams and submitted the Final Exam grades to the Dean’s Office. When I grade the five essays on the Final Exam, I grade the entire class on the first essay, then the entire class on the second essay, and so on. The course grade breaks down as follows:

- (1) The Daily Quiz grade makes up 25% of the course grade. The raw score for the Daily

Quiz grade consists of the highest 25 Daily Quiz scores from among the 27 Daily Quizzes. Because the Daily Quiz tests you on individual cases, you are not tested on individual cases on the Final Exam.

(2) Your response to approximately three “cold calls” makes up 10% of the course grade.

(3) A three-hour, closed book Final Exam will be administered by the Law School at the end of the semester. The Final Exam, which makes up 65% of the course grade, consists of five 25-minute essays and 49 multiple-choice questions (approximately two questions from each of the 27 classes). For the Final Exam, I provide practice essays, and a Final Exam Review Outline. The Final Exam does not test the 54 cases assigned throughout the course, and the Final Exam is limited to the material in the Final Exam Review Outline for Class #1 through Class #27.

At least one essay on the Final Exam is an actual essay from the Practice Final Exam. I will not provide answers or analysis for the Practice Final Exam, which I encourage you to take under exam conditions and then critique among yourselves. In addition, one essay on the Final Exam may be an actual or modified hypothetical problem from the 27 classes. To assist you in preparing for the Final Exam, I offer an optional Final Exam Review Session, covering all 27 classes, on Thursday, April 27, from 3:00 to 4:15 p.m., in room 803.

### **Title IX Sexual Misconduct & Non-discrimination Policy**

UofB’s sexual misconduct and non-discrimination policy is compliant with federal laws prohibiting discrimination. Title IX requires faculty, student employees, and staff members to report any known, learned, or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking based on gender, dating or intimate partner violence, or sexual exploitation and/or related experiences or incidents.

### **Accommodations under the Americans with Disabilities Act**

If you believe that you may be entitled to accommodation under the Americans with Disabilities Act (ADA), see Leslie Metzger in the Dean’s Suite or Shavaun O’Brien in room 1112. If the Law School grants you accommodation, one of these individuals will coordinate the administration of your Daily Quizzes and Final Exam.

### **Students Interested in Criminal Law as a Potential Career**

If you are interested in criminal law, I suggest the following. (1) Satisfy the requirements for the UofB Criminal Law Concentration (I serve as Co-Faculty Adviser). (2) Become a member of the UofB Criminal Law Association (I serve as Faculty Adviser). (3) Intern for a judge, prosecutor, and/or criminal defense attorney.

### **The Professor’s Eight “Pet Peeves”**

“Pet peeve” (1): Do not ask a question until you have read the Course Manual and determined the Course Manual does not provide the answer, which it probably does.

“Pet peeve” (2): Do not request to make up a Daily Quiz because the Course Manual provides that there is no make-up of a Daily Quiz, regardless of the reason you missed the Daily Quiz.

“Pet peeve” (3): Do not take the Daily Quiz and then leave before the class concludes, which is an Honor Code violation.

“Pet peeve” (4): Do not fail to identify yourself in class.

“Pet peeve” (5): Unless you waive your right to challenge a Daily Quiz question, do not attempt to discuss a Daily Quiz question prior to the expiration of the twenty-four hours for submitting a challenge.

“Pet peeve” (6): I am the equivalent of a judge in a courtroom. Do not interrupt me in class or try to talk over me in class.

“Pet peeve” (7): If I call on you, you must answer my question. Do not answer my question by asking a question.

“Pet peeve” (8): Do not attempt to discuss course material with me before that material is covered in class.

### **Information for the First Class**

Warnken casebook materials, pre-class review, and treatise supplement are found on TWEN. If you have any questions, please contact Shavaun O’Brien (room 1112; 410-837-4635; [sobrien@ubalt.edu](mailto:sobrien@ubalt.edu)), my administrative assistant.

There are 27 classes spaced over 14 weeks. Each class (including the first class) starts with a seven-question, seven-minute, multiple-choice Daily Quiz. Thus, you must obtain and prepare the materials for the first class as soon as possible, because each student will take the first Daily Quiz, covering Class #1, on Tuesday, January 10, at 3:00 p.m., in room 803, regardless of whether they have actually read this and have actually prepared the assignment.

Students take the seven-question, multiple-choice Daily Quiz on TWEN. Just prior to class, make sure that (1) your laptop is closed on your desk; (2) TWEN is easily accessible, i.e., there is an icon on the desktop; and (3) your laptop is plugged in or there is sufficient battery. The Daily Quiz is timed for seven minutes. You will be given a copy of the Problem for that class because Daily Quiz questions #6 and #7 are taken from the Problem. **IT IS AN HONOR CODE VIOLATION TO ACCESS ANY MATERIAL DURING THE DAILY QUIZ.** At 3:00 p.m., I will instruct you to open your laptop, sign onto TWEN, and find the Daily Quizzes. I will inform you of the password for that Daily Quiz. At 3:07 p.m., you will be locked out of TWEN. Your computer will inform you of your score for that Daily Quiz.

### **Syllabus**

#### **Date   Class   Topic**

**1/10 #1      Initial Appearance before a District Court Commissioner and Preliminary Hearing Before a District Court Judge**

Mandatory reading:                      Course Manual  
Optional reading:                        Steps in the Criminal Justice System  
    About Professor Byron L. Warnken  
    Curriculum Vitae of Professor Byron L. Warnken  
    Writings of Professor Byron L. Warnken

Warnken ch. 19 & Supp. 43-48  
DeWolfe v. Richmond, 434 Md. 444 (2013).  
Wheeler v. State, 160 Md. App. 566 (2005).

Class preparation  
Pre-Class Review 1-11

**1/12 #2 Personal Jurisdiction, Subject Matter Jurisdiction (Criminal Courts and Juvenile Courts), and Venue**

Warnken ch. 17  
Jones v. State, 172 Md. App. 444 (2007).  
Whaley v. State, 186 Md. 429 (2009).  
Class preparation  
Pre-Class Review 11-21

**1/17 #3 Grand Jury and Charging Documents**

Warnken ch. 16 & Supp. 40-42  
Jones v. State, 297 Md. 7 (1983).  
Hagans v. State, 316 Md. 429 (1989).  
Class preparation  
Pre-Class Review 21-34

**1/19 #4 Constitutional and Statutory Right to Counsel**

Warnken ch. 5 & Supp. 9-13  
Broadwater v. State, 171 Md. App. 297 (2006), aff'd, 401 Md. 175 (2007).  
Marshall v. State, 428 Md. 363 (2012).  
Class preparation  
Pre-Class Review 34-55

**1/24 #5 Timing Issues**

Warnken ch. 2 & Supp. 3-6  
Duncan v. State, 282 Md. 385 (1978).  
Doe v. Dep't of Public Safety & Correctional Services, 430 Md. 535 (2013).  
Class preparation  
Pre-Class Review 55-68

**1/26 #6 Discovery**

Warnken ch. 23 & Supp. 55-57  
Ware v. State, 348 Md. 19 (1997).  
Breakfield v. State, 195 Md. 377 (2010).  
Class preparation  
Pre-Class Review 68-80

**1/31 #7 Pre-trial Motions & Joinder & Severance**

Warnken ch. 11, § I-II & IV.-VIII. & Supp. 27-30; ch. 14, § I-II. & Supp. 34-38; ch. 15, § II; Supp. 73-84.  
Denicolis v. State, 378 Md. 646 (2003).  
Wieland v. State, 101 Md. App. 1 (1994).  
Class preparation  
Pre-Class Review 80-88

**2/2 #8 Double Jeopardy**

Warnken ch. 21 & Supp. 50-53

Farrell v. State, 364 Md. 499 (2001).

Hubbard v. State, 395 Md. 73 (2006).

Class preparation

Pre-Class Review 88-98

**2/7 #9 Incompetency to Stand Trial & Not Criminally Responsible by Reason of Insanity**

Warnken ch. 20, §§ I-II. & Supp. 48-49

Treece v. State, 313 Md. 665 (1988).

State v. Johnson, 143 Md. App. 173 (2002).

Class preparation

Pre-Class Review 98-112

**2/9 #10 Right to Speedy Trial**

Warnken ch. 22 & Supp. 53-55

Fields v. State, 172 Md. App. 496 (2007).

State v. Huntley, 411 Md. 288 (2009).

Class preparation

Pre-Class Review 112-19

**2/14 #11 Defendant's Right to a Public Trial & Public's Right to a Public Trial**

Warnken Supp. 84-93

Carter v. State, 356 Md. 207 (1999).

Watters v. State, 328 Md. 38 (1992).

Class preparation

Pre-Class Review 119-23

**2/16 #12 Right to Trial by Jury**

Warnken ch. 24, §§ I-III. & Supp. 57-59

Fisher v. State, 305 Md. 357 (1986).

State v. Bell, 351 Md. 709 (1998).

Class preparation

Pre-Class Review 123-27

**2/21 & 2/23 #13 & #14 Plea Bargaining & Guilty Pleas**

Warnken ch. 18 & Supp. 42-43 (all text for Class #13 & #14 is located in Class #13; all four cases are located in Class #14; problem is for class #14; no Daily Quiz for class #13 (all class attendees receive 7); nine-question Daily Quiz for Class #14 (three on law, four on four cases, & two on problem)

Barnes v. State, 70 Md. App. 694 (1987).

State v. Poole, 321 Md. 482 (1991).

State v. Daughtry, 419 Md. 35 (2011).

Davis v. State, 278 Md. 103 (1976).

Class preparation

Pre-Class Review 127-42

**2/28 #15 Jury Composition, Selection, Voir Dire, & Challenges**

Warnken ch. 24, § IV. & Supp. 59-62

Pearson v. State, 437 Md. 350 (2014).

Jones v. State, 343 Md. 584 (1996).

Class preparation

Pre-Class Review 142-53

**3/02 #16 Burden of Production**

Warnken ch. 25 & Supp. 62-63

State v. Smith, 374 Md. 527 (2003).

Herd v. State, 125 Md. App. 77 (1999).

Class preparation

Pre-Class Review 153-76

**3/07 & 3/09 #17 & #18 Right to a Fair Trial**

Warnken ch. 27 & Supp. 71-73 (all text for Class #17 and #18 is located in Class #17; all four cases for Class #17 and #18 are located in Class #18; problem for Class #17 and #18 is located in class #18; Daily Quiz #17 has six questions – six questions on the law, no questions on the four cases, and no questions on the problem; Daily Quiz #18 has eight questions – no questions on the law, four questions on the four cases, and four questions on the problem)

Johnson v. State, 352 Md. 374 (1999).

Brown v. State, 153 Md. App. 544 (2003), cert. denied, 380 Md. 618 (2004).

Blanks v. State, 406 Md. 526 (2008).

Jenkins v. State, 375 Md. 284 (2003).

Class preparation

Pre-Class Review 176-203

**3/14 #19 Right to Confrontation Generally**

Warnken ch. 28, §§ I-IV. & Supp. 93-94

Pinkney v. State, 350 Md. 201 (1998).

Gray v. Maryland, 523 U.S. 185 (1998).

Class preparation

Pre-Class Review 203-13

**3/16 #20 Right to Confrontation (Testimonial Hearsay) & Right to Compulsory Process**

Warnken ch. 28, § V. & Supp. 94-97 & ch. 29 & Supp. 97

Michigan v. Bryant, 131 S. Ct. 1143 (2011).

Williams v. Illinois, 132 S. Ct. 2221 (2012).

Class preparation

Pre-Class Review 213-34

**3/28 #21 Burden of Persuasion**

Warnken ch. 26 & Supp. 63-71

Evans v. State, 28 Md. App. 640 (1975), aff'd, 278 Md. 197 (1976).

State v. Butler, 353 Md. 67 (1999).

Class preparation

Pre-Class Review 234-51

### **3/30 #22 Sentencing**

Warnken ch. 30, §§ I.-XI. & Supp. 98

Reiger v. State, 170 Md. App. 693 (2006).

Jennings v. State, 339 Md. 675 (1995).

Class preparation

Pre-Class Review 251-71

### **4/04 #23 Sentencing**

Warnken ch. 30, § XII. (minus A.10.-A.11. & B.7.); §§ XIII.-XX. & Supp. 98-103

State v. Wilkins, 393 Md. 269 (2006).

Greco v. State, 347 Md. 423 (1997).

Class preparation

Pre-Class Review 271-85

### **4/06 #24 Post-verdict motions & post-sentencing motions**

Warnken ch. 31 (text only; no cases; five-question quiz; all questions on text)

### **4/11 #25 Appeals**

Warnken ch. 32, §§ XIX., XXI., & XII. (text only; no cases; six-question quiz; all questions on text)

Pre-Class Review 285-325

### **4/13 & 4/18 #26 & 27 Collateral Review**

Warnken ch. 33, §§ I. to XI. text only; no cases; three-question quiz; all questions on text

Pre-Class Review 325-54

### **4/20 #28 Review**