

## **Constitutional Criminal Procedure II**

**Spring 2018**

**Professor Jose' F. Anderson**

Tuesdays/Thursdays 6:15pm-7:30pm room ALS 408

**NOTE:** First week assignment:

Read pages 1-30 (Chemerinsky & Levenson)

**Casebook:** Erwin Chemerinsky and Laurie Levenson, CRIMINAL PROCEDURE: ADJUDICATION (2012 - 2<sup>nd</sup> Ed.) and supplemented cases and materials to be provided

**Office Hours:** Tuesday-Thursday Noon -1:30 p.m.; 5:15pm-6:10pm and by appointment. You are also welcome to email questions. My email address is janderson@ubalt.edu. Room - Angelos Law 1107; office phone 410-837-4398.

**Participation:** Prompt class attendance is mandatory. If you need to be excused from class or from being called on in class, you must contact me in writing (either via type written, signed note or email) in advance of class, circumstances permitting, or after class, explaining your need to be excused. Unexcused absence from class, tardiness or lack of participation may result in grade reduction. Too many unexcused absences may result in being withdrawn from the class or not being permitted to take the final exam.

## **SYLLABUS**

The page numbers listed below are for the casebook. The class sessions which correspond to the materials are estimates. Each class is different and some materials may take longer to cover than expected. As a result, there are two unassigned classes at the end of the semester. These classes will serve as "buffers" to insure that all material is covered and also allow leeway throughout the semester for practical applications of the material we cover on any given day. Please note that various assignments will have supplemental readings outside of that contained in the case book. Such readings will be posted on the TWEN website or distributed in class.

## **WEEK #1**

### **Class #1 Introduction**

- Key Provision of the Bill of Rights, xix-xl
- Participants and Stages of the Criminal Justice System, pgs 1-12
- Purpose of the Procedural Rules and Role of Counsel, pgs 12-24
- Application of the Bill of Rights to the States, pgs. 24 - 29
- Retroactivity, pgs 29-30

### **Class #2 Initiating Prosecution**

- The Charging Decision, pgs. 31-37
- Limits on Prosecutorial Discretion, pgs 37-51
- Formal Charging: Grand Jury and Preliminary Hearings, pgs. 51-62
- Charging Rules: Severance, Joinder, Amendments and Variances, pgs. 62-75

## **WEEK # 2**

### **Bail and Pretrial Release**

- Bail, pgs71-79
- Other Types of Preventative Detention, pgs 77-99

**WEEK #3****Discovery**

- Purposes of Discovery and Statutory Discovery, pgs 101-107  
Constitutional Discovery, pgs 107-132
- Duty to Preserve Evidence, pgs 132-136

**Plea Bargaining and Guilty Pleas**

- Plea Bargaining, pgs. 137-142
- Guilty Pleas, pgs. 142- 177

**WEEK #4****Speedy Trial Rights**

- Importance of Speedy Trial Rights and Pre-Indictment Delay pgs. 179-192
- Post-Charging Delay and Remedies, pgs.192-207

**WEEK # 5****Right to Counsel**

- Introduction, When does Right to Counsel Apply? pgs. 209-217
- Standard for Effective Assistance of Counsel, pgs. 217-238
- Self-Representation, pgs. 238-250

**Right to Trial by Jury**

- Right to Jury Trial, pgs. 251-257
- Jury Size and Unanimity Requirement, Pgs 257-269

**WEEK #6**

- Jury Composition and Selection, pgs. 269-298

**WEEK # 7 Pretrial Publicity and the Right to a Fair Trial**

- Pretrial Publicity and Remedies, pgs. 298-315
- Ethical Limitations on Lawyers' Extrajudicial Comments, pgs. 315-327
- Cameras in the Courtroom, pgs. 327-332

**WEEK # 9****Trial Rights: Due Process, Right of Confrontation and the Privilege Against Self-Incrimination**

- Right to Confront the Accuser, pgs. 332-356
- Privilege Against Self-Incrimination, pgs. 356-362
- Proof Beyond a Reasonable Doubt and the Role of the Jury, pgs. 363-366

## **WEEK # 10**

### **Sentencing**

- Role of Sentencing and Different Types of Sentences, pgs. 367-373
- Apprendi* and its Progeny, pgs. 373-395
- The 8th Amendment and Cruel and Unusual Punishments, pgs. 395-423
- The Death Penalty, pgs. 423-437
- Recent Limitations on the Death Penalty, pgs. 438-469

## **WEEK # 11 Thursday, March 18**

### **Double Jeopardy**

- Introduction, pgs. 471-481
- Prohibitions on Retrials and Exceptions to the Double Jeopardy Rules, pgs. 481-502
- Multiple Charges, Cumulative Punishments and Collateral Estoppel, pgs. 502-508

## **WEEK #12**

### **Habeas Corpus**

- Introduction, It's all about timing, pgs. 509-523
- Successive Petitions and Exhaustion, pgs. 523-549
- Constitutional Claims, pgs. 549-571
- Procedural Default and Actual Innocence, pgs. 571-641

## **WEEK #13**

- Habeas and the War on Terror, pgs. 641-670

## **WEEK # 14**

Unassigned “buffer” days and exam review

### **Learning Objectives**

- Understand the criminal discovery process for prosecutors and defense lawyers (formal requests for documents; relevance; privilege; work-product protection; protective orders; discovery of testifying and consulting experts; physical and mental examinations; and sanctions for discovery misconduct)
- Understand preliminary adjudication proceedings for dismissal of criminal charges.
- Understand the grand jury process
- Understand right to criminal jury selection process trial by jury
- Understand post-trial motions, appeals and post-conviction process for review of a criminal verdict

-Appreciate the ethical limitations on pleadings, motions, and discovery devices in civil litigation, including prudential judgments about how positions advocated will be received by the court

-Recognize that creation of and revisions to a procedural system, even with the best of intentions, require difficult choices that may advantage some and disadvantage others, given finite resources

## **Learning Outcomes**

- Learn the ethical responsibilities of an attorney in the criminal justice process
- Learn the requirements of a valid guilty plea in a criminal case
- Learn to examine the factors for determining a violation of the constitutional right to a speedy trial
- Learn the aspects of the constitutional right to counsel and what it includes
- Learn to understand the relationship between the right to a public trial and the right to a fair trial
- Learn the procedural tools that ensure a defendant a fair trial under the Federal Constitution

## **Formative Assessment**

Formative assessment provides opportunities for students to evaluate their knowledge, check their understanding, and practice applying what they are learning and then receive feedback from your professor — before the entire semester's grade is on the line. During the course of the semester, you will receive my feedback on your work in at least three ways:

First, a limited form of formative assessment will occur on a daily basis in class as I ask questions of students who are called on and the class as a whole, thereby giving one of you at a time a chance to participate directly. Through our exchange, those who are participating will get the immediate feedback of seeing whether their contributions are moving the discussion forward or not. Thus, one more reason to volunteer in class is the opportunity to gain that immediate feedback. Second, written comments on drafting exercises. Third, group feedback from the professor of former students on litigation exercises.

## **Graded Assessment**

Course grades primarily will be based upon the final exam. Voluntary class participation that is thoughtful and non-domineering can raise a student's grade. Quality, not quantity, counts. Voluntary class participation that does not contribute to the discussion will not, however, cause a grade to be lowered. Students will be assigned problems, negotiation exercises, and other material to prepare, and will be called upon from time to time. These exercises are integral parts of the course and must be completed. Exceptionally good performance on these exercises, together with class participation, can raise a student's grade a maximum total of one level. If a student often is unprepared for class discussions, or repeatedly is tardy or talks to neighbors during class, the instructor may lower his or her grade by one level. A student who is prepared but does not do well on the assigned problems, cases or negotiation will not be penalized.

**Course Expectations:**

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work each week for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours. You are expected to complete all reading assignments before class and to participate consistently in class discussion to demonstrate that you have read and reflected on the issues raised in the assignment.)

**Attendance:**

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

Please let the professor know if you are experiencing special issues that are affecting your attendance.

Regular Semester Hours		
Credit Hours	Meetings Per Week	
	1	2
2	2 absences	5 absences
3	2 absences	5 absences
4	--	5 absences

**Class Cancellation:**

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore

web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

**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 School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at [http://law.ubalt.edu/academics/policiesandprocedures/honor\\_code/](http://law.ubalt.edu/academics/policiesandprocedures/honor_code/).

**Title IX Sexual Misconduct and Nondiscrimination Policy:**

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

**Disability Policy:**

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or [lmetzger@ubalt.edu](mailto:lmetzger@ubalt.edu).

Professor Anderson's office hours for the fall semester will be Tuesday and Thursday: 12:00am-1:30 p.m. subject to meetings of the faculty and its committees. Other meeting times may be obtained by appointment. Regular and punctual attendance is expected. A student whose unexcused absences exceed three (3) classes may be compelled to withdraw from the course. Since other people are relying on your attendance and participation for the course to properly work, and since the course only meets once a week, it cannot be over emphasized that attendance is *critical*.