

Law 594: Criminal Procedure Post-Investigations
Course Memorandum
Spring 2021

Professor Chris Behan
Monday & Wednesday, 4:30-5:45, via Zoom
Zoom Link & Password on Course TWEN Page

1. Course Overview.

At both the state and federal levels, the American criminal justice system contains procedural rules based on Constitutional and statutory provisions that are ostensibly designed to ensure fair and just trials for criminal defendants. In this class, we explore the rules of criminal procedure in light of their underlying values and aspirational goals, always asking ourselves whether the rules achieve their objectives.

This class is important for any student who plans to practice criminal law. It covers the key elements of the criminal trial—from pretrial procedures through the trial itself, then post-conviction remedies—in a thorough and comprehensive manner. In addition, this course covers material that is tested on the bar exam. According to the National Council of Bar Examiners, the following topics in this course are testable subjects for the MBE: right to counsel; fair trial and guilty pleas; double jeopardy; cruel and unusual punishment; burdens of proof and persuasion; appeal and error.

2. Learning Objectives.

At the end of this course, students will be able to:

- Understand the constitutional basis for the rules of criminal procedure followed in American courtrooms at both the state and federal levels and use that knowledge to frame arguments for the application, interpretation, extension, and modification of the Rules.
- Correctly identify and be able to orally explain adjudicative criminal procedure issues, in the context of appellate cases and hypothetical problems presented in the classroom.
- Answer bar-style multiple-choice questions and write bar-style essay answers on criminal law topics covered on the Multistate Bar Exam including “right to counsel; fair trial and guilty pleas; double jeopardy; cruel and unusual punishment; burdens of proof and persuasion; appeal and error.”

3. Class Meetings.

This class meets Monday and Wednesday from 4:30 PM-5:45 PM, starting Wednesday, January 20, 2021 and ending Wednesday, April 21, 2021. The final examination schedule has not yet been released. I will provide information about the final examination when it is available.

4. Course Materials.

The textbook for the course is Jens Ohlin, *Criminal Procedure: Doctrine, Application, and Practice* (Wolters Kluwer 2020), ISBN 978-1-4548-9385-1.

You are also required to have access to the Federal Rules of Criminal Procedure with Advisory Committee Notes. I have provided a link to them on the TWEN page.

5. Contact Information.

- a. *General.* My office is in Room 254. Telephone number is 453-8722. E-mail address is cbehan@siu.edu. If you need to reach me and I am not in the building, leave a text at 618-521-1849. I prefer text messages to calls. If you text, identify yourself in the text.
- b. *Office Hours.* My office hours are by appointment. In the Zoom era, I've tried keeping regular office hours online, but that hasn't worked. If you would like to meet with me, send a text or email and we can set up either a telephone or Zoom meeting. I try to be responsive to student requests for meetings.
- c. *Electronic Communication.* Check your e-mail regularly. I will use TWEN to send messages pertaining to class. Make sure you check the actual email address you used to register for TWEN. The School of Law has adopted a rule requiring students to use their assigned siu.edu email address for law school-related business. Thus, excuses such as, "well, I use my gmail account and that's why I never got your email," are unacceptable.
- d. *Problems and Issues.* Despite the best efforts of professors and students, class is not always perfect. Sometimes a lecture or concept is unclear. Sometimes a fellow student will do or say something insensitive or inappropriate that is not fully resolved by the professor in the classroom. You may experience personal frustration with something I do or say in the classroom. If you experience a problem or identify an issue in the class, please come see me so we can discuss it and resolve it. Some of my best growth and development as a professor has come from students taking the time to alert me to issues or problems of which I had not previously been aware.

6. Workload, Class Structure and Class Rhythm.

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), "a "credit hour" is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time." This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week (a 100-minute block each Monday and Wednesday). The amount of assigned reading and out of class preparation should take you about 3 hours for each class session and 6 hours for the week, averaged out over the full semester, and including studying for and taking the final examination. All told, applying the ABA standard to the number of

credits offered for this class, you should plan on spending a total of 9 hours per week (3 in class and 6 preparing for class) on course-related work.

The class follows a predictable structure and rhythm:

- (1) *Before Class.* There is a reading assignment for each class session. The reading assignments will typically include not only materials from the textbook itself, but also relevant rules from the Federal Rules of Criminal Procedure. You are expected to read the assignment, brief and understand the cases, and work out proposed solutions to any of the problem cases on your own prior to class.
- (2) *During Class.* We will discuss the cases, questions, and problem cases from the book in class. I will call on students at random, using index cards, to discuss cases and problems. Occasionally during class, we will also have unannounced, graded multiple choice and short-answer quizzes that will be administered on TWEN.
- (3) *Classroom Blog.* Beginning with the second week of the semester I'll activate our internal class blog, in which student bloggers write a graded blog post (750-1000 words) about one of the topics covered in the assigned reading for the week. Each student will blog once during the semester. Other students in the class are expected to respond to the blog post in the comments and discussion section of the blog; each student is expected to provide meaningful comments on three other blog posts. The purpose of this assignment is to help shape our classroom discussion and improve your critical analysis and writing skills. There will be a sign-up sheet for these blogs posted on TWEN.

7. Attendance, Class Preparation and Participation.

Attendance is required. In accordance with law school rules, you may miss no more than four (4) class sessions during the semester without having to withdraw from the class or face the grade penalty under the School of Law rules. You are responsible to manage your own absences and, as an adult and a professional, should realize that if you take all absences early in the semester and run into a problem later in the semester, you will have created a problem for yourself from which no one else is obligated to rescue you. Also, if you are assessed an absence for inadequate preparation or not paying attention when off-camera, that absence counts towards your total.

Zoom will keep track of your attendance. When you log on to class, your log-in certifies three things: **(1) you are present via Zoom for class; (2) you are prepared for class; and (3) you are participating in class by listening, taking notes, and responding appropriately when called on.**

Class preparation and participation are not only keys to successful learning, but also an integral part of this course. I believe class participation is critical to a successful learning experience. From a pedagogical perspective, nothing is better than a classroom in which students have read the material and are engaged in the classroom experience; conversely, few things are worse than the reverse.

I call on students randomly. It is possible to be called on multiple sessions in a row. I expect you to be prepared for class. If it becomes evident during our discussion that you are not prepared or have not been paying attention to class, I will announce that you have been assessed an absence for the day. My decision to assess an absence is final and non-reviewable. **Note: if you are assessed an absence for the day, you will receive no credit for any quizzes taken at the beginning of class that day.**

8. Zoom Protocol, Listening, and Note-Taking.

I expect you to listen and be mentally engaged in class. Active, sustained listening is a critical skill for lawyers. I use a minimal number of slides in the class; they do not substitute for good note-taking practices by students.

I expect the following from anyone attending class via Zoom:

- Make sure you have a good, high-speed internet connection. If you are attending from home, ensure that no one else is using Zoom or streaming movies or video at that time. If you can plug your computer directly into a router with an ethernet cable or USB connection, you'll find your Zoom connection will be much better than simply using wifi.
- Attempting to attend class while driving somewhere else does not count as class attendance. Should it become apparent that is what you're doing, I'll assess an absence for the day.
- Turn off all programs on your computer except Zoom and a word-processing program if you are using one to take notes. Do not use chat services or instant-messaging services on your computer during class.
- Do not use your cellphone during this class, or any class, unless it is to participate in an online survey or quiz as directed by me.
- If you are speaking, your video camera must be on. When your camera is on please ensure the area around you is free from distractions, including pets and people. Remember, your Zoom presence is intended to substitute for your personal presence in the classroom as much as possible.
- To help with bandwidth issues, you are permitted to turn your camera off when you are not speaking.
- When your camera is off, you are still part of the class. This means you are required to listen and to participate when called on, without me having to repeat the question or summarize the classroom discussion up to that point because you were not listening. If I call on you and you are not available to respond, ask me to repeat the question, or indicate in any way that you were checked out of class with your camera off, you'll be assessed an absence for the day.

- A few things to consider when your camera is on.
 - You are free to use a virtual background if you'd like, provided it is not overly distracting.
 - If you're attending class from a bedroom or other room in your home, take the time to make your bed, pick up any dirty clothes or dishes that might be lying around, and, in general, straighten the area up to look as uncluttered and professional as possible.
 - The camera should be focused on your face and not on other parts of your body such as up your nostrils, your forehead, your neck, your chest, your midsection, any other non-face part of your body, or the wall behind you.
 - The light source in the room should be in front of you, not behind you.
 - Wear acceptable clothing, such as you would wear to class. Ensure that other people in your home who might pass through camera range are also wearing acceptable clothing. Acceptable clothing does not include pajamas and/or underwear.
 - (This section is derived entirely from experience; my other students and I have, unfortunately, seen far more than we would like to see in classes or meetings in which the participants haven't complied with these recommendations.)
- Unless you are being called on, keep your microphone muted. If you would like to participate, use the Raise Hand function on Zoom to indicate this.
- If something happens to your internet connection during class, turn Zoom off and on and log back on as soon as you can. There is no need to apologize for this; it happens to everyone. It may happen to me while I'm teaching (has happened before).
- I likely will not activate the Zoom chat feature for our classes. I've found it to be more distracting than helpful during class.

Be courteous to the others in the classroom by keeping distractions to a minimum and giving the class your full attention. Do not text, send instant messages, or hold conversations with others during class.

9. Policy on Recording Class.

You are not authorized to make your own audio or video recordings of my classes. The class will be recorded by the School of Law IT department. Generally, I do not make recordings available unless necessary to accommodate a disability or unless you request and receive my approval.

10. **Grading and Evaluation:**

I will evaluate and assess your work in several ways:

- a. **Quizzes. (15% of your final grade)** During the semester, I will give between 5 and 10 unannounced quizzes at the beginning of class. They will be administered via TWEN and will be multiple choice and/or short answer. The quizzes cover the material assigned for that day's reading; they may also cover material from a previous class.

- b. **MEE-Style Essay. (15%)** This is an anonymously graded bar-style essay on a course topic. It will be administered via TWEN about halfway through the semester. You will receive a grade and feedback on your submission. If the essay does not meet standards, you will be required to rewrite it. Your final grade for the essay will be an average of your first submission and your rewritten submission. More details on the assignment to follow. This assignment satisfies the bar-assignment requirement for this course, as well as the Writing Across the Curriculum requirement. The MEE assignment also serves as a make-up day for the class we would otherwise have to hold on Friday, April 23. See <https://law.siu.edu/common/documents/calendar/sp21-calendar.pdf>

- c. **Final examination (70%)**. The examination will be a combination of essay and MPT. There may be some multiple-choice questions as well, but I have not yet decided. More details will be provided later.

11. **Other Important Information on Support and Resources.** Please see the Law School and Provost Syllabus attachments, available at <https://pvcaa.siu.edu/common/documents/provost-memos/syllabus-attachment-spring-2021-vs2.pdf> and <https://law.siu.edu/common/documents/courses/sp-21-syllabi/syl-attachment-spr-21.pdf>.

Reading & Assignment Schedule

The reading schedule for the semester is below. There may be times when reading that is assigned for a class spills over to the next class. This does not change your obligation to be prepared for the material that is listed for the next day and class. Think of the reading schedule as akin to an airline schedule: you are required to be at the airport on time, even if the flight might be delayed a bit.

Week	Class	Date	In-Class Topics	Reading Assignment
1	1	20 Jan	Introduction	--Skim pages 1-15 and watch podcast on introduction to criminal procedure process -- <u>Read in detail and be prepared to discuss</u> the primary cases and notes on pages 16-37. Primary cases include: <i>Palko v. Connecticut</i> <i>Adamson v. California</i> <i>Duncan v. Louisiana</i> -- <u>Understand and be able to discuss</u> Packer's Crime Control and Due Process models of the criminal process on pages 38-49
2	2	25 Jan	Prosecution & Discretion	CPDAP 739-768 Primary Cases: <i>Costello, Williams, Wayte, Armstrong</i>
	3	27 Jan	Prosecution & Discretion	CPDAP 769-796 Principal cases: <i>Blackledge, Zafiro, Bruton, Richardson</i>
3	4	1 Feb	Bail & Pretrial Detention; Mental Illness	CPDAP 797-813 Primary Cases: <i>Salerno, Foucha</i>
	5	3 Feb	Sexual Offenders; Immigration Detention; Material Witness Practice and Policy	CPDAP 815-852 (skip 840-848) Primary Cases: <i>Hendricks, Zadvydas, al-Kidd</i>
4	6	8 Feb	Discovery	CPDAP 853-879 Primary Cases: <i>Brady, Giglio, Smith, Bagley, Kyles</i>
	7	10 Feb	Discovery	CPDAP 879-906 Primary Cases: <i>Strickler, Williams, Youngblood</i>

Week	Class	Date	In-Class Topics	Reading Assignment
5	8	15 Feb	Negotiated Justice: Plea Bargains	CPDAP 907-938 Primary Cases: <i>Jackson, Brady, Bordenkircher, Alford, Henderson</i>
	9	17 Feb	Negotiated Justice: Plea Bargains	CPDAP 939-974 Primary Cases: <i>Hill, Padilla, Frye, Lafler, Santobello, Ricketts</i>
6	10	22 Feb	Speedy Trial	CPDAP 977-1005 Primary Cases: <i>Marion, Lovasco, Barker, Doggett</i>
	11	24 Feb	Speedy Trial Right to Counsel	CPDAP 1005-1036 Primary Cases: <i>Zedner, Gideon, Scott, Rothgerry</i>
7	12	1 Mar	Right to Counsel	CPDAP 1037-1063 Primary Cases: <i>Strickland, Holloway, McCoy</i>
	13	3 Mar	Right to Counsel	CPDAP 1064-1090 Primary Cases: <i>Faretta, Edwards, Ake</i>
8	14	8 Mar	The Jury	CPDAP 1091-1118 Primary Cases: <i>Duncan, Williams, Ballew, Apodaca, In re Winship</i>
	15	10 Mar	The Jury	CPDAP 1119-1146 Primary Cases: <i>Batson, J.E.B., Rivera</i>
9	16	15 Mar	Fair Trial Rights	CPDAP: 1147-1175 Primary Cases: <i>Irvin, Skilling, DePasquale, Presley</i> Note: we will not cover the remainder of Chapter 17, Confrontation, because this topic is covered in Evidence
	17	17 Mar	Fair Trial Rights	CPDAP: 1173-1183 (skip 1183-1194), 1194-1211 Primary Cases: <i>Craig, Griffin, Chambers</i>
10	18	22 Mar	Sentencing	CPDAP: 1215-1245. Primary Cases: <i>Ewing, Graham, Miller, Atkins.</i> Also be prepared to discuss the Problem Case just before Section 2, Juvenile Death Penalty.
	19	24 Mar	Sentencing	CPDAP: 1245-1269 Primary Cases: <i>Roper, Kennedy, McCleskey, Glossip</i>

Week	Class	Date	In-Class Topics	Reading Assignment
11	20	29 Mar	Sentencing	CPDAP: 1269-1298 Primary Cases: <i>Apprendi, Ring, Blakely, Payne</i>
	21	31 Mar	<i>Finish Sentencing . . . In-Class Sentencing Exercise</i>	
12	22	5 April	Double Jeopardy	CPDAP: 1299-1324 Primary Cases: <i>Blockburger, Brown, Serfass, Burks.</i>
	23	7 April	Double Jeopardy	CPDAP: 1324-1350 Primary Cases: <i>Sanford, Dinitz, Kennedy, Heath,</i>
13	24	12	Appeals and Habeas Corpus	CPDAP: 1351-1369 Primary Cases: <i>Jackson, Fulminante, Griffith</i>
	25	14 April	Appeals and Habeas Corpus	CPDAP: 1370-1399 Primary Cases: <i>Teague, Williams, Holland, Rose, Patterson</i>
14	26	19 April	Appeals and Habeas Corpus	CPDAP: 1399-1426 Primary Cases: <i>Maples, House, Cullen, Cain</i>
	27	21 April	<i>Finish Appeals and Habeas . . . Final Review</i>	
	28	23 April	The MEE exercise we did earlier in the semester is the make-up class for this day.	