

**Constitutional Criminal Procedure II**  
**Fall 2013**  
**Professor Jose´ F. Anderson**  
Tuesdays/Thursdays 10:30 a.m. - 11:45 a.m.

**NOTE:** First week assignment:

Read pages 1-34 (Chemerinsky & Levenson)

**Casebook:** Erwin Chemerinsky and Laurie Levenson, CRIMINAL PROCEDURE: ADJUDICATION (2008) and supplemented cases and materials to be provided

**Office Hours:** Tuesday-Thursday 12:00 noon -1:30 p.m.; Wednesday 12 noon-1:30 p.m. and by appointment. You are also welcome to email questions. My email address is [janderson@ubalt.edu](mailto: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 Too many unexcused absences may result in being withdrawn from the class or not being permitted to take the final exam.

**Grades:** Grades will be based on a final examination. Class participation may also raise or lower your exam grade one ½ grade level. Please let the professor know if you are experiencing special issues that are affecting your attendance.

## **SYLLABUS**

The page numbers listed below are for the Casebook. Unless otherwise indicated, read all of the assigned pages, which may include not only the designated case, but also Notes & Questions, articles or other materials after the case or introductory material before the case, as well as, information contained in the material supplementing the textbook. Many of the cases provided by the professor that are not in the casebook are cases in which the

professor served as counsel. Accordingly, students should be particularly well prepared for those discussions.

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, pgs 17-18
- Participants and Stages of the Criminal Justice System, pgs 1-11
- Purpose of the Procedural Rules and Role of Counsel, pgs 11-16
- Application of the Bill of Rights to the States, pgs 18-24
- Retroactivity, pgs 26-27

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

- The Charging Decision, pgs. 29-34
- Limits on Prosecutorial Discretion, pgs 34-47
- Formal Charging Mechanisms: Grand Jury and Preliminary Hearings, pgs. 47-57
- Charging Rules: Severance, Joinder, Amendments and Variances, pgs. 57-69

## **WEEK # 2**

### **Bail and Pretrial Release**

- Bail, pgs 71-79
- Other Types of Preventative Detention, pgs 79-90

## **WEEK #3**

### **Discovery**

- Purposes of Discovery and Statutory Discovery, pgs 91-96
- Constitutional Discovery, pgs 97-118

Duty to Preserve Evidence, pgs 118-122

**Plea Bargaining and Guilty Pleas**

Plea Bargaining, pgs. 123-135

Guilty Pleas, pgs. 135-143, 149

**WEEK #4**

**Speedy Trial Rights**

Importance of Speedy Trial Rights and Pre-Indictment Delay, pgs. 151-162

Post-Charging Delay and Remedies, pgs.162-172

**WEEK # 5**

**Right to Counsel**

Introduction, When does Right to Counsel Apply? pgs.173-180

Standard for Effective Assistance of Counsel, pgs. 180-196

Self-Representation, pgs. 196-204

**Right to Trial by Jury**

Right to Jury Trial, pgs. 205-210

Jury Size and Unanimity Requirement, pgs. 210-221

**WEEK #6**

Jury Composition and Selection, pgs. 221-242

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

Pretrial Publicity and Remedies, pgs. 242-252

Ethical Limitations on Lawyers' Extrajudicial Comments, pgs. 252-363

Cameras in the Courtroom, pgs. 263-268

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**WEEK # 9**

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

Right to Confront the Accuser, pgs. 268-279

Privilege Against Self-Incrimination, pgs. 279-282

Proof Beyond a Reasonable Doubt and the Role of the Jury, pgs. 282-285

## **WEEK # 10**

### **Sentencing**

- Role of Sentencing and Different Types of Sentences, pgs. 287-293
- Apprendi* and its Progeny, pgs. 293-312
- The 8th Amendment and Cruel and Unusual Punishments, pgs. 312-328
- The Death Penalty, pgs. 328-341
- Recent Limitations on the Death Penalty, pgs. 341-362

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

### **Double Jeopardy**

- Introduction, pgs. 363-372
- Prohibitions on Retrials and Exceptions to the Double Jeopardy Rules, pgs. 372-388
- Multiple Charges, Cumulative Punishments and Collateral Estoppel, pgs. 388-395

## **WEEK #12**

### **Habeas Corpus**

- Introduction, It's all about timing, pgs. 397-404
- Successive Petitions and Exhaustion, pgs. 404-420
- Constitutional Claims, pgs. 420-441
- Procedural Default and Actual Innocence, pgs. 441-475

## **WEEK #13**

- Habeas and the War on Terror, pgs. 487-493

## **WEEK # 14**

Unassigned "buffer" days and exam review