

Law 594: Criminal Procedure Post-Investigations
Course Memorandum
Spring 2020

Professor Chris Behan
Tuesday-Thursday, 1:30-2:45, Room 251

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 Tuesday and Thursday from 1:30 PM-2:45 PM, starting Tuesday, January 14, 2020 and ending Thursday, April 23, 2020. The final examination is scheduled for Thursday, May 7, at 8:15 AM.

From time to time, I may cancel class to attend conferences, mock trial tournaments or other professional obligations. I will provide plenty of advance notice to assist in your planning. To make up for these missed classes, I will use a combination of out-of-class assignments, podcasts and physical make-up classes.

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. This book covers both of the Criminal Procedure courses offered at SIU. When I teach *Criminal Procedure: Pretrial* next year, I will also use this book. If you want to save some money and aren't planning on taking the Criminal Procedure: Pretrial class next year, you can instead use Jens Ohlin, *Adjudicative Criminal Procedure* (Wolters Kluwer 2019), ISBN 9781454893844. This book covers only the material we will cover this semester in our Criminal Procedure: Post-Investigation course but has exactly the same cases and materials for these topics as does the larger Ohlin book. It is selling for about \$75 less than the larger book. In the reading assignments, I will include pagination for either book: CPDAP is the big book; ACP is the smaller book.

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 and TA 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 Tuesdays 3:00-4:30, or whenever my office door is open. If those times don't work for you, we can set up an appointment to meet at a different time of mutual convenience. Just email me to set up an appointment.
- c. *Electronic Communication.* Check your e-mail regularly. I will use TWEN to send messages pertaining to class. Make sure you are actually checking the 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 I had not previously been aware of.

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 taking into account 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, understand the cases, and work out proposed solutions to any of the problem cases on your own prior to class.
- (2) *During Class*. We’ll begin each class with a short (5-10 minute), student-led discussion of a current event or newsworthy issue in adjudicative criminal procedure. Each student will lead one such discussion during the semester; there will be a sign-up sheet on TWEN. Transition to either a guest speaker or a professor-led discussion of the day’s assigned reading materials. 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.
- (3) *Classroom Blog*. Beginning with the second week of class, we’ll have an internal class blog, in which student bloggers write a graded blog post (800-1000 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. The purpose of this assignment is to help shape our classroom discussion and improve your critical analysis and writing skills.

7. Class Participation.

Class participation is not only a key to successful learning, it is an integral part of this course. I believe class participation is absolutely 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. As explained below, I assign 100 raw points for classroom preparation and participation. These are scaled to be worth 10% of the final grade.

I don't permit "noting out" in my classes. Recognizing that all of us are human, however, you get one (1) pass during the semester, other than a day you are assigned to give a presentation, of course.

8. Listening, Note-Taking, Computers and the Internet.

I expect you to listen and be mentally engaged in class. Active, sustained listening is an absolutely critical skill for lawyers.

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. If it is absolutely necessary for you to leave the classroom while class is in session, please minimize the disruption when entering or exiting the room.

You may use computers in class to take notes and access the electronic version of the text during class. Those are the authorized uses and there are no others. If individuals abuse the privilege, I reserve the right to ban such individuals from using laptops from the classroom. If I think you're having a problem, you'll get an email warning and an invitation to discuss the issue with me. If it continues after our discussion, you'll simply be banned from using a laptop in 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. Attendance Policy.

Attendance is required. In accordance with law school rules, you may miss no more than six (6) 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.

I will pass around an attendance sheet every day at the beginning of class. Your original, genuine signature on the attendance sheet certifies two things: (1) you are physically present; and (2) you are prepared for class. If you come in a minute or two late, you can still sign the attendance sheet.

Make a habit of coming to class on time. It is a tremendous distraction to everyone when someone strolls in after class has begun.

I do not permit noting out in my classes.

11. **Grading and Evaluation:**

I will evaluate and assess your work in several ways:

a. **Classroom preparation and participation. (10% of your final grade)** I assign 100 raw points for classroom preparation and participation, scaled to be worth 10% of the final grade. Of these 100 points, 60 are allocated for classroom participation, 20 points are allocated for making intelligent and thoughtful responses to the student blog posts that are assigned throughout the semester, and 10 are allocated for the current events presentation.

For classroom performance, everyone starts off with 60 points. You keep the 60 points if you are prepared for and participate in class discussions when called on. You lose points by evident lack of preparation and forethought. when you are called on. If I call on you in class and you are unprepared or under-prepared, I will move on to another student. I'll email you after class informing you that you have lost 10 raw points from your classroom prep.

To get the 20 points for blog responses, you must respond to at least 6 other student blog posts, spaced throughout the semester. To assist with this, I'll include a sign-up sheet on TWEN not only for blog posts, but for blog post responses. The 10 points for your current events presentation come from . . . wait for it . . . giving a current events presentation in the class.

At the end of the semester, I will ask each of you to turn in a self-evaluation explaining what grade you believe you should earn from classroom preparation and participation, supported by a sound narrative explanation and evidence. I will then compare your notes and mine and assign total points for this area of assessment.

b. **Blog Posts. (15%)** As explained above, this is an 800-1000 word

reflective blog post on one of the assigned topic for the week. I'll set up an internal class blog that only class members can access. Each student will write one blog post during the semester. The deadline for the blog post is midnight on the Monday of the assigned week. Everyone in the class must read the blog post prior to the next class, and any responses to the blog post are due by Friday at 5 pm the week the blog is posted. I will post a sign-up sheet on TWEN and a more detailed assignment description and grading rubric in the Course Materials section of the TWEN page. This assignment satisfies the Writing Across the Curriculum requirement for the course.

c. MEE-Style Essay. (15%) This is an anonymously-graded bar-style essay on a course topic. It will be administered the week after spring break, and I will give you the topic of the essay before spring break begins. You will receive a grade and feedback on your submission, plus the opportunity to rewrite the essay. 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.

d. Final examination (60%). Exam will be closed-book, closed note. The examination will be a combination of multiple choice questions and essay questions. The examination is scheduled for Thursday, May 8, at 1:15 pm.

12. Other Important Information on Support and Resources. Please see the Law School and Provost Syllabus attachments, available at <https://law.siu.edu/academics/semester-info/syllabi/sp-20.html>.

Reading & Assignment Schedule

The reading schedule for the first two weeks of the semester is below. I will release further reading assignments in roughly two-week increments. There may be times when reading that is assigned for a particular class spills over to the next class. This does not change your obligation to be prepared for the material that is listed for a particular class and day. Think of the reading schedule as similar to an airline schedule. You have to be at the airport on time, even if the flight might be delayed a bit.

Key:

Big Ohlin book: CPDAP
 Smaller Ohlin book: ACP
 Federal Rules of Criminal Procedure: FRCRP

Week	Class	Date	In-Class Topics	Reading Assignment
1	1	14 Jan	Introduction	<ul style="list-style-type: none"> • CPDAP & ACP: • <u>Lightly skim for familiarity</u> the paragraph headings on pages 3-15.

Week	Class	Date	In-Class Topics	Reading Assignment
				<ul style="list-style-type: none"> • --<u>Read in detail and be prepared to discuss</u> the primary cases and notes on pages 16-37. Primary cases include: <ul style="list-style-type: none"> • <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	16 Jan	Prosecution & Discretion	CPDAP 739-768; ACP 53-82 Primary Cases: <i>Costello, Williams, Wayte, Armstrong</i>
2	3	21 Jan	Bail & Pretrial Detention; Mental Illness	CPDAP 797-813; ACP 111-129 Primary Cases: <i>Salerno, Foucha</i>
	4	23 Jan	Sexual Offenders; Immigration Detention; Material Witness Practice and Policy	CPDAP 815-852 (skip 840-848); ACP 129-165 (skip 154-162) Primary Cases: <i>Hendricks, Zadvydas, al-Kidd</i>