

Criminal Procedure II, Fall 2016
Professor Burke

Required Casebook: Most of our readings will come from the second half of Saltzburg and Capra, *American Criminal Procedure, Cases and Commentary*, 10th Edition (2014). The supplement is unnecessary, but make sure that you purchase the correct edition of the casebook.

Students have two options for purchasing the required text. The full hardback version of the textbook (ISBN 9780314285577) contains materials that pertain to both Criminal Procedure I (investigations) and this course (adjudication). Unless you already own the full version of the textbook, I suggest you purchase the shorter, paperback version by the same authors, *American Criminal Procedure, Adjudicative: Cases and Commentary*, 10th ed. (ISBN 9780314285584), which contains only chapters 6-13 of the more complete casebook, which is the material that we will use in this course. Either version of the text will suffice for this course.

Course Objectives: Students will learn the rights guaranteed by the U.S. Constitution to defendants in criminal trials. Achieving this objective will involve studying criminal procedural rules from pretrial release through sentencing, studying and discussing the theories and policies that underpin the law of criminal procedure, and engaging in skills exercises to see how these procedures are implemented in practice.

Reading: This course syllabus provides most of the reading assignments for the semester. Unless I notify you otherwise, you should assume that we will move on to the next section of the syllabus after each class. You should also be prepared to do additional reading announced throughout the semester that might be necessary for exercises that we will do in class.

Course Coverage: Although this course's title is "Criminal Procedure II," Criminal Procedure I is not a prerequisite, and this course does not build on the subjects that are covered in Criminal Procedure I. This course simply covers different procedures: those that arise during the adjudicative phase of a criminal case. While Criminal Procedure I focuses largely on the investigatory phase of a criminal case, we will follow a defendant from "bail to jail."

Although Criminal Procedure I is not a foundation for this course, I nevertheless strongly recommend that all students take Criminal Procedure I prior to graduation. The bar examination's coverage of criminal procedure focuses almost entirely on the subjects covered in Criminal Procedure I. In contrast, the

material covered in this course is aimed primarily at students who plan to practice criminal law.

Class Attendance: The rules of the New York State Court of Appeals, the American Bar Association, and the law school require law students to be in good and regular class attendance. To comply with these rules, you must attend at least 75% of the regularly-scheduled classes in this course. Thus, you may miss no more than THREE of our scheduled classes. Each class will also begin promptly.

I will provide sign-in sheets for each regularly-scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Law school policy requires me to inform the law school administration of excessive absences. Repeated absences or tardiness will count against your final grade.

If you believe you must be absent from class for more than the permitted number of hours, you should contact the Office of Student Services.

Class Preparation: The American Bar Association requires that you spend at least four hours per week, on average, outside of class studying for this two-credit course. This is in addition to the time we spend in class.

Out-of-Class Availability: If you'd like to speak to me outside of class, please let me know before or after class, or email me to make arrangements. My email address is alafair.s.burke@hofstra.edu. My office is in Room 104D, in the southeast corner of the library. Although I do not restrict my availability to office hours, I can usually be found in my office from 12-2 pm on the days when we have classes scheduled. It's a good idea to let me know you are coming just in case there is a conflict. My secretary is Fran Avnet in Room 104. My number is 516-463-4243.

TWEN: Class materials and other communications will be available through Twen. Please be sure to register on this course's TWEN page.

Class Participation: Class discussion among prepared students makes class more interesting for all students. I call not only on students who volunteer to answer questions, but also on students randomly. Moreover, this course focuses not only on the theory and doctrine applying to criminal adjudication, but also their practical implementation. Accordingly, students will be expected to discuss charging decisions, conduct mock plea negotiations and sentencing hearings, and complete other litigation-focused exercises in class.

If you are unprepared for class, you may exercise a PASS without explanation, and will not be called on. The time to exercise a pass is BEFORE class begins, not after you are called on. Students who exercise more than one or two passes per semester will have this counted against their final grade.

Grading: 25% of students' course grade will be based on the quality of participation in class discussion and problems. The remainder of the semester grade will be based on a final examination.

Course Calendar: Class will not meet on September 21. To make up this time, we will take only five-minute mid-class breaks, and students will watch a documentary on plea bargaining during the week of September 21. Please mark your calendars accordingly.

SYLLABUS

The required casebook (“CB”) is American Criminal Procedure, Cases and Commentary (10th ed.) by Saltzburg & Capra. The schedule below is meant to be a guide for those students who would like to read ahead. I may adjust the schedule as the semester proceeds.

* indicates that the assigned reading will be posted on TWEN. Note that these pages are required, not merely recommended, even though not in the casebook.

Class	Topic	Assignment
8/24	The decision to prosecute	955-982 (skills exercise to be distributed in class)
8/31	Formal Charges - The Grand Jury - Notice, constructive amendment, variance	982-1014 (skills exercise to be distributed in class) 1016-1021 (skills exercise to be distributed in class)
9/7	Bail & Preventative Detention	1023-middle of 1061 18 USC 3142* (skills problem to be distributed in class)
9/14	Discovery - Introduction - Brady Other discovery issues	1069-1074 1088-1103, 1109-1118 browse 1074-1088 read 1118-27 (skills problem to be distributed)

9/21	No Class Guilty Pleas	On your own, watch “The Plea/Frontline” http://www.pbs.org/video/2216784391/ Read Jed Rakoff, “Why Innocent People Plead Guilty”** http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/ Be prepared to discuss both on 9/28
9/28	Guilty Pleas continued Plea Bargaining	1088-1103, 1109-1118 (skills problem) 1143-1176 (skills problem to be distributed in class)
10/5	Right to speedy trial Joinder and Severance	1177-1204 1204-1212
10/19	Intro to jury decision making	1258-1274 In/post-class film: Inside the Jury Room
10/26	Jury Selection and Composition Jury Integrity	1274-1282, 1300-1324 1324-1328
11/2	In-Class Jury Selection Exercise	TBA
11/9	Sentencing: -Determinate v Indeterminate - Constitutional Limits	1517-1519 1520-1538
11/16	Sentencing Guidelines	1549-1586
11/23	Double Jeopardy -The Effect of Acquittal -Multiple Charges	1609-1629 1646-top 1659
11/30	Finish prior block; REVIEW	