

## CRIMINAL PROCEDURE II

### Learning Objectives:

Criminal Procedure II is simultaneously an advanced and supplemental learning experience in the law of Federal Criminal Procedure. Students will be exposed to substantive doctrines such as Double Jeopardy, Discovery, the Right to a Trial by Jury and Habeus Corpus that are not routinely covered in the basic Criminal Procedure Course. Although there will be some lectures on these doctrines, the learning experience will be substantially different than that in Criminal Procedure I because students will learn doctrines and then use those doctrines in applied skills exercises.

Assigned Readings: Students may use any casebook that has substantial coverage of Double Jeopardy, Discovery, Trial by Jury, Grand Jury, Stop and Frisk and Encounters, Good Faith.

Grading: The final grade will be a composite of the grades on the various skills exercises and the final examination. The Final Examination will be closed book.

Week 1 - Introduction, Organization and Explanation of Skills Assignments

Week 2 - The Fourth Amendment: Going, Going, Gone

- a) A debate: 2 v 2 to a panel of 3.
- b) The issue is whether the Supreme Court in the last decade has created so many exceptions to the suppression of evidence that it has undermined the right - As those arguing that the Fourth is Going, Going, Gone are likely to say, "A right without a remedy is no right at all."

Week 3 - Habeus Corpus

- a- Direct Appeal v. Collateral Appeal  
Federal Statute - Lecture - 1 hour
- b- "Is Gant is an old law?" - argue each side to appellate panel who are a "hot bench" and will question and decide, orally, but with significant detail.  
This will be a 2 v.2 argument to a "hot bench" of two. The students who are participating in this presentation must know the rule of law applicable to the application of rights law in a collateral attack.
  - No written material are necessary, except for a case list of the cases that will be mentioned in your oral argument.

#### Week 4 - Double Jeopardy

- a - Explain the law of Double Jeopardy involving Conviction and Acquittal -  
Lecture on Double Jeopardy and "Abortions" = DV, Mistrial, Appeal, reversal on Appeal and the need to Respect Defendant's Right to a verdict from his jury - 2 hour lecture.

#### Week 5 - Double Jeopardy

- a) Hypo: Defendant is charged with a violation of 18 USC 2113 (a) and (d) and Conspiracy 18 USC 371. He was acquitted of the conspiracy and the armed bank robbery - 2113 (d). The jury hung on 2113(b), regular robbery. Can he be retried on the hung jury count? More facts will be supplied.  
2 v 2 to a "hot bench" of 3.
- b - Roles will be assigned for the Motion to Suppress.
  - The Motion to Suppress will center on the: Probable Cause Motion in People v. Southley which will be tried as United States v. Southley. The suppression motion concerns the stop, frisk, and detention of Southley. Two students will represent Southley while two students represent the United States. The Southley Hypothetical has "canned" case reports which, with supplementation and Shepardizing may be used in the argument. There will be 4 'attorneys' assigned to prepare the witnesses, 4 'attorneys' assigned to examine the 4 witnesses, two attorneys to argue the motion to the judge and four 'attorneys' to play the witness roles.

#### Week 6 - Motion to Suppress - Getting the facts

- a - Witness Preparation for Motion to Suppress. The two hour session will be devoted to the preparation of the witnesses. Each Prosecutor and or Defendant 'attorney' will prepare his or her witness in cooperation with their partners. Preparation: 1 hour. The "lawyers" will have to have acquired a significant amount of doctrinal law concerning the issues in this kind of motion to adequately prepare their witnesses.

#### Week 7 - The Motion to Suppress - Presenting the Facts

- a) This class will involve the presentation of the witnesses. There are four witnesses. Each will testify.
- b) After the fact hearing, there will be a "strategy" session, one for each side, to determine what the witnesses said and how their testimony creates or removes legal issues.

Week 8 - Legal Argument to the Court on the Motion to Suppress

a) there will be two separate arguments. In each there will be an attorney on each side arguing to a "hot bench" of 3.

Week 9 - Discovery: Does It Work?

a - Students will use Professor Burke's article, Alafair Burke, Revisiting Prosecutorial Disclosure, Indiana Law Review, to support the position that the present discovery rules do not sufficiently protect defendants' needs and desires. To undermine that position, the other side will no doubt argue that the present system protects defendants' right by making sure that they get every fact that has a chance to make a difference. 2 v 2 to a bench of 3.  
1 hour

b - Explain Mike Tyson in light of the above. Is there a different standard for the defendant and the prosecution? Debate: 1 v 1 to a bench of 1

Week 10 - Gant, Where Are We Now? And, Is predictability a core value and if so, is Gant The Worst Criminal Procedure Decision, Ever - A Debate

- Narrow focus v. comprehensible  
- Where are we now? Fact Pattern( to be supplied) in which two defense attorneys will argue against two prosecutors. What can you do? Two cops - frisk while Belton?  
Two perps = automatic Belton?  
Perp cuffed, but right next to the car?

Week 11 Trial by Jury

Batson & Apprendi

Robin Charlow, Tolerating Deception and Discrimination After Batson

Week 12 - Grand Jury (How to dump a case, how to reopen a case and run away juries)

Bernard Goetz, Daren Wilson, Daniel Pantaleo  
And more.

Week 13 - The Overwhelming Power of Consent.

Week 14 - Recap with beverages