

- Casebook: Erwin Chemerinsky and Laurie Levenson, CRIMINAL PROCEDURE: ADJUDICATION (2008)
- TWEN: This course has a TWEN website, on which additional materials and discussion questions will be posted. Be sure that you are registered for and able to access the TWEN site.
- Office Hours: Tuesday 1:00-2:30 p.m; by appointment  
Room 419 / 556-4361 / [jenny.carroll@uc.edu](mailto:jenny.carroll@uc.edu)
- 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. Handwritten notes may compromise anonymity in exam grading, and therefore will not be accepted. Unexcused absence from class, tardiness or lack of participation may result in grade reduction.
- Grades: Grades will be based on a final examination. Class participation will also raise or lower grades as appropriate.

## **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 supplement to the textbook.

Please note that various assignments will have supplemental reading outside of that contained in the case book. Such reading will be posted on the TWEN website or distributed in class.

### **I. Introduction**

- a. Key Provision of the Bill of Rights, pgs. 17-18
- b. Participants and Stages of the Criminal Justice System, pgs. 1-11
- c. Purpose of the Procedural Rules and Role of Counsel, pgs. 11-16
- d. Application of the Bill of Rights to the States, pgs. 18-24
- e. Retroactivity, pgs. 26-27

## **II. Initiating Prosecution**

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

## **III. Bail and Pretrial Release**

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

## **IV. Discovery**

- a. Purposes of Discovery and Statutory Discovery, pgs. 91-96
- b. Constitutional Discovery, pgs. 97-118
- c. Duty to Preserve Evidence, pgs. 118-122

## **V. Plea Bargaining and Guilty Pleas**

- a. Plea Bargaining, pgs. 123-135
- b. Guilty Pleas, pgs. 135-143, 149

## **VI. Speedy Trial Rights**

- a. Importance of Speedy Trial Rights and Pre-Indictment Delay, pgs. 151-162
- b. Post-Charging Delay and Remedies, pgs. 162-172

## **VII. Right to Counsel**

- a. Introduction, When does Right to Counsel Apply? pgs. 173-180
- b. Standard for Effective Assistance of Counsel, pgs. 180-196
- c. Self-Representation, pgs. 196-204

## **VIII. Right to Trial by Jury**

- a. Right to Jury Trial, pgs. 205-210
- b. Jury Size and Unanimity Requirement, pgs. 210-221
- c. Jury Composition and Selection, pgs. 221-242

## **IX. Pretrial Publicity and the Right to a Fair Trial**

- a. Pretrial Publicity and Remedies, pgs. 242-252
- b. Ethical Limitations on Lawyers' Extrajudicial Comments, pgs. 252-363
- c. Cameras in the Courtroom, pgs. 263-268

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

- a. Right to Confront the Accuser, pgs. 268-279
- b. Privilege Against Self-Incrimination, pgs. 279-282
- c. Proof Beyond a Reasonable Doubt and the Role of the Jury, pgs. 282-285

**XI. Sentencing**

- a. Role of Sentencing and Different Types of Sentences, pgs. 287-293
- b. *Apprendi* and its Progeny, pgs. 293-312
- c. The 8<sup>th</sup> Amendment and Cruel and Unusual Punishments, pgs. 312-328
- d. The Death Penalty, pgs. 328-341
- e. Recent Limitations on the Death Penalty, pgs. 341-362

**XII. Double Jeopardy**

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

**XIII. Habeas Corpus**

- a. Introduction, It's all about timing, pgs. 397-404
- b. Successive Petitions and Exhaustion, pgs. 404-420
- c. Constitutional Claims, pgs. 420-441
- d. Procedural Default and Actual Innocence, pgs. 441-475
- e. Habeas and the War on Terror, pgs. 487-493