

Criminal Procedure II
David A. Lord Spring
2024

I. Class Schedule

This class will meet on Mondays from 6:05 p.m. to 9:00 p.m. We will have two breaks during each class. Please note that there is no class on Monday, January 29, due to an out-of-town teaching commitment on my part. In lieu of class that day, a pass/fail assignment to view criminal court proceedings (discussed later in this syllabus) is required. The activity does not have to be done specifically on that week, but must be completed at some point over the course of the semester. There is also no class on Wednesday, March 6, 2024 due to Spring Break.

II. Learning Outcomes

By the end of the course, students will have acquired the following skill-set:

- (A) A broad understanding of the legal issues and controlling cases that govern the adjudication of criminal cases.
- (B) The basic skill set to understand how to make appropriate arguments for either the prosecution or defense at various proceedings in a criminal case.
- (C) An understanding of the controversies and debates in constitutional law that pertain to the adjudication of criminal cases.
- (D) An ability to apply case law in this field to individual fact patterns and make cogent arguments on contested legal issues.

III. Contact information and availability

My email address is dlord1@gmu.edu. I would welcome you to contact me with any questions or concerns and am happy to schedule a meeting, as needed, throughout the Spring term.

IV. TWEN

I will create a TWEN page for this course where the PowerPoint lectures from class will be available. These will be of substantial use to you in preparing for the exam. I will also post supplemental material for use in the practical exercises throughout the semester.

V. Required Texts and Supplemental Materials

The required text for this class is *American Criminal Procedure: Adjudication – Cases and Commentary, 12th Edition* by Stephen A. Saltzburg and Daniel J. Capra (ISBN-978-1-647408-645-9). Please note that this is a soft-bound, book with an olive-green cover.

I am mindful of the many time constraints facing law students. As a general rule, approximately 60 pages of reading have been assigned per class. Some classes have more, others less. I may cover additional cases and principles that are not in the assigned reading. If you are absent from a class, you may contact me about any extraneous material that may be covered. A PowerPoint set of slides will be available for each lecture and will be posted on TWEN after the relevant class.

VI. Classroom Participation and Attendance

In terms of reading, every student is expected to be thoroughly engaged in class discussions about the cases. However, to reduce anxiety and improve the quality of case presentation, the cases that we plan on discussing each class will be identified in the prior session and each case will be assigned to a particular student (with the exception of our first class session of course). That student will be responsible for summarizing the facts and holding as well as offering their view of the issues. However, all students are expected to engage in conversation about the cases and are responsible for reading the decisions.

You will note that this text in many ways is part case-book and part hornbook. As a result, some of the cases that we will be discussing offer only a cursory summary in the casebook and the student assigned the case may need to access the full text of the decision online.

Please note that it is Mason's policy that if a student is absent for *any* reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session. (AR 4-1.1.) Missing three sessions of this course would result in this provision being triggered. Please also note that while missing less than 3 courses would not result in your being precluded from receiving credit from the course, any absence will factor into class participation.

Class participation will consist of attendance, engagement in class discussion, and preparation for the class activities and case preparation discussed above. If a student is deemed to have exceptional class participation, they will be eligible to have their final grade increased one level (for example, from a B to a B+ or from a B+ to an A-), assuming it does not cause a violation of the university's mandatory curve. Additionally, if a student's performance on one of the pass/fail assignments in the course (court attendance or practical exercise) exceeds expectations, that may be factored into whether they receive such an increase.

VI. The Final Exam and Evaluation

There are three components to the student's final grade:

- A. Class participation (please see Section V, above).
- B. Court attendance: Over the course of the semester, each student is expected to attend proceedings in a criminal court on at least one occasion and to write a one-page paper on what they observed and the extent to which any of the topics we have discussed in class played a role in what was happening that day in Court. I'm happy to help provide assistance in identifying court proceedings that you could attend if you are

uncertain how to go about doing this. Additionally, if you work a full-time job or have other scheduling constraints that make this assignment impractical or would create an undue hardship, I will work with you to find an alternate assignment to stand in place of this. It may involve interviewing criminal practitioners about one of the topics that we discuss this week. However, to be eligible for an alternate assignment, please contact me within the first month of class to let me know that you need this kind of accommodation. This will be a pass/fail assignment but is factored into your class participation. Specifically, failure to complete the assignment will result in a one step decrease in grade (i.e., from an A to an A-; from an A- to a B+ and so forth).

- C. The final exam will take place on April 24, 2024 at 6:00 p.m. and students will have three hours to complete it. The exam will be open book. Half will consist of multiple choice and true/false questions. The additional portion will consist of an essay in which you are provided a fact pattern and asked to assess the constitutional and legal issues in it.

VII. Detailed Class Schedule

Class 1, January 22

Topic: Introduction – The screening and charging process/prosecutorial discretion, grand juries

Reading: Saltzburg and Capra, pp. 982-1043 (61 pgs.)

Class 2, January 29

No in-person class – court watching exercise stands in as substitute for this session.

Class 3, February 5

Topic: Bail and pretrial detention

Reading: Saltzburg and Capra, pp. 1057-1101 (44 pgs.)

Class 4, February 12

Topic: Discovery and Brady

Reading: Saltzburg and Capra, pp. 1101-1164 (63 pgs.)

Class 5, February 19

Topic: Guilty Pleas and Plea Bargaining

Reading: Saltzburg and Capra, pp. 1165-1212 (47 pgs.)

Class 6, February 26

Topic: Pretrial Motions, including speedy trial, joinder/severance, and burden shifting/proof issues

Reading: Saltzburg and Capra, pp. 1213-1298; exclude 1237-1244; 1269-1287 (60 total pages)

No Class March 4 – Spring Recess

Class 7, March 11

Topic: Jury trials

Reading: Saltzburg and Capra, pp. 1299-1366; exclude 1332-1340

Class 8, March 18

Topic: Sentencing

Reading: Saltzburg and Capra, pp. 1547-1580; 1626-1640 (47 pgs.)

Address guidelines in lecture

Class 9, March 25

Topic: Double Jeopardy

Reading: Saltzburg and Capra, pp. 1641-1731 (89 pgs.); can exclude dissents/concurrences) and 1697-1701; 1720-1724 (about 74

Class 10, April 1

Topic: Presence, competence and the right to counsel

Reading: Saltzburg and Capra, pp. 1416-1485, except for pages 1454-1469, which need not be read (54 pages)

Class 11, April 8

Topic: Self Representation, post-trial motions, and direct attack/appeal

Reading: Saltzburg and Capra, pp. 1526-1547; 1737-1775 (59 pgs.)

Class 12, April 15

Topic: Habeas proceedings

Reading: Saltzburg and Capra, pp. 1775-1820, excluding pages 1808-1814 which need not be read (39 pgs.)

Class 13, April 22

Topic: Review