

ADJUDICATORY CRIMINAL PROCEDURE

Anderson

Spring 2007

Text: Kamiser, FaFave, Israel & King, Advanced Criminal Procedure (11th Edition 2005) plus handouts: Federal Rules of Criminal Procedure, etc.

Course Goals and Coverage

This course is designed to provide a theoretical and practical understanding of the criminal process *after* arrest. The course will not cover in a significant way the Fourth Amendment (searches and seizures), Fifth Amendment (interrogations), or Sixth Amendment (right to counsel). These subjects are covered in Investigatory Criminal Procedure. It is not expected that students will have taken Investigatory Criminal Procedure.

Assignments: The standing assignment is to remain approximately 25 pages ahead of where the previous class ended, even though we sometimes will not cover that much material (average coverage will be 20 pages per day, based on total pages assigned and the number of spring classes). It is best to take time to read the assignments on a particular subject matter as a block. Part I of the sequence of readings is set out below. In addition, you are to study all relevant Federal Rules of Criminal Procedure (handout). Students are expected to be prepared for each class. Case book (ACP) readings will be supplemented during the course, including materials not referred to in the reading assignments. Some materials will be placed on reserve in the Law Library. Recent newspaper articles may provide a basis for class discussion. You are encouraged to clip or copy relevant newspaper or magazine articles and bring them to class for possible use in class.

Grades: Your grade will be based on a three- hour final examination to be held on the scheduled examination date. Half of this examination will consist of objective questions (true-false and multiple choice); the other half will contain some limited-response questions (example: "What is an *Alford* plea?"), one or more policy-based questions, and one or more traditional fact-based questions. You will be responsible for all material covered in the readings or discussed in class, including any supplemental reading materials handed out in class or placed on reserve.

You should also be aware that individual grades may be adjusted upward to take into account good (+ 0.1) or excellent (+0.2) class performance and regular attendance. . In extraordinary circumstances, a student's grade may be lowered for persistent lack of class preparation, as defined by Professor Anderson; and a student's grade may be lowered to reflect excessive absenteeism. A seating chart will be used to keep track of attendance.

Adjudicatory Criminal Procedure - Assignments, Part I

<u>Chapter</u>	<u>Page Assignments</u>
I. An Overview of the Criminal Justice Process	1-26
IV. The Right to Counsel, By Far the Most Pervasive Right of the Accused; Equality and the Adversary System	77-80
A. The Right to Counsel in Criminal Proceedings	80-97
B. The Griffin-Douglas “Equality” Principle	97-109
C. Withdrawal of Appointed Counsel on Appeal, etc.	109-114
D. The Right to Appointed Counsel in Proceedings Other than Criminal Prosecutions	114-118
V. The Role of Counsel (read the first three sections, not to be discussed in class or covered on the exam)	119-152
A. The Right to “Effective” Assistance of Counsel	
1. Basic Features of the Right - Strickland	153-170
2. Application of the Strickland Standard	170-183
3. Strickland Exceptions	183-190
4. Conflicts of Interest	191-216
XIII. The Commencement of Formal Proceedings	
A. The Right to Bail; Pretrial Release Procedures	945-959
1. The Tennessee Bail Reform Act (handout of selected sections), to be discussed in place of the Federal Bail Reform Act)	
B. Preventive Detention (part of Federal Bail Reform Act, referred to as Supp., App. B, on p. 959, to be distributed)	959-974

XIV.	The Decision Whether to Prosecute	
A.	The Office of Prosecutor and the Nature of the Decision Whether to Prosecute	975-979
1.	Diversion	979
2.	Charging: selection of the charge	980-981
B.	Some Views on Discretion in the Criminal Process and the Prosecutor's Discretion in Particular	981-992
C.	Challenging the Prosecutor's Discretion	
1.	The Decision Not to Prosecute	992-998
2..	The Decision to Prosecute	998-1015
D.	The Diversion Decision	1015-1018
E.	Selection of the Charge	1019-1026
XV.	The Preliminary Hearing	
A.	The Functions of the Preliminary Hearing	1027-1034
B.	The Defendant's Right to a Preliminary hearing	1034-1039
C.	The Bindover Determination	1040-1047
D.	Preliminary Hearing Procedures	1047-1059
XVI.	Grand Jury Review	
A.	The Role of Grand Jury Review	1060-1067
B.	Challenges to Grand Jury Composition	1067-1077
C.	Challenges to the Evidence before the Grand Jury	1077-1085
D.	Misconduct Challenges	1085-1106