

## **EAP Criminal (aka “Bail to Jail”)**

**Thursdays 5:25 p.m. – 7:10 p.m.**

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Bail to Jail is a 2 credit course designed to simulate practice using criminal cases. Students will be expected to complete two writing assignments and two oral exercises. The focus of the class is substantive and practical criminal law and procedure. The class will also incorporate related issues, such as professional responsibility and ethics, client and witness contact and control, and issues collateral to criminal cases.

### **Assignments**

Any written assignments must be filed with the Court (aka Elizabeth Kruska) on paper in hand. Any extensions will require you to file a Motion for Enlargement of Time prior to the assignment due date and will require a factual proffer about why you require more time.

I expect that written assignments will be done well and contain citations where appropriate. Written assignments should be formatted to be read easily and should be done in a professional font. Court filings must have appropriate captions. Written assignments will be graded on content, thoughtfulness, use of law and facts, and obvious effort. Please make every effort to cite and use current (not overruled) law, where applicable.

### **Oral Exercises**

There will be 2 in-class oral exercises and one out-of-class exercise. Oral exercises will be graded on effort, organization, and participation. I will know if you are unprepared. Our class is a safe place where it is okay to make mistakes. I would rather you try something and make a mistake here than make a mistake in practice that is costly to your client.

### **Office Hours**

I do not plan to hold office hours. I am generally very accessible by email. Please use [ekruska@gmail.com](mailto:ekruska@gmail.com) to reach me. I will try to respond to emails on the same day or within a couple days. If it becomes clear that students need to meet with me outside of class, we can arrange mutually convenient times to meet. I have a VLS email account, but I do not check it as regularly as my gmail account. Please use the gmail account to reach me.

### **TWEN**

We have a TWEN site! I like TWEN so I'll try to use it as much as possible. There will likely be times when it makes sense for me to provide you with statutes, rules, caselaw and other fun things. I'll put almost everything on TWEN.

### **Grading**

This is an interactive course. Your grades will be based on your participation and preparedness in class, as well as written assignments and oral exercises. I have tried to spread out the different written assignments and oral exercises.

The written assignments will be:  
A trial notebook (20%)  
A 5 page sentencing memorandum (20%)

The oral exercises will be:  
An arraignment and bail hearing (15%)  
A final lightning-round exercise (15%)  
A recorded client/victim interview (15%)

The remaining 15% of your grade will be based on your in-class participation. That seems like a lot, but this is a very interactive class.

### **References, Texts, etc.**

Like the other sections in the Experiential Advocacy Program, there is no textbook for the course. However, there are legal references you should check and use. We will very frequently discuss ethical issues, so you will want to have a copy of the Model Rules of Professional Conduct. (You may already have this if you have taken Legal Profession or other xAd sections.) You may also find it helpful to get a hornbook or other treatise on constitutional criminal procedure.

*We will assume that our cases take place in Vermont, and that Vermont laws apply.* You will need to be able to access the Vermont Rules of Criminal Procedure and Vermont statutes. You can use the books in the library or you can look up the information online in Lexis or Westlaw.

You are more than welcome to read relevant caselaw from the books in the library, or you may look them up online.

### **Class Outlines**

I will try to start every class with a more detailed outline of what we should accomplish each time. That will keep us on track.

### **Ethics Discussions**

I will provide you with several different ethics fact patterns. We will discuss one or two of these during every class. We may do them in any order, even though they are numbered. I may also bring new ethics fact patterns at any given time. There is no shortage of these.

This is not meant to be a substitute for your ethics class. It is designed to help think about ethical, professional, and sometimes moral issues that occur daily in real life criminal practice.

### **Serial**

Since this is a class about how to do criminal cases, I want us to think about a real life case. Each week we will listen to 1 episode of Serial (season 1 – the one about Adnan Syed). We'll spend 10-15 minutes each class talking about the episode and how elements of the episodes fit in with criminal cases. The podcast is organized differently than the class (for example, the bail episode is around episode 10 or so), but it is a good real-life example of how a criminal case is put together.

There are also related podcasts, websites, blogs, and documents. Where applicable I'll direct you to those resources.

### **Learning Outcomes and Related Competencies**

Since this is a hands-on, simulation-based class, our focus is on building skills that will help as you go forward in your legal careers.

#### **Trial Notebook**

You will show how you would prepare for a trial, by synthesizing your case facts, applicable law, and other issues. This requires critical thinking, planning ahead, and anticipating issues in your case.

#### **Sentencing Memorandum**

You will show your power of persuasion in a clear written document. This requires using the facts of your case, anticipating arguments, gathering information, and the use of applicable law.

#### **Arraignment and Bail Hearing**

You will show your oral advocacy skills here. This requires logically structuring an argument so that it is persuasive. You will show your ability to use the applicable law and case facts, and to explain them clearly.

#### **Witness Interview**

You will show your ability to identify the goals of the person you interview, while counseling (if appropriate), and strategizing, as necessary. It is also expected that you will show your professionalism, courtesy, and appropriate boundaries in your role as a lawyer.

#### **Lightning Round**

You will have fun. More importantly, though, you will show your ability to argue persuasively based on facts you have only for a short period of time. You will show your ability to make decisions and how to back up your decisions. Because this will be an argument between two sides, you will demonstrate how you can disagree while being respectful and maintaining professional demeanor.

Here we go!

### **Class 1 – August 31** *Where It All Begins: A Criminal Case From Start To Finish*

- We will go through a criminal case from the first germ of a bad idea through sentencing
- We will discuss Vermont procedure and where applicable, differences in New Hampshire and/or federal procedure
- → For next time: Research Vermont's bail statutes and arraignment rules

**Class 2 – September 7**      *Where It All Begins, Part II, and Intro to Bail*

- Finish any remaining discussion from Class 1
- Ethical issues
- Bail! What's bail? What isn't bail? History of bail. All things bail.

**Class 3 – September 14**      *You Get a Case!*

- Class will be divided into prosecutors and defense lawyers and the first cases will be introduced
- Issue spotting & strategy
- What do we want to know?
- Bail! We'll start to create an outline of what a bail hearing would look like using your first case so you'll be ready for your next case

**Class 4 – September 21** *Arraignment and Bail (court room, if possible)*

- Prosecutors and defenders will have 20-30 minutes to prepare their bail arguments
- Bail arguments, emergency-style
- NB: You will receive information about these cases via TWEN no later than 2 days prior to this class

**Class 5 – September 28**      *Client/Victim/Witness meetings*

- How do you interview someone? How do you get the information you need?
- Practice interviewing
- We'll discuss the recorded interview assignment, which will actually happen closer to Halloween

**Class 6 – October 5**      *So, How Do We Actually Do This?*

- Starting a trial notebook
- Developing a theory of your case
- What do we need to prove and how are we going to get there?
- ASSIGNMENT – Make a trial notebook! This will be on the case for which you did the bail argument. Details to follow. Due October 26 at the start of class  
→For next time: look at the Vermont model jury instructions online

**Class 7 - October 12** *Charging! And Jury Instructions*

- We're going to put on our prosecutor hats and charge some cases
- Information/affidavit vs. grand jury practice
- Planning jury instructions  
→For next time: review discovery and motion rules

**Class 8 – October 19** *Discovery & Motion Practice*

- What discovery is and parties' obligations/limitations
- Experts!
- Motions – what are you filing and why?
- How are you going to try to shape your case?

- →For next time: review plea colloquy and sentencing rules/statutes

### **Class 9 – October 26 Trial Notebook Assignment Due Today**

#### *Pleas and sentencing*

- Class discussion of pleas and sentencing
- Plea negotiations – You'll get to try negotiating a plea in one of your cases
- → ASSIGNMENT: DUE, 11/16 in class: Your Sentencing Memoranda! This should be at least 5 pages long. I will not read more than 10 pages.

Assignment: you must take and send to me a photo of a) yourself in your Halloween costume; b) an adorable child in a Halloween costume; c) a giant stash of candy; or d) anything else evocative of Halloween (bats, pumpkins, actual witches, etc.) This is due by November 1.

### **Class 10 – November 2 NO CLASS**

- I will be out of state this day so we will not have class together. Use this time to conduct your recorded interviews. I will provide specific details on how this will work. The assignment is due electronically to me no later than November 17, 2017 at 5:00 p.m.

### **Class 11 - November 9**

#### *Your Second Clients*

- Remember those folks you met during Class 4 for arraignment?
- Issue spotting, strategizing
- Revisiting sentencing & discussion of sentencing memos

### **Class 12 – November 16 *I Went to Law School to Become a Lawyer, Not a***

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- Addiction, mental illness, homelessness, poverty, juveniles, special courts
  - Collateral issues in criminal cases (firearms, non-citizens)
  - Other special things that happen in criminal court and adjacent to criminal court, like probation, parole, post-conviction/habeas actions, extradition, registries

### **November 23 – THANKSGIVING!**

- Sticking around? Head on over to Woodstock and do the annual Turkey Trot 5k!
- Not sticking around? Travel safely!
- Go Lions!

### **Class 13 – November 30 *Lightning Round***

- You'll find out when you arrive!
- There will probably be cookies