**Bail To Jail Fall 2020: The All-Remote Edition**

**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. Because the whole Fall 2020 semester will be taught remotely, this class will also include a written final project.

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 filed with the Court (aka Elizabeth Kruska) electronically. Use [ekruska@gmail.com](mailto:ekruska@gmail.com) to turn in all assignments. 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 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.

\***THIS CLASS TAKES PLACE IN VERMONT. CITE VERMONT LAW WHERE APPLICABLE.\***

**Oral Exercises**

There will be 2 oral exercises; 1 will be done in class and 1 will be done outside of class and handed in as an assignment. 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 – that is generally the fastest way to reach me. I will try to respond to emails on the same day or within a couple days. If you want to schedule an out-of-class session or meeting, please contact me and we can find a mutually-convenient time.

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 where I put a lot of our information and class materials. There will likely be times when it makes sense for me to provide you with statutes, rules, caselaw and other things. I’ll put almost everything on TWEN. I may also post and share information in other ways. If I do that I will let you know how and where I have posted information.

**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: The oral exercises will be:

A trial notebook/plan (15%) An arraignment and bail hearing (15%)

A 5 page sentencing memorandum (15%) A recorded client/victim interview (15%)

Final project (20%)

The remaining 20% of your grade will be based on your in-class participation. That may seem like a lot, but this is meant to be a very interactive class.

**References, Texts, etc.**

Like the other sections in the 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.) You may also find it helpful to get a hornbook or other treatise on constitutional criminal procedure.

Course materials may include anything that helps explain or illustrate principles of law. Materials may include news articles, various media sites, cartoons (I’m not kidding), podcasts, songs, or anything else I encounter that furthers our discussion.

***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, Vermont statutes, and Vermont caselaw. You have Lexis and Westlaw access; use it.

**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 try to 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.

You may already be familiar with this case and with the podcast. We will be listening critically and discussing certain aspects of the story for how it fits with our class. There are also related podcasts, websites, blogs, and documents. Where applicable I’ll direct you to those resources.

**In-Class Participation and Conduct**

Lawyers argue. One thing we will work on is *how* to argue. Our legal system is necessarily created to be adverse. We can, should, and will take varying positions on certain issues. While our discussions may become spirited, they must always remain respectful and focused on the issue. I do not permit *ad hominem* or personal attacks. Our class is meant to be a venue where you can try making an argument; some will work, some won’t.

I will also often solicit volunteers for in-class activities. Sometimes I will draw names out of a hat or other suitable device. I want to ensure everyone participates and has the opportunity to speak or try an exercise.

We will be together remotely this semester via Teams. Make sure you are in a location where you have good connectivity. I prefer to see everyone, so it is my preference that you have your camera on during class. Please also do what you can to reduce noise. Please keep distractions to a minimum. Treat our course just like you would any on-campus course.

**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. The focus is less on having the “right” answer and more on your process and analysis.

Trial Notebook/Plan

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 persuasive abilities in a clear written document. This requires showing how you can take a clear position, and using the facts of your case, anticipate arguments, gather information, and use applicable law.

Bail Hearing

You will show your oral advocacy skills. 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. You will also show your ability to answer the court’s questions, and, if necessary, how to respond to an argument that is contrary to yours.

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.

Final Project

This is a written exercise designed to incorporate many topics and points from our semester together. This will require attention to detail. While there may be more than one “right” answer, it will be important that you are able to support any position you take and any argument you make.

Here we go!

**8/27/2020** *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 other state and/or federal procedure
* → For next time: Research Vermont’s bail statutes and arraignment rules

**9/3/2020**  *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.
* We’ll discuss the recorded interview assignment
* → For next time: Review interview information; will be posted on TWEN

**9/10/2020** *Client/Victim/Witness meetings*

* How do you interview someone? How do you get the information you need?
* Practice interviewing: in-class interview simulations
* ASSIGNMENT: DUE SEPTEMBER 18 BY 5:00 P.M.: your recorded client interview

**9/17/2020** *You Get a Case!*

* Our 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

**9/24/2020** *Bail Hearings*

* Bail arguments
* You will receive information about these cases via TWEN no later than 2 days prior to this class

**10/1/2020** *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! Instructions will be posted on   
  TWEN. Due electronically October 16 at 5:00 p.m.

→For next time: look at the Vermont model jury instructions online

**10/8/2020**  *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

**10/15/2020** *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

**10/22/2020** *Pleas and sentencing*

* Class discussion of pleas and sentencing
* Plea negotiations – You’ll get to try negotiating a plea in a case
* → ASSIGNMENT: DUE, 11/13: Your Sentencing Memoranda! This should be at least 5 pages long. I will not read more than 10 pages.

**10/30/2020** **IT’S HALLOWEEN!**

* Sugar-fueled lecture/discussion on 4th, 5th, and 6th Amendment
* EXTRA CREDIT Assignment: you must take and send to me a photo of anything having to do with Halloween. This is due by November 1 at 11:00 a.m.

**11/5/2020**  *Continued Work On Our Existing Cases*

* Remember the defendants involved in the bail hearings from back in September? We’ll revisit their cases
* Issue spotting, strategizing
* Revisiting sentencing & discussion of sentencing memos

**11/12/2020** *I Went to Law School to Become a Lawyer, Not a \_\_\_\_\_\_\_\_\_\_*

* 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

**11/19/2020** –*Clean Up*

* What did we not cover this semester? What would you like to know? What do we have outstanding that we’d like to review?
* ASSIGNMENT – I will give you an assignment during this class that will take you 20 minutes outside of class. You will find out what it is on 11/19. It is for discussion in our last class and it only works if you do the assignment.

**11/26/2020 - THANKSGIVING!**

* Staying home? Have a great time and find a fun local activity!
* Not staying home? Travel safely!
* Go Lions! (if there’s football… who knows?)

**12/3/2020** *Wrap-Up In-Class Discussion*

* Discuss the assignment from 11/19/2020
* Finish our discussion on *Serial* (if we haven’t already)
* As a group we will review a couple fact patterns and have an in-class discussion incorporating everything learned this semester

FINAL PROJECT – The final project will be posted on TWEN on December 4, 2020 by 5:00 p.m.

Due electronically December 11, 2020 at 5:00 p.m.