

Bail To Jail Fall 2021
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. I anticipate this class will be taught in person all semester (with one exception). If that is the case, our final will be an in-person oral exercise during the last class. If we have to go back to remote classes, we will still have a fun oral exercise as our last class, but the “final” will be a written take-home event.

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 turned in on or before the due date on paper. If the class ends up being remote written assignments must be turned in electronically. 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. Motions for Enlargement of Time must be filed electronically to ekruska@gmail.com.

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.

You will have one out-of-class oral exercise that must be turned in electronically.

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. As noted above, I anticipate our “final” will be an additional in-class oral exercise on the last day of class if we are together in person.

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 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, I am more than happy to do that – just contact me and we will find a mutually-convenient time and location 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 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.

Teams

I'll try to cross-post information in both TWEN and Teams, as it appears Teams gets used for this pretty effectively.

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/plan (15%)

A 5 page sentencing memorandum (15%)

The oral exercises will be:

An arraignment and bail hearing (15%)

A recorded client/victim interview (15%)

Either Written or Oral (depending on the virus) - 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 GPP, 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 but that is not necessary.

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. If you find something that fits, send it my way!

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. I generally also try to send an email to the class early in the week with our plan and what we hope to accomplish in that week's class.

Ethics & Professional 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. There is significant value in attempting to make an argument and experiencing what it feels like when an argument does not work.

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 in person this semester. We will all follow whatever safety requirements VLS has, and we'll all continue to be flexible, as requirements may change.

There will be one time we will have a remote class, which we will do via Teams. If there are other times that we are required to go remote we will use Teams. If we are remote, 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 online classes 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

In oral form, it will show your ability to formulate arguments quickly, and your ability to respond to others’ arguments logically and professionally.

In written form (if this is necessary), it will show your ability to spot issues, find appropriate statutes, and think critically about legal decisions that need to be made.

Extra Credit

From time to time I offer a spur of the moment extra credit assignment. These are rarely long or onerous, and are usually fun. Take advantage if you’d like!

Here we go!

Assignment #1: Prior to First Class

First assignment for Bail to Jail: Listen to Episode 1 of Serial (the first season). Available on all podcast platforms and here: <https://serialpodcast.org/season-one>. You may have listened to this before. Whether this is your first time hearing it, or if you have heard it before, start thinking about this case as if you were a lawyer working on either the prosecution or defense side. What would you need to know? What are the next steps you would take? How do we get there?

Class 1 – September 2 *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 generally how criminal procedure works in adjudication of a criminal case
- → For next time: Research Vermont's bail statutes and arraignment rules

Class 2 – September 9 *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 16 *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 23 *Arraignment and Bail (Location: TBA, possibly court room)*

- Bail arguments, emergency-style
- NB: You will receive information about these cases via TWEN and/or Teams no later than 2 days prior to this class

Class 5 – September 30 *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 7 *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 21** at the start of class
→For next time: look at the Vermont model jury instructions online

Class 7 - October 14 *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 21 *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 class (November 4): review plea colloquy and sentencing rules/statutes
- Discussion of the Recorded Interview Assignment
- **Trial Notebook Assignment Due Today**

Class 9 – October 28

- I will be traveling 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 no later than **November 10, 2021 at 5:00 p.m.**

Extra Credit Assignment Details to follow! (This is an easy assignment if you wish to do it)

Class 10 – November 4 VIRTUAL CLASS – WILL BE HELD VIA TEAMS

- I will be in sunny San Diego today, so we'll be together remotely via Teams or other appropriate platform (likely Teams)

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, **December 2** in class: Your Sentencing Memoranda! This should be at least 5 pages long. I will not read more than 10 pages.

November 10 – Recorded Interview Assignment Due by 5:00 p.m.

Class 11 - November 11 *More Work With Clients and Cases*

- Issue spotting, strategizing
- Revisiting sentencing & discussion of sentencing memos

Class 12 – November 18 *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
 - Other special things that happen in criminal court and adjacent to criminal court, like probation, parole, post-conviction/habeas actions, extradition, registries

November 25 – THANKSGIVING!

- There is a Thanksgiving assignment that will take approximately 18 minutes of your time, but you can do it any time over the Thanksgiving week, as we'll discuss it in the next class
- Eat pie! Go Lions!

Class 13 – December 2 *Discussion of the Thanksgiving Assignment and Wrap-Up*

- Sometimes we run out of time in our earlier classes and need to use this class to wrap up things we didn't get to cover
- Likely will finish our discussion of *Serial*
- **Sentencing Memoranda Assignment Due Today**

Class 14 – December 9 *Lightning Round*

- You'll find out when you arrive!
- Historically there have been cookies. Probably this time there will be cookies.
- NOTE: If we are in a virtual setting this will be a modified class discussion, and the final written assignment will be discussed this day, as well. If we are in person, this will be your final.