



Syllabus

Fall ~~2006~~ 2007

August 22, CLASS 1 — (TUES) 8/21

INTRO: SYLLABUS, BOOKS, RESOURCES, EXPECTATIONS FOR CLASS

Sources of rules and procedures
local rules, statute, official rules

Themes: controlled discretion, efficiency in administration of justice,
fairness, appearance of legitimacy and then —

ASSIGNMENT: none (but read and review handouts throughout the Term)

Handout 1:

Subin, *The Practice of Federal Criminal Law*, Chapter 1
“Formal Stages of Federal Criminal Process” (p2-8)

Handout 2:

Chapter 3 from Subin’s text
“Proof in the Criminal Process” (pp 26-43)

Consider –

In our criminal justice system, the Government retains broad discretion as to whom to prosecute. So long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests in his discretion.

Wayte v. United States, 470 U.S. 598 (1985) (vocal draft resister;
selective prosecution)

A prosecutor's power to damage or destroy anyone he chooses to indict is virtually limitless.

Irving Younger, *Memoir of a Prosecutor*, Commentary, Oct 1976 66-70.

(Federal prosecutor under Bobby Kennedy; federal district court judge; famous professor and evidence lecturer -- "10 Commandments of Cross" etc)

AUG 24, CLASS 2 PROSECUTORIAL DISCRETION, cont. (Thurs)

ASSIGNMENT: *United States v. Jenkins*, 2007 WL 2034037 (7/17/07)

Optional

92 Geo. L.J. 1135, Pretextual Prosecution (approx 20 pages), the “Al Capone” play

United States v. Redondo-Lemos, 27 F.3d 439 (9th Cir. 1994) regarding the common practice of charging the husband in a drug case but letting the wife go...

United States v. Jones, 159 F.3d 969 (6th Cir. 1998) race-based decision to prosecute some defendants under harsher federal sentencing scheme...

In class I’ll discuss the classic Supreme Court cases: *Yick Wo v. Hopkins*, *Wayte v. United States*, *United States v. Armstrong*...

After this, we begin a survey of the rules...

AUGUST 28 CLASS 3 JUDICIAL Screening Devices and Binding Over for Trial

Initial appearance, Preliminary examination, and Arraignment

**Assigned Reading: Federal Rules 3, 4, 5, 5.1, 10 and 18 USC § 3060
State Rules CrR 2.1, 2.2, 3.2A, 3.2B, & 4.1
Chapter 3.8 to 3.57, Chapter 6**

Everyone: compare federal and state rules re: Arraignment

AUGUST 30 GRAND JURY, Pt. 1

**Assigned Reading: Federal Rule 6, Chapter 8 of our TEXT
A little history...**

Optional Reading: Handouts re: grand jury

SEPTEMBER 4 GRAND JURY, Pt. 2

Assigned Reading: Federal Rule 6, Chapter 9

Optional Reading: Checklist article handout

SEPTEMBER 6 DOUBLE JEOPARDY Part I

SEPTEMBER 11 DOUBLE JEOPARDY Part II

SEPTEMBER 13 BAIL

Assigned Reading: Chapter 4

Download: Federal Bail Act (automatic download from class web site)

Download: State Bail Rules (automatic download from [class web site](#))

SEPTEMBER 18 THEORY OF PRETRIAL PRACTICE

The prosecution v. defense approach to motion practice. Likely to be a shortened class, *but be sure to get the handout for Thursday's class.*

NEXT TUESDAY has lots of reading

SEPTEMBER 20 (I may be in Boise federal courtroom till late afternoon)

JAIL TOUR: first group

6:30pm to approximately 8:15pm

We meet at the jail's public waiting area (which is behind the Public Safety Building... which is behind the Superior Courthouse). If you are late, they will not allow you to join in, so **be there *before 6:15* to be sure of a chance to take advantage of this opportunity. If you cannot stay past approximately 8pm it may not be possible to take the tour. Some have only lasted 60 minutes, some longer and it's rather hard to predict what time the jail can give us. If at all possible, make arrangements so that you are able to attend as late as 8:15.**

SEPTEMBER 25 MOTIONS

**Assigned Reading: Chapter 11 (all of it)
Handout with problems
Joinder/Severance Chapter 9:90 through 9:110
Speedy Trial Chapter 9:111 through 9:123
Optional Reading: Download Spokane Local Rules
([automatic download](#))**

SEPTEMBER 27 DISCOVERY, Pt I

**Assigned Reading: Rules 12, 15, 16 + Chapter 10:1 through 10:94
Optional Reading: *United States v. Chon*, 210 F.3d 990 (9th 2000), in particular headnotes 6 and 7.**

OCTOBER 2 JAIL TOUR: 2nd group

6:30pm to approximately 8:15pm

We meet at the jail’s public waiting area (which is behind the Public Safety Building... which is behind the Superior Courthouse). If you are late, they will not allow you to join in, so **be there before 6:15 to be sure of a chance to take advantage of this opportunity. If you cannot stay past approximately 8pm it may not be possible to take the tour. Some have only lasted 60 minutes, some longer and it’s rather hard to predict what time the jail can give us. If at all possible, make arrangements so that you are able to attend as late as 8:15.**

OCTOBER 4 DISCOVERY, Pt II

(so called “constitutional” discovery, i.e., *Brady*, *Henthorn*, etc.)

Assigned Reading: Chapter 10:95 through 10:130

Optional Reading: *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1992), reh’g denied, 405 U.S. 935 (1992) (requiring review of agents’ personnel files for exculpatory information)

OCTOBER 9 PLEADING GUILTY, Part I Rule 11 and procedures

Assigned Reading: Chapter 12

Optional Reading: Chapter 13 (assigned for next week)

OCTOBER 11 PLEADING GUILTY Part II

Withdrawals, remedies, effects of plea

Assigned Reading: Chapter 13

Optional Reading: handouts re: Rule 11 fiascos

OCTOBER 16 NO CLASS

OCTOBER 18 Catch up time, or courtroom topics

The “quiz” will be passed out today

Due next class (Oct 11)

We’ll review the answers in class at the beginning of next class.

OCTOBER 23 Quiz review + Survey of trial rules

Assigned Reading: Chapter 14:1 through 14:23,
Chapter 14:90 through 14:159

OCTOBER 24 Impartial Trial

Judge & jury
Jury selection (Rule 23, 24)

Assigned Reading: handout re: voir dire, Baston

Optional Reading: Part II.A-C from Judges Recurrent Problems Manual
([download entire manual](#)) ... Sorry, this is huge...

And there's [a different judge's manual](#), much shorter — and nearly as good — re:
handling federal jury trials ...

OCTOBER 30 Misconduct (opening/closing and courtroom in general)

Assigned Reading:

Optional Reading: Part VI.A. from Judges Manual ([entire huge manual](#))
Handouts: bar discipline for naughty lawyers

NOVEMBER 1 The Defense Ducks

Motion for acquittal (Rule 29) (Part 1)
Mistrial (Rule 26.3)

Assigned Reading: Chapter 14:159 through 14:202

Optional Reading: Part VII.D. from Judges Manual ([entire huge manual](#))

NOVEMBER 6 Instructions; Closing

Assigned Reading: Rule 30,
Chapter 14:45 to 14:78,
plus handout of sample instructions
Handout: *United States v. Neder*
Handout: *Apprendi v. New Jersey*
Chapman & Cotton
Rule 52 preview...

Optional reading: Part VI.B. from Judges Manual (CD handout)

NOVEMBER 8 Post trial motions (new trial, arresting judgment, etc)

Assigned Reading: Rule 33 Rule 34 and revisit Rule 29

NOVEMBER 13 Federal sentencing (checkmate!)

Assigned Reading: Chapter 15 (long!!)
Class Time: VIDEO (staying 10 minutes extra)

NOVEMBER 15 More on Federal & State SENTENCING

Assigned Reading:
Optional reading: to be determined...

NOVEMBER 20 Appeals + Habeas

Assigned reading: Rule 52 (again)
28 U.S.C. Section 2251, 2254, 2255
State PRP (Rules 7.8 and others)

NOVEMBER 22 Thanksgiving Break

Assigned eating: turkey
Optional eating: vegan turkey

**NOVEMBER 27 Last class with new material
(forfeiture, expungement, diversion programs)**

Assigned reading: 21 U.S.C. 981, Supplemental Maritime Rules, Rule 32.2

Optional reading: *United States v. Ursery*, *United States v. Hudson*

NOVEMBER 29 THEMES, things to know...