

CRIMINAL PROCEDURE (Investigatory)

Professor Tracey Maclin, Fall 2024 Office Location: Holland Hall 312L

Class: Tuesdays, Wednesdays & Thursdays 10:45 – 12:00pm. Holland 285C

Office Hours: _____ If those times are inconvenient, please call or email me to make an appointment for an alternative time.

E-mail address: maclin@law.ufl.edu

Office phone: 352 273 0917

The following is a general guide regarding the requirements of the course. For specific questions regarding law school rules, students should consult the University of Florida Student Handbook and Academic Policies. A link to the handbook is here:

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-studenthandbook-and-academic-policies>

Attendance and Preparation

Regular attendance is expected of every student. In other words, unless you have a very good excuse for missing a class, you must attend class every day. Attendance in class is required by both the ABA and the Law School. If you miss more than six classes, your grade for the semester will be adversely affected. If you have a legitimate reason for missing class, you should contact me before or soon after class ends for your absence to be excused.

Preparation of class assignments and informed participation in class discussion is expected of each student.

Students should devote at two hours or more outside of class reading and preparing for each hour of class.

Each student must make sure that his or her name is on the professor's seating chart.

The average reading assignment for each class is approximately 30 - 35 pages a day.

Students must come to class ON TIME.

TURN OFF your cell phone while in class.

Final Grade

The student's attendance, class preparation, and classroom participation will be considered by the professor in determining each student's final grade. This may include either RAISING or LOWERING a student's final grade on account of class attendance, preparation, and participation. **IF YOU ARE CALLED UPON TO DISCUSS THE ASSIGNED MATERIALS, AND YOU ARE NOT PREPARED, YOUR GRADE WILL AUTOMATICALLY BE LOWERED ONE LEVEL. PERIOD.**

If you unprepared for a specific class and do not want to be called on, e-mail me at least one hour *before* class and I will not call on you for that class. DO NOT ABUSE THIS PRIVILEGE.

Grading Evaluation

Students final grade will be based upon a final exam and class participation. This course follows the Levin College of Law's grading policies found here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>. The law school policy on exam delays and accommodations can be found [here](#).

Information on UF Law Grading Policies

The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent	Letter Grade	Point Equivalent
A	4.0	C	2.0
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.0	D	1.0
B-	2.67	D-	0.67
C+	2.33	E	0.0

The law school grading policy is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies#grading-and-examinations>.

Exam

The final examination will be an open book exam that can be taken remotely. The exam **MUST BE TYPED.**

Books

The casebook is King, Kerr & Primus Criminal Procedure: Investigation (16th Edition).

Finally, you should download from the Criminal Procedure Course website “Documents

Section” the following Supplemental Packages: Supplemental Package Parts 1 & 2 - Fourth Amendment Materials; Supplemental Package Part 3 - Writings About the Police; Supplemental Package Part 4 - Miranda Materials.

Extra Source Materials

I have ordered several copies of Joshua Dressler & Alan Michaels, *Understanding Criminal Procedure* (8th ed.) Volume 1 (Investigation). The Dressler & Michael’s book is excellent; it is the book I recommend when students ask for a source book for Criminal Procedure.

Criminal Procedure Stories (Carol Steiker, ed.) is an interesting and informative book, which I recommend. It has several chapters that provide in-depth discussion and analysis of some of the cases and doctrines we will study. For example, Professor Kamisar’s chapter on *Mapp v. Ohio* provides an excellent analysis on the cases leading up to *Mapp*. A copy of this book has been put on reserve in the Law Library.

Finally, the “Bible” for Fourth Amendment topics is Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment* (6th ed. 2021). This is a six volume treatise that has everything you need to know about the Fourth Amendment. LaFare’s treatise is on reserve in the Law Library.

Statement Related to Accommodations for Students with Disabilities

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs. Students with disabilities should follow this procedure as early as possible in the semester, as accommodations are not retroactive. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester.

Questions about exam delays and accommodations can be found here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/formsapplications/exam-delays-accommodations-form>.

Course Description and Objectives

This course will study the United States Supreme Court's rulings on the Fourth Amendment, the Fifth Amendment's Self-Incrimination Clause and the Court's rulings on the scope of the government's authority to interrogate individuals pre-trial under the Sixth Amendment's Assistance of Counsel Clause.

Upon completion of the course, students will be well-versed on the constitutional rights of persons when encountering law enforcement officials and other governmental officials.

Student Course Evaluations

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click here (<https://gatorevals.aa.ufl.edu/students/>) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students here: <https://gatorevals.aa.ufl.edu/public-results/>.

Recordings of Class

Under Florida law, students have the right to make a personal (audio or video) recording of the class for educational purposes. However, students do not have the right to share or publish the recording without the permission of the professor.

If you anticipate missing a class because of a job interview or illness, please contact my faculty assistant, Michele Benedict, benedict@law.ufl.edu, and she will arrange to have the class recorded.

First Week – August 20 - 22 (3 days)

Leonard Levy on the origins of the Fourth Amendment; Justice Stewart's article on Mapp v. Ohio (Supplemental Package)

Mapp v. Ohio p. 206-18

Read Justice Thomas' concurring opinion in Collins v. Virginia (Supplemental Package)

United States v. Leon p. 493-501; Illinois v. Krull p. 500; Arizona v. Evans (### handout)

Hudson v. Michigan p. 487-89; 501-03

Herring v. United States p.504; Davis v. United States p.505-10

Hoffa v. United States p. 511-18

Katz v. U.S. p. 213-19

Second Week – August 27- 29 (3 days)

U.S. v. White p. 515-18

U.S. v. Place p.246; U.S. v. Jacobsen p. 245. I will explain the holdings and reasoning of these two cases considering the truncated description of the cases in the casebook.

Illinois v. Caballes p. 246

Smith v. Maryland p. 250-56

Oliver v. U.S.; U.S. v. Dunn p. 221-27. I will explain the reasoning of *Oliver*.

California v. Ciraolo p. 237

Florida v. Riley p. 239

California v. Greenwood p. 228-32; Bond v. U.S. p. 219

Kyllo v. U.S. p. 240-45

U.S. v. Knotts p. 248; U.S. v. Karo p. 249-50; United States v. Jones p. 271-74; p. 256-57

Grady v. North Carolina (### handout)

Florida v. Jardines p. 276-80

Ex Parte Jackson p.233; p. 254-55 *Content Surveillance of the Internet: accessing of e-mail*

Introduction to "Standing" p. 454; 458-60; United States v. Payner p. 27; p. 459

Rakas v. Illinois (Supp. Pack.); Rawlings v. Kentucky p.460-62

Minnesota v. Carter p.466-69

Byrd v. U.S. p.462-64

Carpenter v. United States (Supp. Pack.) Note that Carpenter is a 27 page opinion. Thus, you will want to put aside sufficient time to read the opinion.

On the scope and impact of Carpenter p. 264-71. Also, you can find Justice Alito's dissent in Carpenter at p. 796-99. Essentially, Justice Alito argued that, as an original matter, the Framers did not intend to apply the Fourth Amendment to compulsory process demanding documents. Moreover, Alito contended that, as matter of modern doctrine, a court order for CSLI satisfies Fourth Amendment standards. You are not required to read Justice Alito's dissent.

Third Week – September 3 - 5 (3 days)

Andresen v. Maryland; Zurcher v. Stanford Daily (### handouts)

Illinois v. Gates p.296-303; Massachusetts v. Upton (### handout)

Florida v. Harris p.303

U.S. v. Grubbs p. 304

Franks v. Delaware p. 499

McCray v. Illinois (### handout) (For McCray, students should look through the articles concerning police lying on pages 62-77 of Supplemental Package, Part 3, "Writings about the Police.")

Maryland v. Pringle p. 306-08

Introduction to Search Warrants p. 309-12

Groh v. Ramirez; Wilson v. Layne (### handouts)

Ybarra v. Illinois p. 315; United States v. Watson p. 367-71

Tennessee v. Garner (Supp. Pack.)

Scott v. Harris p. 421-23 (If you google "Scott v. Harris" and click "video" you will find a video of the chase. I recommend that you watch the video.)

Gerstein v. Pugh p. 370

County of Riverside, Ca. v. McLaughlin p. 371

Powell v. Nevada (### handout)

Fourth Week – September 10 - 12 (3 days)

Chimel v. California p. 333-36

Washington v. Chrisman (### handout)

Kentucky v. King p. 331-33

Vale v. Louisiana (### handout)

Maryland v. Buie (Supp. Pack.)

Payton v. New York p. 323-26

Welsh v. Wisconsin p. 328

Warden v. Hayden p.327-28;

Mincey v. Arizona; Thompson v. Louisiana; Flippo v. West Virginia (### handout)

Segura v. U.S. (### handout)

Illinois v. McArthur p.323

U.S. v. Santana (Supp. Pack.); Lange v. California (### handout)

Steagald v. U.S. p. 326-27

Brigham City, Utah v. Stuart p.329

Read pages 312-15 of the casebook for the “no-knock” cases. Review/skim news articles concerning unannounced entries by the police in Supplement Package Part 1 pages 159-172.

Fifth Week – September 17 - 19 (3 days)

Arizona v. Hicks (Supp. Pack)

Horton v. California p. 319-22

United States v. Chadwick p. 338-41

California v. Carney p. 352-56

California v. Acevedo p. 356-59

Wyoming v. Houghton (### handout)

Collins v. Virginia (### handout)

Arizona v. Gant p. 360-66

Colorado v. Bertine (Supp. Pack.); Florida v. Wells p. 366

Caniglia v. Strom (### handout)

Sixth Week – September 24 - 26 (3 days)

(During our class discussion of Terry v. Ohio, I may refer to some of the materials on pages 1-44 in Supplement Package Part 3, "Writings about the Police." Also, you may consider reading some of the news articles on pages 201-244 of the Supplement Package, Part 1. You are not, however, required to read this material before class.)

Terry v. Ohio p. 388-96

Arizona v. Johnson p. 412; Sibron v. New York p. 415;

Regarding the impact of the Second Amendment on an officer's authority to frisk in states that allow persons to carry concealed weapons outside of the home, see the *en banc* ruling in United States v. Robinson, 846 F.3d 694 (4th Cir. 2017) (### handout)

Minnesota v. Dickerson p.414-16

Florida v. J.L. p. 401; Navarette v. California, p. 406

Note on "Potentially 'Licensed' activity" p. 402

Illinois v. Wardlow p. 396-401; Heien v. North Carolina p. 407-08

Florida v. Royer (Supp. Pack.) (Regarding Royer, you are not required to read the dissenting opinions of Justices Blackmun and Rehnquist. Also, I may reference in our class discussions some of the news articles on the drug courier profile in the Supplement Package on pages 326-354.)

Ethnic Profiling post 9/11: Review U.S. Dept. of Justice Policies on Racial Profiling p. 45-50; Justice Sotomayor's dissent in Utah v. Strieff and Randall Kennedy's article.

Florida v. Bostick p. 281-84

United States v. Drayton p.284-88

California v. Hodari D. p. 289-90

Torres v. Madrid p. 290-95

Brendlin v. California p. 288 & 464-65

United States v. Hensley p. 401; United States v. Sharpe p. 409

Kansas v. Glover p. 403-05

Seventh Week – October 1-3 (3 days)

Hiibel v. Sixth Judicial District Court p. 411

(You can view a video of the arrest of Mr. Hiibel on the following link:
<https://www.youtube.com/watch?v=APynGWWqD8Y>)

Rodriguez v. United States p. 350-51

United States v. Place p. 342-43; p. 410

Michigan v. Long p. 416

Hayes v. Florida (Supp. Pack.)

United States v. Dionisio p. 791-96

Michigan v. Summers (Supp. Pack.)

Bailey v. United States p.317

Muehler v. Mena p. 318

Los Angeles County v. Rettele (## handout)

Pennsylvania v. Mimms (Supp. Pack.)

Maryland v. Wilson (Supp. Pack for the syllabus of Wilson)

Eighth Week – October 8-10 (3 days)

New York v. Class (Supp. Pack.)

United States v. Robinson p. 379-81

Riley v. California p. 381

Atwater v. Lago Vista p. 372-77; Virginia v. Moore p. 377-79

Whren v. United States p. 344-50; Ashcroft v. al-Kidd (## handout)

Knowles v. Iowa (## handout)

Winston v. Lee (Supp. Pack.)

Schmerber v. California p. 384; Missouri v. McNeely p.384

Cupp v. Murphy (### handout)

Maryland v. King (Supp. Pack. Handout)

Wyman v. James (Supp. Pack.)

Administrative search cases, p. 427-36

Michigan Dept. State Police v. Sitz p. 430-33

Indianapolis v. Edmond p. 433

Samson v. California p. 436

City of Los Angeles v. Patel p. 436

Ninth Week – October 15 - 17 (3 days)

New Jersey v. T.L.O. (Supp. Pack.)

Safford Unified Sch. Dist. v. Redding p. 434

Bd. of Ed. Ind. Sch. Dist. Pottawatomie Cty. v. Earls (Supp. Pack.)

United States v. Montoya deHernandez (Supp. Pack.)

Florence v. Bd. of Chosen Freeholders of City of Burlington p. 385

Schneekloth v. Bustamonte p. 441-448; Florida v. Jimeno p. 443

Ohio v. Robinette (Supp. Pack.). While discussing Robinette, I will note news articles on p. 137-48 in Supplement Package Part 2.

In conjunction with our discussion of Robinette, students may want to read the following handouts: Gary Webb, DWB, Esquire Mag. 1999, and Jeffrey Goldberg, The Color of Suspicion, N.Y. Times Mag., June 20, 1999.

Birchfield v. North Dakota p. 383

Mitchell v. Wisconsin p. 384

Illinois v. Rodriguez p. 451

Georgia v. Randolph (will be discussed during our analysis of Fernandez v. California)

Fernandez v. California p.445-57

United States v. Martin Verdugo-Orquidez (Supp. Pack.)

Tenth Week – October 22 -24 (3 days)

Optional Reading: For a short article on the history of the Self Incrimination Clause, read Leonard Levy's chapter. See pages 1-16 in Supp. Pack Part 4.

Introduction to Miranda cases: Read pages 537-48 of casebook & pages 17-37 of the Supplemental Package Part 4 (news articles on confessions). You should watch the video of the PBS Documentary: Frontline: "Norfolk Four," Pardoned 20 years after false confessions.

Crooker v. California; Cicenia v. LaGay; Spano v. New York p. 548-49

Massiah v. United States p.549; Escobedo v. Illinois p. 551-555

Miranda v. Arizona p. 555-74

Oregon v. Elstad (Supp. Pack.)

Colorado v. Connelly p. 703-08 & p. 604; California v. Prysock (Supp. Pack.)

Eleventh Week – October 29-31 (3 days)

Duckworth v. Eagan p. 601-02

Florida v. Powell p. 603

Colorado v. Spring p. 604-06

Beckwith v. United States p. 574

Stansbury v. California p.576

United States v. Mandujano p. 804-06

Oregon v. Mathiason; California v. Beheler p. 575-76

Berkemer v. McCarty p. 574-75; Minnesota v. Murphy p. 575

J.D.B. v. North Carolina p. 576-79

Rhode Island v. Innis p. 584-88

Arizona v. Mauro (Supp. Pack.); Illinois v. Perkins p. 590 Pennsylvania v. Muniz p. 591 & 593-95

Twelfth Week – November 5 - 7 (3 days)

Hiibel v. Sixth Judicial Court p. 592

New York v. Quarles p.595-601, which include the readings on the use of torture in terrorism cases.

North Carolina v. Butler p. 615

Berghuis v. Thompson p. 617-22 & p. 635-37

Salinas v. Texas (handout)

Connecticut v. Barrett p. 616

Moran v. Burbine p. 607-15

Fare v. Michael C. p. 622-23

Michigan v. Mosley p. 641-43

Edwards v. Arizona; Arizona v. Roberson; Minnick v. Mississippi p. 627-29

Thirteenth Week – November 12 - 14 (3 days)

Maryland v. Shatzer p. 629-33

Howes v. Fields p. 579-83

Oregon v. Bradshaw p. 633-35

Davis v. United States p. 624-27

Dickerson v. United States p. 646-59

Chavez v. Martinez p. 659-64

Vega v. Tekoh p. 664

United States v. Patane p. 720-24

Missouri v. Seibert p. 724-31

McNeil v. Wisconsin p. 686

For those interested in the subject of false confessions, there is a new and detailed discussion on false confessions pages 710-18 of the casebook. ***This is not required reading.***

If we had an extra week (as has been the case when I taught the course in prior years), we would read the cases below. I am happy to discuss any of these cases with you.

Fourteenth Week –

Miller v. Fenton and the “voluntariness” test p. 693-701

Arizona v. Fulminate p. 701-03

Brewer v. Williams p. 665-72 (This is the famous [or infamous] “Christian burial speech” case.)

Patterson v. Illinois p. 676-80

United States v. Henry p. 672

Maine v. Moulton (Supp Pack.)

Kuhlmann v. Wilson p. 672-75

Michigan v. Jackson (Supp. Pack.)

Montejo v. Louisiana p. 681-86

For those interested in the subject of false confessions, there is a new and detailed discussion on false confessions pages 710-18 of the casebook. ***This is not required reading.***