

CRIMINAL PROCEDURE (Investigatory)

Professor Tracey Maclin, Fall 2022

Office Location: Holland Hall 312L

Class: Tuesdays & Thursdays 1:15 – 2:40pm.

Office Hours: Tuesday and Thursday after class. If those times are inconvenient, please call or e-mail 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-student-handbook-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 should 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 Kamisar, LaFave, Israel's, King, Kerr & Primus Basic Criminal Procedure (15th Edition). You should also purchase the 2022 Supplement to the casebook.

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. LaFave, *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. LaFave’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/forms-applications/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.bluer.com/ufl/>. Summaries of course evaluation results are available to students here: <https://gatorevals.aa.ufl.edu/public-results/>.

Recordings of Class

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time, and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

Criminal Procedure (Investigatory)

First Week – August 23 & 25

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

Mapp v. Ohio p. 211-217

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

U.S. v. Leon p. 217

Read pages 224-240 of the casebook. For these pages, we will focus our class discussion on Illinois v. Krull; Arizona v. Evans; Herring v. United States p.234; and Davis v. U.S. p.229

Hoffa v. United States p. 459-63

Katz v. U.S. p. 240-43

Second Week – August 30 & September 1

U.S. v. White p. 463-67

U.S. v. Place p.244

U.S. v. Jacobsen p. 237 & p. 244

Smith v. Maryland p. 269-72

Oliver v. U.S. & Dunn v. United States (referenced in note "c" on page 245)

Calif. v. Ciraolo (Supp. Pack.)

Florida v. Riley p. 252

Calif. v. Greenwood p. 251

Kyllo v. U.S. p. 253-55

United States v. Jones p.255-260

Florida v. Jardines p. 245-50

Ex Parte Jackson p.266; *Content Surveillance of the Internet: accessing of e-mail* p.268-69

Introduction to "Standing" p. 795; 799-801; United States v. Payner p. 33; p. 800

Rakas v. Illinois (Supp. Pack.); Rawlings p.801-803

Minnesota v. Carter p.807-810

Byrd v. U.S. p.799 & 803-807

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. 264-265; 275-77. Also, you can find Justice Alito's dissent in Carpenter at p. 749-755. 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 this material from the casebook nor Justice Alito's dissent.

In the 2022 Supplement, there is an interesting discussion of the application of *Carpenter* in the lower courts. The split decision by the Fourth Circuit in Leaders of a Beautiful Struggle v. Baltimore Police Department is particularly interesting.

Third Week – September 6 & 8

Illinois v. Gates; Massachusetts v. Upton p.282-91

U.S. v. Grubbs p.293

Franks v. Delaware p. 294-95

McCray v. Illinois p. 295-96 (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, 296-301

Introduction to Search Warrants p. 302-06

Wilson v. Layne p. 314

Ybarra v. Illinois p. 309; United States v. Watson p. 321-25

Tennessee v. Garner (Supp. Pack.)

Scott v. Harris (Supp. Pack.) (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. 328

County of Riverside, Ca. v. McLaughlin p. 330

Powell v. Nevada p.330

Fourth Week – September 13 & 15

Chimel v. California p. 356-59

Washington v. Chrisman p. 360

Kentucky v. King p. 361-365

Maryland v. Buie (Supp. Pack.)

Payton v. New York p. 369-72

Welsh v. Wisconsin p. 373-74

Mincey v. Arizona; Thompson v. Louisiana; Flippo v. West Virginia p.368;

Warden v. Hayden p.372-73; Segura v. U.S. p. 366-67;

U.S. v. Santana (Supp. Pack.); Lange v. California (2022 Supplement, page ____)

Steagald v. U.S. p. 374-76

Read pages 306-309 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 20 & 22

Arizona v. Hicks (Supp. Pack)
Horton v. California p. 313-314
California v. Carney p. 376-382
California v. Acevedo p. 382-386
Wyoming v. Houghton p. 386-388
Collins v. Virginia p. 250

Arizona v. Gant p. 391-399
Colorado v. Bertine (Supp. Pack.); Florida v. Wells p.401
Caniglia v. Strom (2022 Supplement, page ____)

Sixth Week – September 27 & 29

(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. 401-07
Arizona v. Johnson p. 429-30

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), p. 430-31

Minnesota v. Dickerson p.432
Florida v. J.L. p. 414-15

Note on "Potentially 'Licensed' activity" p. 416-17
Illinois v. Wardlow p. 412-14; Heien v. North Carolina p. 417-18
Note on "Group Seizure" p. 418

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 attacks: Review U.S. Dept. of Justice Policies on Racial Profiling p. 43-45 and Stuart Taylor, Jr. – Politically Incorrect Profiling: A Matter of Life or Death p. 48-49

United States v. Drayton (Supplemental Package, handout)
California v. Hodari D. p. 408-09

Torres v. Madrid (2022 Supplement, page ____)
United States v. Knights and discussion of whether race is relevant to the “free to leave” test.
(2022 Supplement, page ____)

Brendlin v. California p. 409 & 805-06
United States v. Hensley p. 412; United States v. Sharpe p. 420

Seventh Week – October 4 & 6

Hiibel v. Sixth Judicial District Court p. 420-21

(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. 423-25
United States v. Place p. 428
Michigan v. Long p. 432
Davis v. Mississippi p. 433
Hayes v. Florida (Supp. Pack.)
United States v. Dionisio p. 744-48
Michigan v. Summers (Supp. Pack.)
Bailey v. United States p.312
Muehler v. Mena p. 312
Los Angeles County v. Rettele p. 310
Pennsylvania v. Mimms (Supp. Pack.)
Maryland v. Wilson p. 350, footnote *L* (see also Supp. Pack for the syllabus of Wilson)

Eighth Week – October 11 & 13

New York v. Class (Supp. Pack.)
United States v. Robinson p. 331-34
Riley v. California p. 334-36
Gustafson v. Florida p. 336
Atwater v. Lago Vista p. 325-26 & 337-39; Virginia v. Moore p. 339

Whren v. United States 340 - 344
Knowles v. Iowa p.349
Winston v. Lee (Supp. Pack.); Missouri v. McNeely p.345

Maryland v. King (Supp. Pack. Handout)
Wyman v. James (Supp. Pack.)

Administrative search cases, p. 434-440;

Michigan Dept. State Police v. Sitz (Supp. Pack.)

Indianapolis v. Edmond (handout) (I may briefly discuss *Edmond* in class.).

Samson v. California p. 440

Nineth Week – October 18 & 20

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

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

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

Schneckloth v. Bustamonte p. 441-448; Florida v. Jimeno p. 448

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. 346-48 & 449-50

Mitchell v. Wisconsin (handout found on course website)

Illinois v. Rodriquez p. 451-55

Georgia v. Randolph p. 456-57

Fernandez v. California p.457-58

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

Tenth Week – October 25 & 27

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 487-498 of casebook & pages 17-37 of the Supplemental Package Part 4 (See the news articles on confessions. I will reference the article on the interrogation of Susan Smith during our class discussion.).

Crooker v. California; Cicenia v. LaGay; Spano v. New York p. 498-99

Massiah v. United States p.499; Escobedo v. Illinois p. 501-505

Miranda v. Arizona p. 505-523

Michigan v. Tucker p. 521

Oregon v. Elstad (Supp. Pack.)

Colorado v. Connelly p. 666-673 & p. 554

California v. Prysock (Supp. Pack.)

Eleventh Week – November 1 & 3

Duckworth v. Eagan p. 550-52
Florida v. Powell p. 552-54
Colorado v. Spring p. 554-56
Beckwith v. United States p. 523
Stansbury v. California p.525
United States v. Mandujano p. 763-66
Oregon v. Mathiason; California v. Beheler p. 525
Berkemer v. McCarty p. 524
J.D.B. v. North Carolina p. 525-28

Rhode Island v. Innis p. 533-39

Illinois v. Perkins p. 539-41
Pennsylvania v. Muniz p. 540, 541, & 542-44

Twelfth Week – November 8 & 10

New York v. Quarles p.544-550, which include the readings on the use of torture in terrorism cases.

North Carolina v. Butler p. 564-65
Berghuis v. Thompkins p. 565-571 & p. 584-86
Salinas v. Texas (handout)
Connecticut v. Barrett p.565
Moran v. Burbine p. 556-564
Fare v. Michael C. p. 571

Michigan v. Mosley p. 590-91
Edwards v. Arizona; Arizona v. Roberson; Minnick v. Mississippi p. 576-77

Thirteenth Week – November 15 & 17

Davis v. United States p. 572-575

Dickerson v. United States p.593-607

Chavez v. Martinez p. 607-613
United States v. Patane p. 614-18
Missouri v. Seibert p. 618-624

McNeil v. Wisconsin p. 650