PSC 240
The Constitution and Criminal Procedure

Prof. Edward L. Fiandach
Spring, 2011

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Purpose

The purpose of this course will be to examine the Constitution and criminal procedure. In the first half of this course, we will briefly examine the origins of the Constitution and the Bill of Rights, the methodology of Constitutional litigation, and we will examine in some detail the role that the 4th, 5th, 6th and 14th Amendments play during the course of a criminal prosecution.

During the second half of the semester, we will turn our attention to the procedural issues addressing topics such as Motions, Discovery, Terrorism, Double Jeopardy, the Trial and the Death Penalty. To some extent, we will discuss questions of strategy and ethics that must be considered by counsel.

While the course should prove helpful for those wishing to attend law school, it is by no means a "lawyer's course." We will deal with broad issues of social policy as reflected in the mechanics of criminal procedure.

Class Attendance

Class Attendance is optional. *This does not mean that it is advisable to miss class. Much of the material that the student will be expected to know will be presented in class*. Further, the class will be engaging in various discussions. While no grade or credit will be given for the content of class discussions, those who chose to engage in class discussions on a regular basis will receive a one-half grade point

increase in the final grade.

Class Preparation

Class preparation will generally consist of an assigned reading from the course book, *LaFave, Israel and King, Criminal Procedure,* published by West Group. There are multiple additions of this text and any version is acceptable. Reading section numbers should be consistent through all available revisions.

In the lectures *I only highlight selected parts of the reading*. Therefore to excel in this course, *you must do the reading.*

Examinations

There will be two examinations given. One will be given in class as a midterm. Please note that *under no circumstances whatsoever will a student be permitted to defer or retake any examination.*

The second examination will be the final examination.

Paper Requirement

A paper is required for this course. It will comprise the remaining 1/3 of the grade. The topic will be offered after the midterm break. The topic will be so unique so as to ensure that originality will prevail. **Please note: Because of the size of this class. No papers will be accepted late or by e-mail!**

Grading

My grading is very objective. Therefore, the only time I will review a grade is if there has been what appears to be *an obvious* error such as a midterm of an "A," a paper of an "A" and a final grade of a C. If

you are displeased with your grade, please note that I rarely change grades and do not appreciate e-mails complaining about a particular grade. Please also note that if a student asks for a review of his/her grade, I will do so, *however*, that test will be re-graded *ab initio*. *This means that I will grade it as though it was not previously graded, it will not be re-graded simply to be raised*. *The grade, awarded upon regrading,* ***may be higher or lower and it will be final.***
Grading of the examinations will be as follows. The midterm will count towards 1/3 of the final grade and the final will be weighted as 1/3 of the final grade.

How to Contact Me

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Office Hours by appointment only.

Course Syllabus

Please note that what follows is always subject to change!

January 12th, “Course of a Case”.

January 17th, No class (Martin Luther King, Jr. day).

January 19th, “The Origin of Constitutional Power.”

January 24th,“Revolution Transformed.”

January 26th, “Perspectives on Search and Seizure.”

LaFave, *et.al*., pp. 103. - 118; 127 - 141.

January 31st, “Probable Cause,”
LaFave, *et al.,* 3.1 - 3.3.

February 2nd, “Stop, Frisk and Roadblocks,”
LaFave, *et.al.*, §§ 3.9.

February 7th, “Consent and the Power to Search,”
LaFave, *et.al.*, § 3.10.

February 9th, “Eavesdropping, and Electronic Surveillance.”
LaFave, *et.al.*, §§ 4.1 - 4.6.

February 14th, “Compelling Truth; Interrogation and Voluntariness,”
LaFave, *et.al.*, §§ 6.1 - 6.3.

February 16th, “The Right to Counsel”
LaFave, *et. al.,* § 6.4.

February 21st, “*Miranda a*nd the Privilege Against Self Incrimination,”
LaFave, *et.al.*, §§ 6.6 - 6.10; Fiandach, “*Miranda* Revisited.”

February 23rd, “Why *Miranda*?”
Fiandach Article, LaFave, *et.al.*, § 11.1.

February 28th, “Identification,”
LaFave, *et.al.*, §§ 7.1 - 7.5. The lecture focus will be additional to what is covered in the reading *both are advised.*

March 2nd, Midterm [In class].

March 14th, “Habeas Corpus,”
LaFave, § 28.1 - § 28.2.

March 16th, “Substantive Crimes.”
Please note that this is not covered in the reading. Class attendance is suggested.

March 21st, “Evidence,”
LaFave, *et.al.*, § 24.4. *Please note, this topic is not well covered in the reading, class attendance is advised.*

March 23rd, Guest Lecturer, “The Grand Jury”, Timothy C. Rath, Esq.
LaFave, *et.al.*, §§ 8.1 - 8.6.

March 28th, “Terrorism and the USA Patriot Act.”

March 30th, “The Detention Cases”

April 4th, “Discovery and Pre-Trial Motions,”
LaFave, *et. al.*, §§ 20.3 - 20.4.

April 6th, “Trial by Jury.” LaFave, *et. al.*, §§ 22.1 - 22.4.

April 11th, “Guest Lecturer, Hon. Jonathon Feldman, “The Fourth Amendment in the Information Age. [Tentative]

April 13th, Guest Lecturer, “Race and the Law,” Hon. Stephen Miller.

April 18th, “Speedy Trial and Double Jeopardy,”
LaFave, *et.al.*, §§ 18.1 - 18.2; §§ 25.1 - 25.4

April 20th, Guest Lecturer, Heather Parker, Esq., Woman and the Law.”

April 25th, “The Death Penalty.”

April 27th, Review.