

# **SYLLABUS**

## **PSC 240 The Constitution and Criminal Procedure**

**Prof. Edward L. Fiandach  
Spring, 2017**

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**PSC 240**  
**The Constitution and Criminal Procedure**

**Prof. Edward Fiandach**  
**Spring 2017**

**Purpose**

The purpose of this course will be to examine the Constitution and criminal procedure. In the first half of this course, we will examine the origins of the Constitution and the Bill of Rights and American Rights generally. We will also examine the methodology of Constitutional litigation, and we discuss in detail the role that the Constitution through the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments plays 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, it has been the experience of past years that students have been remiss in reading LaFave. If you do neither, you will fail. Additionally, 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 consideration in the event that “a grade up” is close.

**Class Preparation**

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

Over the years, I have received some critical comment along the lines that since the material is well covered in class, the textbook represented a needless expense. Maybe it is, but maybe it's not. Therefore, I will leave the decision as to whether to purchase a copy up to the individual student. Several copies have been placed on reserve for those who choose not to purchase the text. Please bear in mind however, that I am still firmly of the belief that 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

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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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Mail: 100 Allens Creek Road, Rochester, NY 14618.  
Office Hours by appointment only.

### Course Syllabus

*Please note that what follows is always subject to change!*

January 18<sup>th</sup>, "Course of a Case".

January 23<sup>rd</sup>, "The Origin of Constitutional Power"  
Fiandach, "*Time and Space, the Unseen Brilliance of the Gettysburg Address.*"

January 25<sup>th</sup>, "The Origin and Future of American Rights."

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January 30<sup>th</sup>, "Perspectives on Search and Seizure."  
LaFave, *et.al.*, pp. 103. - 118; 127 - 141.

February 1<sup>st</sup>, "Probable Cause."  
LaFave, *et al.*, 3.1 - 3.3.

February 6<sup>th</sup>, "Here Today, Gone Tomorrow, *Automobiles.*"  
LaFave, *et.al.*, pp. 199 - 212.

February 8<sup>th</sup>, "Street Encounters and Roadblocks."  
LaFave, *et.al.*, §§ 3.9.

February 13<sup>th</sup>, "Consent and the Power to Search,"  
LaFave, *et.al.*, § 3.10.

February 15<sup>th</sup>, "Eavesdropping, and Electronic Surveillance."  
LaFave, *et.al.*, §§ 4.1 - 4.6. No Class.

February 20<sup>th</sup>, "Compelling Truth; Interrogation and Voluntariness,"  
LaFave, *et.al.*, §§ 6.1 - 6.3.

February 22<sup>nd</sup>, NO CLASS.

February 27<sup>th</sup>, "*Miranda* and the Privilege Against Self Incrimination,"  
LaFave, *et.al.*, §§ 6.6 - 6.10; Fiandach, "*Miranda* Revisited."

March 1<sup>st</sup>, "The Right to Counsel,"  
LaFave, *et. al.*, § 6.4.

March 6<sup>th</sup>, Review.

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March 8<sup>th</sup>, MIDTERM, IN CLASS.

March 20<sup>th</sup>, Guest Lecturer, "Race and the Law," Hon. Stephen Miller.

March 22<sup>nd</sup>, "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 27<sup>th</sup>, "Cross-Examination"

LaFave, *et. al.*, , § 24.4 (Note that class presentation will be more extensive than the reading).

March 29<sup>th</sup>, Guest Lecturer, "The Grand Jury", Timothy C. Rath, Esq.

LaFave, *et.al.*, §§ 8.1 - 8.6.

April 3<sup>rd</sup>, "Habeas Corpus,"

LaFave, § 28.1 - § 28.2.

April 5<sup>th</sup>, "Evidence,"

LaFave, *et.al.*, § 24.4. *Please note, this topic is not well covered in the reading, class attendance is advised.*

April 10<sup>th</sup>, "Substantive Crimes."

Please note that this is not covered in the reading. Class attendance is suggested.

April 12<sup>th</sup>, "Discovery and Pre-Trial Motions," LaFave, *et. al.*, 24.3

April 17<sup>th</sup>, "Speedy Trial, Double Jeopardy,"

LaFave, *et. al.*, §§ 20.3 - 20.4, LaFave, *et.al.*, §§ 18.1 - 18.2; §§ 25.1 - 25.4

April 19<sup>th</sup>, "Terrorism and the USA Patriot Act"

April 24<sup>th</sup>, "Trial by Jury." LaFave, *et. al.*, §§ 22.1 - 22.4.

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April 26<sup>th</sup>, "The Death Penalty."

May 1<sup>st</sup>, "The Future of the Constitution."

May 3<sup>rd</sup>, Review.