

SYLLABUS

PSC 240 The Constitution and Criminal Procedure

**Prof. Edward L. Fiandach
Spring, 2023**

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PSC 240
The Constitution and Criminal Procedure

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Purpose

The purpose of this course will be to examine the Constitution and criminal procedure and the role undertaken by the Supreme Court in shaping American justice. In the first half of this course, we will examine the origins of the Constitution, 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 4th, 5th, 6th, 8th 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, the Death Penalty and the Innocence Project. 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

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 roughly 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. Please bear in mind however, that I am still firmly of the belief that to excel in this course, *you must do the reading*.

Additionally, please note that in the syllabus there are references to those classes where the reading does not cover the topic well and attendance is strongly suggested.

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 11th, Introduction and lecture, "Course of a Criminal Case."

January 16th, Martin Luther King, Jr. Day, No Class.

January 18th, "The Origin of Constitutional Power"
Fiandach, "*Time and Space, the Unseen Brilliance of the Gettysburg Address;*" PDF "Hallmarks of Freedom."

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January 23rd, "The Origin and Future of American Rights."
Fiandach & Candela, "*Obergefell*, Drugs and Fundamental Rights."

January 25th, "Perspectives on Search and Seizure."
LaFave, *et.al.*, pp. 103. - 118; 127 - 141.

January 30th, "Probable Cause."
LaFave, *et al.*, 3.1 - 3.3.

February 1st, "*Automobiles – Stops and Searches.*"
LaFave, *et.al.*, pp. 199 - 212.

February 6th, "*Terry v. Ohio*, Street Encounters and Roadblocks."
LaFave, *et.al.*, §§ 3.9.

February 8th, "Consent and the Power to Search."
LaFave, *et.al.*, § 3.10.

February 13th, "Eavesdropping, and Electronic Surveillance."
LaFave, *et.al.*, §§ 4.1 - 4.6.

February 15th, "Compelling Truth; Interrogation and Voluntariness,"
LaFave, *et.al.*, §§ 6.1 - 6.3.

February 20th, No Class.

February 22nd, No Class.

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February 27th, "Escobedo and The Right to Counsel."
LaFave, *et. al.*, § 6.4.

March 1st, "Miranda and the Privilege Against Self Incrimination."
LaFave, *et.al.*, §§ 6.6 - 6.10; Fiandach, "Miranda at Fifty."

March 13th, **MIDTERM, IN CLASS.**

March 15th, "Cross-Examination."
LaFave, *et.al.*, §§ 7.1 - 7.5. The lecture focus will be additional to what is covered in the reading *both are advised*.

March 20th, "Habeas Corpus."
LaFave, *et. al.*, , § 24.4 (Note that class presentation will be more extensive than the reading).

March, 22nd, "Identification Testimony."
LaFave, § 28.1 - § 28.2.

March, 27th, (Tentative) William Bastuck, founder of It Could Happen to You, "It Could Happen to You."

March 29th, "Evidence."
"Perry Mason," season 2, episode 21 (This is the original Perry Mason show from the 1950's. It is streamable on most services); LaFave, *et.al.*, § 24.4.
Please note, this topic is not well covered in the reading, class attendance is advised.

April 3rd, (Tentative) Jennifer Summers, Esq., "Police Encounters and Race."
Please note, this will not be presented virtually and recording is not permitted.

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April 5th, "Substantive Crimes."

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

April 10th, "Speedy Trial" & "Double Jeopardy,"

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

April 12th, "Terrorism and the USA Patriot Act."

Please attend, this is not covered by LaFave.

April 17th, "The Trial" LaFave, *et. al.*, §§ 22.1 - 22.4.

"Perry Mason," season 2, episode 25 (This is the original Perry Mason show from the 1950's. It is streamable on most services) Please attend, this is not covered by LaFave.

April 19th, "The Death Penalty."

Please attend, this is not covered by LaFave.

April 24th, "The Future of the Constitution."

Please attend, this is not covered by LaFave.

April 26th, Final Review.