Law 953 - Criminal Procedure: Investigations

Instructor
Samuel P. Newton
Office
210-A
Office Hours
Wednesdays: 2-5 pm
By appointment or drop in
Phone
(208) 885-7936
(406) 212-5533 (cell)
Email
samnewton@uidaho.edu

Course Overview
Welcome to Criminal Procedure! You are taking this course at a timely moment in American history, when the relationship between the police and ordinary citizens is front-page news and a matter of national debate. In this course, we will explore this relationship from the perspective of constitutional law.

Catalog description: A study of the federal constitutional constraints on criminal investigations, with a focus on searches and seizures, arrests, interrogations, identification procedures, and the right to counsel.

Course Goals
By the end of the semester, you should be able to:

• understand and articulate the foundational Fourth, Fifth, and Sixth Amendment protections afforded to criminal suspects and defendants at the investigative stages of criminal proceedings;

• make legal arguments about how those constitutional principles should apply to new factual scenarios;

• think critically about the merits of the Supreme Court’s jurisprudence in this area; and

• contextualize the existing doctrine within a broader debate about how the American criminal justice system does, and should, operate in practice.

This course does not address constitutional procedures surrounding the adjudicative stages of criminal proceedings, such as double jeopardy and the right to a jury trial, which are covered in a separate course: Criminal Procedure: Adjudications.

Required Materials
Supplemental readings as assigned


Turnitin Clickers. We will be using these regularly during class for feedback and quizzes.

Major Assignments: Descriptions

Your grade will be assigned as follows:

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<thead>
<tr>
<th>Assignment</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Quizzes</td>
<td>15%</td>
</tr>
<tr>
<td>Final Examination</td>
<td>85%</td>
</tr>
<tr>
<td>Participation</td>
<td>± 5%</td>
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</tbody>
</table>

Quizzes

During class, I will give quizzes on the day’s reading or on the major content of the lecture. I may give more than one quiz in a class period or I may not give a quiz at all. However, you should count on a quiz more often than not.

The quizzes accomplish three goals. First, they ensure that you have done the day’s reading. This is important because it allows us to spend valuable class time not rehashing what you’ve already read, but delving into the nuances. Second, they enable me to get concrete, live feedback on how students understand the course material. For example, if I give a quiz toward the end of class, it is typically to gauge how well the class has comprehended the day’s material. If most students do not understand a concept, then I can adjust my teaching. Third, it allows you, the student, to also get feedback on your understanding of class concepts.

Most quizzes will be graded, though some quizzes are for information-gathering and a logged response counts for full points. I will drop the bottom 20% test scores from all students. You can take your drops for missing class or for times you forget to read, or just for bad scores. (I will also not count any quiz that the vast majority of the class misses.)

Final Examination

This examination will be a 3-hour in-class written final with multiple choice and essay-style questions modeled after the UBE and the MEE. The exam will be open book, open note.
Participation

I will not grade student participation in the traditional way, which in my experience tends to have students trembling in fear while other students often feel a need to dominate the discussion. However, I use participation to bump a student’s grade either up or down if they are on the border of a particular grade. Participation will be based on a holistic assessment of some of these factors:

1. **Being prepared when called upon.** I will call on every student throughout the semester to discuss the case or the readings. When you are called on, I do not expect you to know all of the answers and do not want to humiliate you. It is ok to get something wrong or even misunderstand a case. Often the purpose of this discussion is to get you to think through something you may not have thought through before. I will assess whether I believe you have read through and given the case some thought. If you happen to not be prepared, just tell me up front and I will give you another opportunity at a later date. You will not get extra points—and could actually lose points—for excessive talking such that it dominates class discussion. While I love hearing from students, I want to make sure everyone is heard. This honestly simulates law practice. You will need to be prepared when you walk into court and judges will ask you questions you have not anticipated and force you to think through the ramifications of your argument.

2. **Participation in group discussions.** Periodically through the semester, we will use a “problem based” approach to tackle the readings. I will give students documents from actual or sample cases or hypothetical problems which will require you to apply the readings to scenarios. As you divide into small groups, I will wander around the class, listen to, and participate in your small discussions. All students start and should end the semester with full points. However, you will lose points in two scenarios: 1) you are not present for a given day’s discussion; or 2) as I sit in your group, you appear, clearly to me, to have not done the day’s reading. I will communicate with you before I begin deducting points, so that you have a fair warning you are not meeting my expectations.

3. **Email/BBLearn/in-person discussions.** If you are someone who shies away from in class discussions, please email me or come see me in my office. You can earn participation from our in-person discussions. Additionally, our BBLearn allows for discussions. I strongly encourage you to discuss the cases or concepts among yourselves in that forum. I will regularly monitor that board and make comments myself. Ask questions. Most of the time, I would like to see other students respond to the questions. If we can create a community to help each other understand concepts or answer questions, then we can ensure we all succeed.

I assume that all interactions in class will be civil, respectful, and supportive of an inclusive learning environment for all students. If you have any problem, please speak with me, the Dean, or an advisor, about any concerns you may have about classroom participation and classroom dynamics. Importantly, I call your attention to the University of Idaho College of Law’s diversity and nondiscrimination statements, which apply fully in my classroom:

The University of Idaho College of Law embraces diversity within the law school community and the legal profession. Our law school protects and fosters an inclusive and respectful learning environment for the discussion of legal principles, concepts, and practical skills. As a preparatory ground for future practitioners of the law, we adhere to the standards of legal
professionalism within our classrooms, our offices, our hallways, our student organizations, our gathering places, and our activities. The calling to law is an important one with significant impacts on society, and as a law school we take that significance to the core of our purpose. The law school community values people of diverse cultures, races, ethnicities, genders, physical abilities, lifestyles, opinions, citizenship, philosophies, sexual orientations, religious backgrounds, ages, life experience, and identities. Diversity is an essential component of the University of Idaho College of Law and requires legal professionalism from all sectors of our community to provide an appropriately respectful learning environment.

The University of Idaho College of Law has a policy of nondiscrimination on the basis of race, color, religion, national origin, sex, age, sexual orientation, disability, or status as a Vietnam era veteran. This policy applies to all programs, services, and facilities, and includes, but is not limited to, applications, admissions, access to programs and services, career services, and employment.

**Statement of Grading Approach or Philosophy**

I have to grade on a curve, per the University of Idaho Law School’s policies. See your student handbook. This is an upper-division courses with 20 or more students so the mean curve is 2.66–3.00.

**Credit Hours for Coursework**

You should read approximately 30 pages of the course textbook per class period, plus supplemental reading. Per College of Law guidelines, you should anticipate about six hours of out-of-class work per week.

In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week, or at least the equivalent amount of work for academic activities including simulation, field placement, clinical, and other academic work leading to the award of credit hours.

The Course requirements outlined above with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule.
Center for Disability Access and Resources (CDAR) Reasonable Accommodations Statement

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by:

- Calling 208-885-6307
- Emailing cdar@uidaho.edu

It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at http://www.uidaho.edu/current-students/cdar. Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

Course Policies and Information for Students

1. Attendance Policy

   a. Per the College of Law, “[s]tudents are required to attend classes regularly and punctually, pursuant to American Bar Association accreditation requirements.”

   b. I will not take attendance each class period, but you will get a zero if you miss a quiz, which happens most class periods. Absences will also affect your participation grade.

2. Technology Policies

   a. Review this article: Why I’m Asking You Not to Use Laptops. Even if you think you won’t, I promise you will check your phone and surf the internet with your laptop during class.

   b. This kind of multitasking has been shown to impair learning. A study published in 2013 found that not only do multitasking students perform more poorly on a post-class test, but so did the peers who could see the computer. Your online behavior not only distracts you, but it distracts others. Learning does not happen unless all of us are engaged, actively, in the conversation.

   c. Take notes by hand! I did this in law school and it worked. A 2014 study found that students who take notes on a laptop perform worse than those who don’t. The study found that while “taking more notes can be beneficial, laptop note takers’ tendency to transcribe lectures verbatim rather than processing information and reframing it in their own words is detrimental to learning.” In my case, I created outlines on the fly that forced me, in class, to synthesize the material.

   d. It also distracts me. I know when students are engaged in technology rather than the course and it often makes me lose my train of thought.

   e. However, I will not prohibit technology in the classroom. In fact, I will use it in class. You are adults and you know the research. I’m not going to make anyone forfeit his or her
preferred method of engaging with course material. But if you are going to use it, please try to focus on class material. If you need to text or call, please step out of the class.

f. I will allow students who know they can be distracted by technology—or who don’t want to be distracted by it—to sit on the first two rows so they do not have to see others’ online habits.

3. **Recording Class Sessions**
   a. Students may not electronically record classes unless they have the express consent of the instructor, except where the Dean of Students has allowed recording as a disability accommodation pursuant to a recommendation by CDAR. Recording classes without the instructor’s express consent violates the Honor Code. Students recording classes as a disability accommodation must follow procedures set down by CDAR. Students who are unable to attend class for reasons of illness or other exigencies must receive permission from the instructor before classes are recorded on their behalf. Contact the Law Library for recording equipment and information on recording procedures.

4. **Ethics/Violations of Academic Integrity**
   a. Please be familiar with the [Honor Code and Student Code of Conduct](#), which apply in this course. I will report any violations of these policies and take them very seriously.

5. **Preferred Name/Pronoun Policy**
   b. I will use any name or pronoun a student prefers to help create an empowering, safe and nondiscriminatory experience. Please talk with me about your given situation and your preferences if they are different from your listed information.

6. **Mental Health**
   c. The University maintains a counseling office. Law school can be very stressful. Please take care of your mental health and use these services if you need them! You may contact that office in Mary E. Forney Hall Room 306, by phone at (208) 885-4354, and by email at [ctc@uidaho.edu](mailto:ctc@uidaho.edu). You may need to call the crisis line at (208) 885-6716 which is open 24 hours a day, 365 days a year.

**Disclaimer**

I reserve the right to make modifications to this information throughout the semester.

**Contact**

Please contact me by email, phone, or in person with your questions. My job is to help you understand and learn this material. It really is an honor to be involved in your education and I love personally interacting with you!
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<thead>
<tr>
<th>Week</th>
<th>Reading Schedule</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td><strong>Chapter 1</strong>: Introduction / <strong>Chapter 2</strong>: Introduction, What is a Search?</td>
</tr>
<tr>
<td>2</td>
<td><strong>Chapter 2</strong>: Introduction, What is a Search?</td>
</tr>
<tr>
<td>3</td>
<td><strong>Chapter 2</strong>: The Requirement for Probable Cause, The Warrant Requirement, Exceptions to the Warrant Requirement</td>
</tr>
<tr>
<td>4</td>
<td><strong>Chapter 2</strong>: Exceptions to the Warrant Requirement</td>
</tr>
<tr>
<td>5</td>
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</tr>
<tr>
<td>6</td>
<td><strong>Chapter 2</strong>: Exceptions to the Warrant Requirement</td>
</tr>
<tr>
<td>7</td>
<td><strong>Chapter 2</strong>: Seizures and Arrests, Stop and Frisk, Electronic Surveillance</td>
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<tr>
<td>8</td>
<td><strong>Chapter 3</strong>: Is the Exclusionary Rule a Desirable Remedy, The Origins of the Exclusionary Rule, When Does the Exclusionary Rule Apply? Who Can Object to the Introduction of Evidence? Exceptions to the Exclusionary Rule</td>
</tr>
<tr>
<td>9</td>
<td><strong>Chapter 3</strong>: Exceptions to the Exclusionary Rule, Suppression Hearings</td>
</tr>
<tr>
<td>10</td>
<td><strong>Chapter 4</strong>: Due Process and the Requirement for Voluntariness, Fifth Amendment Limits: <em>Miranda</em></td>
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<tr>
<td>11</td>
<td><strong>Chapter 4</strong>: Fifth Amendment Limits: <em>Miranda</em></td>
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<tr>
<td>12</td>
<td><strong>Chapter 4</strong>: Fifth Amendment Limits: <em>Miranda</em></td>
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<tr>
<td>13</td>
<td><strong>Chapter 4</strong>: Sixth Amendment Right to Counsel and Police Interrogations</td>
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<tr>
<td>14</td>
<td><strong>Buffer Week</strong>. Changes may be made to this schedule or syllabus at any time. Changes will be announced in class, by email to your student account, or through the Remind app.</td>
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**Final Examination, December 5, 2018, 8-11 am**