

University of Maryland

**THE LAW OF CRIMINAL INVESTIGATION
CCJS 234
Fall 2021**

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Syllabus¹

The course book (Ferdico's Criminal Procedure, 12th ed.) provides an excellent resource for the course materials, and is likely a welcome addition to your professional book collection, even beyond this course. If you are not already familiar with it, you should also read the U.S. Constitution. I will cover many of the significant topics in class, so I am not opposed to you using the last edition, but you will be responsible for new aspects of the law.

CLASS 1: Introduction and course overview; examination and grading policy.
Chapter 1, pp. 2-33.

CLASSES 2-4: Constitutional overview, particularly the Fourth, Fifth and Sixth Amendments. Structure of the court system and the criminal justice process. Chapter 2, pp. 34-87; Chapter 15, pp. 610-644. **POSTED and CLASS LECTURES**

CLASS 5: Basic criminal justice concepts, including the exclusionary rule and fruit of the poisonous tree doctrine, probable cause, privacy and "standing." Text at 90-147. Stop and frisk. Chapter 3, pp. 90-125. The law of stop and frisk, Chapter 8, pp. 307-365.

CLASS 6: The law of stop and frisk, Chapter 8, pp. 307-365; Arrests: procedures and issues. Chapter 7, pp. 238-276.

CLASSES 7-8: The search warrant: how to write it, what to know, when it's required and what is necessary, including probable cause, particularity and proper execution. Chapters 4, 5 and 6, pp. 126-237. This section also will cover types of searches and search warrants, including computer searches, border searches, wiretaps and terrorism-related issues, not included in textbook.

¹ This syllabus is copyrighted by the professor and any unauthorized use of the syllabus or materials therein as composed for this course, including distribution of class notes, without the express consent of the professor is prohibited and may be punishable by law.

CLASS 8: Search Warrant Assignment Due (MAJOR SCHEDULED GRADING EVENT)

CLASS 9: Mid-term Exam (MAJOR SCHEDULED GRADING EVENT) (test instructions to be provided)

CLASS 10: Exceptions to the warrant requirement: Warrantless Searches. Search incident to lawful arrest. Chapter 7, pp. 276-305; Plain view. Chapter 10, pp. 408-445.

CLASS 11: Warrantless Searches continued: consent searches. Chapter 9, pp. 366-407; vehicle searches. Chapter 11, pp. 446-481.

CLASS 11-12: Warrantless Searches continued: Open Fields doctrine and Abandoned Property. Chapter 12, pp. 483-513.

CLASSES 13-14: Admissions/Confessions and the **Miranda** doctrine. Chapter 13, pp. 514-569.

CLASS 14: Pre-trial identification issues. Chapter 14, pp. 570-609. Review for final exam. Possible guest lecture. **Assignment No. 2 Due (MAJOR SCHEDULED GRADING EVENT)**

Final Exam as scheduled by the University. (MAJOR SCHEDULED GRADING EVENT)

The class grading policy will be based on two exams and two homework assignments. The exams are each worth 50 points; the homework assignments are each worth 20 points. A total of 140 points are therefore possible in this course. Attendance is expected and participation is optional, but your grades can benefit from both. There is a natural curve to your grades, which I will explain in class and you will be apprised of interim scores during the semester so you can track how you are doing. **PLEASE NOTE THAT BECAUSE OF THE SIGNIFICANT ARRAY OF ASSIGNMENTS AND TESTS, THERE IS NO EXTRA CREDIT FOR THIS COURSE.**

ALL ASSIGNMENTS ARE DUE ON DATE ESTABLISHED AND MUST BE SUBMITTED AS INSTRUCTED. YOU AND ONLY YOU ARE RESPONSIBLE FOR SUBMITTING ASSIGNMENTS AT OR BEFORE THE ESTABLISHED DEADLINE. PLEASE BE ADVISED THAT THE GRADING SYSTEM INVOLVES A CURVE AND IS BASED ON TOTAL POINTS ACHIEVED DURING THE SEMESTER. NO EXTRA CREDIT ASSIGNMENTS WILL BE OFFERED. NO CHANGES TO GRADES WILL BE MADE AFTER EXAMS.

THE MIDTERM EXAM DATE IS SUBJECT TO CHANGE RESULTING FROM SCHEDULING ISSUES. YOU ARE RESPONSIBLE FOR KEEPING ABREAST OF THOSE CHANGES AND FOR BEING AVAILABLE WHEN EXAMS ARE GIVEN. THAT INCLUDES FINAL EXAMS; THE UNIVERSITY SETS THE FINAL EXAM SCHEDULE AND YOU ARE EXPECTED TO TAKE THE EXAM AT THE SCHEDULED TIME. PLEASE DO NOT MAKE TRAVEL ARRANGEMENTS OR OTHER PLANS THAT INTERFERE WITH YOU TAKING EXAMS AT SCHEDULED TIMES.

Homework Assignments

No. 1: You are a federal agent. Prepare an application/affidavit for a search warrant. Remember to satisfy all of the requirements for the issuance of a search warrant. You are free to create the crime and all information needed to complete the application/affidavit. *Be sure to include the Warrant, Application, Affidavit and Schedules in the package.*

No. 2: *Hypothetical Fact Pattern:* NIH Police Officer Joey Tribiani has developed probable cause to arrest Monica Geller for conspiracy to steal a 24” LED-screen TV from the NIH on-campus retail store. He also has probable cause to search her home for the stolen item. Joey secured a search warrant solely for the stolen item but elected not to secure an arrest warrant. He and Officer Rachel Greene went to the house Geller was residing at, and upon properly knocking and announcing their presence, let themselves in when no one responded. Inside, Tribiani and Greene saw two individuals: one was a female seated on the living room sofa listening to music through a set of Bose headphones. The other was a fussy male dressed in bohemian clothing. The officers approached the female on the sofa, explained their presence, and immediately arrested Geller when she identified herself. Tribiani then searched Geller and found a gold and jade pendant with the price tag on it (\$5500) inside her pants pocket, along with one roll of undeveloped film subsequently developed the next day at the police station and found to contain child pornography. Law enforcement officers eventually would like to use the developed film to obtain another set of search warrants, this time for both persons’ residences.

Greene subsequently searched the living room area and found an unregistered gun in a closed drawer of a coffee table next to the sofa, a small vial of fentanyl sitting out on the sofa cushion (the vial had been supplied by Monica’s friend Phoebe), a photograph of the Washington Monument with an “x” through it, and a series of pornographic pictures of a young boy known to the officers to be the son of prominent local doctor named Chandler Bing, under the sofa cushions. Greene also saw a computer on a small desk near the coffee table; it was not plugged in. Greene plugged the computer cord in, turned on the computer and discovered it was not password protected, whereupon he briefly looked through some of the files until he discovered two in particular: one that read “Rossporn.rude.jpg.” and one that read “Training camp sites for future jihad.” The first file contained hundreds of thumbnail kiddie porn pictures. The second file was empty.

As it turns out, the other person at the house was a friend of Monica's. His name was Ross, and he was a good enough friend such that he had planned to stay several nights. At the

time of this confrontation, Ross had been at the house one day and one night, although Ross did not volunteer this information to the police. He was standing next to the couch when Monica was arrested. After the officers found the gun, fentanyl and pornography, they also arrested Ross. Greene, a well-intentioned but rookie officer, immediately after the arrest asked Ross whether he possessed any contraband, including weapons. Ross at first refused to answer but then told Officer Greene about 30 seconds later that he had a small caliber pistol in his pants pocket and that there were drugs upstairs in his room, and he pointed out his room. Greene first searched Ross and recovered the gun. When Greene started up the stairs, Ross also told her that Monica drew the "x" through the picture of the Washington Monument.

Greene subsequently searched the room Ross told her he was staying in. She found a woman's overnight makeup kit, with the name Phoebe Buffet stitched on it in the drawer of an upstairs dresser in the bedroom he opened and searched it. Inside the kit were 62 grams of crack cocaine.

You are to answer the following questions by thoroughly analyzing the applicable law. Remember that these questions are questions of legal admissibility against each individual. You should consider the factual connections between the evidence and the individuals, as well as the legal basis for whether an item may be admissible. Keep in mind that admissibility is a principle that involves more than whether or not the items are factually connected to the person, and I am interested in the search and seizure issues, not evidentiary issues like relevance.

(a) Can the government offer evidence of the pendant recovered from Monica in a trial against Monica? Against Ross? Why or why not? (b) Can the government offer evidence of the gun, Washington Monument photo and pornography, including the computer kiddie porn, in a trial against Monica? Against Ross? Why or why not?; (c) Can the government offer evidence of the empty file containing the name "Training camp sites for future jihad?" If so, who is the likely defendant against whom it would be admissible and why is it, or is it not, admissible? (d) Can the government offer evidence of the undeveloped roll of film and the pictures made from the undeveloped roll of film in a trial against Monica? Against Ross? Why or why not? (e) Can the government offer evidence of the fentanyl found in Monica's residence in a trial against Monica? Against Ross? Why or why not? (f) Are Ross's statements after arrest admissible against Ross? Against Monica? Why or why not? (g) Can the government offer the gun recovered from Ross or evidence of the crack found in the makeup kit in a trial against Ross? Against Monica? Why or why not?

You should answer the question and then discuss the applicable principles you have learned that justify your answer, explaining how they apply and relate to the proper or improper seizure of the items, and why they make the evidence admissible or

non-admissible at trial against each of Monica and Ross. Admissibility/Non-admissibility at trial is a different issue from seizure during the search; admissibility depends on a number of factors, including the legitimacy of the seizure. Please analyze the legitimacy of the seizures of evidence in this case. That means you are focusing on the legality of what the police did during the investigation, and not on the trial tactics of the prosecutor.

Explain your answers in no more than 3 pages. You are not to assume any facts not obviously implied, but you may take a position based on the natural inferences drawn from the facts in the hypothetical, particularly as they may relate to the discovery of evidence of criminal conduct.

NOTE: At the end of **ALL** your written homework assignments, I want you to inscribe the following pledge **IN INK:** *“I pledge on my honor that I have not given or received any unauthorized assistance on this assignment/paper/examination.”*

MAKEUP POLICY

I have a very strict policy regarding makeup exams or assignments. These will only be given in cases of excused absences and official documentation is required. Excused absences are: illness with a doctor's note, death in the immediate family, required school activities, and required court appearance. **I will not accept a Health Center honor statement to verify an illness.** If you go to the Health Center and a doctor will not write you a note, you will need to get a copy of your medical record from them to verify your illness. By law, you are entitled to get a copy of this and it is your responsibility to do so. I must be notified in person or by e-mail **PRIOR** to missing an **exam or assignment** for me to consider giving you a makeup or accepting a late submission. **If you know in advance that you will be absent for an exam or an assignment due date with an approved absence, you will be expected to take the exam or turn in the assignment prior to the exam/assignment due date.**

ILLNESS AND DISABILITY SUPPORT

Please be advised that the University has recently changed the illness policy and you are able to submit for a single illness an attested absence note you can write yourself. According to the new policy, the University will accept as an excused absence a self-signed note from a student who has missed a single lecture, recitation or laboratory, attesting to the date of the illness. The note must also contain an acknowledgment by the student that the information is true and correct and that providing false information is prohibited under Code of Student Conduct. The student is also obligated to make a reasonable attempt to inform the instructor of his/her illness in advance. I will of course abide by such policy, as it affects a **SINGLE** absence.

A student who experiences a prolonged absence or an illness preventing completion of a major Schedule Grading Event (*see* Syllabus for designated Scheduled Grading Events) is

Criminal Justice Syllabus

Fall 2021

Prof. Salem

required to provide written documentation of the illness from the Health Center or an outside health care provider, verifying the dates of the treatment and the time period during which the student was unable to meet academic responsibilities.

I will also make every effort to accommodate students who are registered with the Accessibility and Disability Services (ADS) Office and who provide me with a University of Maryland DSS Accommodation form. This form must be presented to me no later than March 4, 2020. I am not able to accommodate students who are not registered with ADS or who do not provide me with documentation that has not been reviewed by ADS after September 10, 2020. ADS students who are requesting to take their exams at the ADS Center need to provide me with a testing form for each exam that must be turned in to me no later than 1 week prior to each exam. The student is expected to take the exam at the same time as the rest of the class.

Any documentation for missing a class should be submitted to the instructor before, but no later than the first day of class upon the student's return.

COURSE POLICIES

Course-related policies set by the University may be found at the following link:
<http://www.ugst.umd.edu/courserelatedpolicies.html>.

ACADEMIC INTEGRITY

Academic dishonesty of any form will absolutely NOT be tolerated. Academic dishonesty encompasses the traditional behavior such as cheating on exams and assignments, giving false statements, etc., but also includes activities such as possessing and/or reviewing previous semester's exams and computer assignments. Additionally, students will be asked to write the University approved Honor Pledge on each exam and HW assignment. The University of Maryland, College Park has a nationally Recognized Code of Academic Integrity, administered by the Student Honor Council. This Code sets standards for academic integrity at Maryland for all undergraduate and graduate students. As a student you are responsible for upholding these standards for this course. It is very important for you to be aware of the consequences of cheating, fabrication, facilitation, and plagiarism. For more information on the Code of Academic Integrity or the Student Honor Council, please visit <http://www.studenthonorcouncil.umd.edu/whatis.html>

CLASSROOM CODE OF CONDUCT

The success of this class is dependent not only on my abilities and talents as an instructor to communicate new and complicated ideas, but also on our ability as a class to work together to create an environment conducive to learning. As a Department and University, we expect the faculty and students to be prepared for class and to be actively engaged in the classroom activities. Unfortunately, disruptive behaviors in the classroom cheat other students out of opportunities to learn. The University of Maryland's Code of Academic Integrity defines classroom disruption as "behavior a reasonable person would view as substantially or repeatedly interfering with the conduct of a class." If we ever have to resort to virtual lectures, examples would include bombing, making loud or distracting noises, and persisting in speaking without being recognized. Please be sure to mute yourself unless you are speaking.

Students are expected to treat each other with respect. Disruptive behavior of any kind will not be tolerated. Students who are unable to show civility with one another, the teaching assistants, or me will be subject to referral to the Office of Student Conduct or to Campus Police. You are expected to adhere to the Code of Student Conduct.

MASKING

President Pines provided clear expectations to the University about the wearing of masks for unvaccinated students. Face coverings over the nose and mouth are required while you are indoors at all times. There are no exceptions. Students not wearing a mask will be given a warning and asked to wear one, or will be asked to leave the classroom immediately. Students who have additional issues with the mask expectation after a first warning will be referred to the Office of Student Conduct for failure to comply with a directive of University officials. Please do not make yourself a poor example

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The lectures I deliver in this class and the course materials I create and distribute, other than copies of case decisions, are protected by federal copyright law as my original works. My lectures are recorded or delivered from written lectures in order to ensure copyright protection. You are permitted to take notes of my lectures and to use course materials for your use in this course. You may not record, reproduce, or distribute my lectures/notes for any commercial purpose without my written consent. Persons who sell or distribute copies or modified copies of my course materials, possess commercial copies of my notes (i.e. Terpnotes), or assist another person or entity in selling or distributing those materials may be considered in violation of the University Code of Student Conduct, Part 9(k).

COURSE EVALUATIONS

I take your evaluation of my course very seriously. Each year I revise my syllabus, course assignments and exam questions based on the feedback I receive on the course evaluation. I am not only interested in the scores that you give this class but I am also very interested in the specific comments you have about this course. I want to encourage each student in this class to evaluate not only my class but all of your classes.

EXAM SCHEDULE

While I have set out the class in which the midterm is scheduled, please be aware that I intend to cover each topic prior to the midterm thoroughly enough to prepare you and therefore the date may change. I will of course keep you informed and you will have several weeks'

notice of the exact date before the midterm exam is given. As for the final exam, the University sets the date and time and you are responsible for being there at the scheduled date and time. I will not give make-ups without a significant excuse and proof of such excuse. That means in part that I do not typically give an early exam because you have scheduled your summer trip (home or elsewhere) before the exam date. You should consider scheduling any trips only AFTER the test dates come out.

As you are well aware, this semester is an effort to return to more normal circumstances, but times are still not normal. All of us are dealing with additional stress and anxiety. I write this to let you know that I am very open to being flexible should life events arise that make it hard for you to keep up with the class. Such events might include things happening to you personally or things happening to family members. Please know that I want to do everything I can to support you. To do this, though, I need to know about a problem when it starts, not after it has already derailed your ability to keep up with class. I don't need to know details. Whatever you are comfortable telling me is fine. Letting me know sooner rather than later, though, is key. I am in a much better position to help you and make accommodations if you tell me when the problem arises. It is MUCH harder to do this if you wait until the end of the term. You can email me or Amanda.

Upshot: I am here to help. If you are having life issues that are making it hard for you to keep up with class, PLEASE let me know so I can try to accommodate you.

Criminal Justice Syllabus
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